

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 799 Property Insurance

**SPONSOR(S):** Commerce Committee and State Administration & Technology Appropriations Subcommittee and Insurance & Banking Subcommittee, Griffiths and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 594

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**FINAL HOUSE FLOOR ACTION:** 87 Y's

28 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 799 passed the House on April 26, 2023. The bill was amended in the Senate on May 1, 2023, and returned to the House. The House concurred in the Senate amendments on May 3, 2023, and passed the bill as amended.

#### Windstorm Coverage

- Establishing that a property insurer's residential rate filing with the Office of Insurance Regulation (OIR) must allow for appropriate discounts for mitigation measures that reduce the potential for windstorm losses.
- Adding wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance. Wind uplift is the upward-acting pressure on parts of a roof caused by wind traveling across it.

#### Citizens Property Insurance Corporation (Citizens)

- Providing that the "glidepath" normally imposed on Citizens rates does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.
- Making certain that a limitation on Citizens rates for non-primary residences (current law) and policies assumed from unsound insurers (proposed by the bill) applies on a year-over-year basis, rather than based on a fixed date.
- Eliminating the requirement that condominium owners insured by Citizens purchase flood insurance.
- Making technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements.
- Establishing that, in addition to any other method of alternative dispute resolution authorized by law, Citizens may adopt policy forms that allow both Citizens and Citizens' policyholders to request a hearing by the Division of Administrative Hearings (DOAH) to resolve claims disputes.

#### Flood Coverage Required by Windstorm Policies

- Requiring that, if an insurer requires an insured or applicant to have flood coverage when issuing a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage.
- Providing that an insurer may deny a wind claim where a policyholder fails to maintain his or her flood insurance policy after the insurer verifies the existence of the flood policy, but before making a wind claim.
- Establishing that a master flood policy issued to someone other than the insured or applicant, and that includes the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

The bill provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study. The bill has no impact on local government revenues or expenditures. It will likely have a positive direct economic impact on the private sector.

The bill was approved by the Governor on May 31, 2023, ch. 2023-175, L.O.F., and will become effective on July 1, 2023.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Windstorm Coverage

#### **Background**

##### APPROVAL OF INSURANCE RATE FILINGS

In general, insurers must file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by the Office of Insurance Regulation (OIR).<sup>1</sup> OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.<sup>2</sup> In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Rate filings must also account for factors that should result in premium discounts or credited for policyholders. A residential property insurance rate filing must account for mitigation measures that policyholders undertake to reduce hurricane losses.<sup>3</sup>

##### MITIGATION CREDITS IN RESIDENTIAL PROPERTY INSURANCE RATE FILINGS

Residential property insurers must provide credits, discounts, other rate differentials, or appropriate reductions in deductibles to reduce insurance premiums for properties with mitigation features.<sup>4</sup> Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.<sup>5</sup> These features must be accounted for in residential property insurance rate filings submitted to OIR for approval.<sup>6</sup> Such features include, but are not limited to, measures that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to foundation strength, or appropriate protection, window, door, and skylight strength.<sup>7</sup> Examples of items that might be installed to protect a structure include hurricane shutters, a hip roof, or a specific type of roof covering.

##### WIND UPLIFT

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<sup>1</sup> S. 627.062(2)(a), F.S.

<sup>2</sup> S. 627.062(1), F.S.

<sup>3</sup> S. 627.062(2)(j), F.S.

<sup>4</sup> See s. 627.0629, F.S.

<sup>5</sup> See *id.*

<sup>6</sup> S. 627.0629(1), F.S.

<sup>7</sup> *Id.*

Wind uplift is the upward-acting pressure on the parts of a roof caused by wind traveling across the roof.<sup>8</sup> It is a force measure in pounds per square foot and occurs when the pressure below a roof exceeds the pressure above it.<sup>9</sup> Wind uplift can intensify during high winds, as air enters a building, causing an increase in the air pressure below the roof, while the speed of wind over the roof reduces the pressure above the roof.<sup>10</sup> When wind uplift exceeds the limits of a building system design, a roof deck could detach from a supporting structure.<sup>11</sup> Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift.<sup>12</sup> The standards vary based on building location and likelihood of exposure to high winds.<sup>13</sup>

### ***Effect of the Bill***

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer's rate filing must allow for appropriate discounts for mitigation measures that policyholders undertake to reduce the potential for windstorm losses.

The bill adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

The bill also provides an appropriation for OIR to procure a wind-loss mitigation study. The study is required to evaluate roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protections, window, door, and skylight strength, and methods and devices to prevent water intrusion through the tracks of sliding glass doors. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

### **Citizens Property Insurance Corporation (Citizens)**

#### ***General Background***

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>14</sup> Citizens is not a private insurance company.<sup>15</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).<sup>16</sup>

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<sup>8</sup> Certified Commercial Property Inspectors Association, *How Wind Uplift can Affect a Commercial Building's Roof*, <https://ccpia.org/how-wind-uplift-can-affect-a-commercial-buildings-roof/> (last visited Mar. 6, 2023).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* Changes to Florida's treatment of wind load were made in the 7<sup>th</sup> edition of the Florida Building Code in 2020. See Wind Loads- Impacts from ASCE 7-16 (June 2020), [https://floridabuilding.org/fbc/thecode/2020\\_7edition/ASCE\\_7-16\\_Fact\\_Sheet\\_final\\_2\\_column\\_format052820final.pdf](https://floridabuilding.org/fbc/thecode/2020_7edition/ASCE_7-16_Fact_Sheet_final_2_column_format052820final.pdf) (last visited Mar. 6, 2023).

<sup>14</sup> The term "admitted market" means insurance companies licensed to transact insurance in Florida.

<sup>15</sup> Section 627.351(6)(a)1., F.S.

<sup>16</sup> Section 2, ch. 2002-240, Laws of Fla.

## ***Background***

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows:<sup>17</sup>

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

Citizens' rate cap, also known as the "glidepath," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.

Until December 2022, Citizens' rates did not differ based upon whether the property that is a policyholder's primary residence, a policyholder's second home (e.g., a vacation home), or occupied by a long-term tenant.<sup>18</sup> During Special Session 2022A, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023. The rate for these residences must be no more than 50% above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage. However, current law does not provide any similar exception for risks previously insured by an unsound or insolvent insurer.

## ***Effect of the Bill***

The bill provides that, in addition to non-primary residences, the "glidepath" normally imposed on Citizens year-to-year rate growth does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.<sup>19</sup> Instead, these risks must be no more than 50% above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage. The bill also makes certain that limitation on Citizens rate increases for non-primary residences and policies assumed from unsound insurers applies on a year-over-year basis, rather than being attached to a fixed date (i.e., the rate in effect the year before the date of application for coverage).

## **CITIZENS ELIGIBILITY REQUIREMENTS**

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<sup>17</sup> S. 627.351(6)(n)5., F.S.

<sup>18</sup> Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home.

<sup>19</sup> In practical effect, this means that such policyholders might continue to pay the premium amount that they paid their prior insurer, not a lower premium that they might otherwise be charged by Citizens if subject to the rate increase limitations.

## Background

Until December 2022, Citizens Property Insurance Corporation could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signed a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant did not obtain flood coverage in addition to a policy from Citizens, the risk was not covered for flood damage.<sup>20</sup> A Citizens policyholder who did not obtain flood coverage and executed such a form, and who made a claim for water damage against Citizens, had the burden of proving the damage was not caused by flooding.<sup>21</sup> Additionally, Citizens could deny coverage to a policyholder or applicant who refuses to execute the form.<sup>22</sup>

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.<sup>23</sup>

A bill passed on December 2022 (SB 2-A) mandated that Citizens require personal lines residential policyholders and applicants to purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP. The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens. Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.

SB 2-A implemented the purchase of flood coverage by personal lines residential policyholders and applicants as follows:

- Policyholders whose Citizens' policies do not provide wind coverage are not required to purchase flood coverage as a condition of maintaining their Citizens' policies.
- All policyholders whose property insured by Citizens is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
  - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
  - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
  - January 1, 2024, for property valued at \$600,000 or more.
  - January 1, 2025, for property valued at \$500,000 or more.
  - January 1, 2026, for property valued at \$400,000 or more.
  - January 1, 2027, for all other personal lines residential property insured by Citizens.

Citizens has expressed concerns with the ability to implement the flood coverage requirements for the policyholders who must have flood coverage in place on or after January 1, 2024, because of the way in which dwelling value is calculated for issuance of policies.<sup>24</sup>

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<sup>20</sup> S. 627.351(6)(aa), F.S. (2021).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Current NFIP personal lines flood policies have limits of \$250,000 per claim.

<sup>24</sup> Current law used the phrase "property valued at . . .," but Citizens issues policies based on the replacement cost of a structure or unit (e.g. single-family home or condominium).

## ***Effect of the Bill***

The bill eliminates the requirement that condominium owners insured by Citizens purchase flood insurance. It also makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements.

## REFERRAL OF CASES TO THE DIVISION OF ADMINISTRATIVE HEARINGS (DOAH)

### ***Background***

The Division of Administrative Hearings (DOAH) is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.<sup>25</sup> When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.<sup>26</sup> Requests for hearings are initially made to the appropriate state agency.<sup>27</sup> If the case does not involve disputed facts, the agency itself will conduct a proceeding and subsequently render a decision.<sup>28</sup> If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to DOAH for a hearing.<sup>29</sup>

DOAH provides a hearing conducted by an independent and neutral Administrative Law Judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Recommended Order and issues a Final Order which usually adopts the Judge's factual findings, but, under certain circumstances, the agency may reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. If the Final Order is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.<sup>30</sup>

Currently, disputes between Citizens and a Citizens policyholder that are not resolved via informal negotiations or alternative dispute resolution may result in the filing of a civil suit in circuit court.<sup>31</sup>

### ***Effect of the Bill***

The bill provides that, in addition to any other method of alternative dispute resolution authorized by law, Citizens may adopt policy forms that allow both Citizens and Citizens' policyholders to request a hearing by DOAH to resolve claims disputes. It also establishes that attorney fees may be awarded to either party for raising unsupported claims or defenses during a DOAH proceeding and for the use of offers of judgment and demands for judgment. The bill prohibits either party from serving an offer earlier than ten days after the filing of the request for a hearing with DOAH or later than 10 days before the date set for the final hearing at DOAH. Additionally, the bill prohibits OIR from approving a maximum hourly rate for attorney fees for hearings before DOAH.

## **Flood Coverage Required by Windstorm Policies**

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<sup>25</sup> Ch. 120, F.S.

<sup>26</sup> s. 120.68(1), F.S.

<sup>27</sup> See Uniform Rule 28-106.201(2).

<sup>28</sup> s. 120.57(2), F.S.

<sup>29</sup> s. 120.57(1), F.S.

<sup>30</sup> s. 120.68(2)(a), F.S.

<sup>31</sup> Bid protest resolutions involving Citizens are currently handled by the Division of Administrative Hearings. See Citizens, *Board of Governors Procedure Protests*, <https://www.citizensfla.com/documents/20702/42664/Procurement+Protest+Procedure/816d9bfb-e636-40ec-a9f5-34873d053bf7> (last visited Apr. 15, 2023).

## **Background**

Property insurance policies generally do not include flood coverage. Damage from flooding, including flooding from hurricane-generated storm surge, is not covered under a standard commercial policy, including a Commercial Package Policy or a Business Owners Policy.<sup>32</sup> Standard homeowners, condominium owners, and renters insurance policies do not provide flood coverage, including damage from storm surge.<sup>33</sup> However, some property insurers include language in property insurance policies providing windstorm coverage that requires that an insured or applicant maintain flood coverage in order for the windstorm coverage to be valid if a claim is made for windstorm damage. Compliance with this requirement may be problematic if an insurance agent has not made an insured or applicant aware of it at the time a property insurance policy is purchased.

## **Effect of the Bill**

For residential and commercial property insurance policies issued or renewed on or after October 1, 2023, the bill establishes that if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage at the time of policy issuance or renewal.

If such verification was made and flood coverage is not in force at the time of loss, the insurer may deny a claim solely because the insured does not have coverage for the peril of flood. However, if the insurer fails to make such verification, the insurer is prohibited from denying a claim for wind solely because the insured does not have coverage for the peril of flood.

In addition to flood coverage directly obtained by the insured or applicant, the bill establishes that a master flood policy issued to someone other than the insured or applicant, but that covers the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

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<sup>32</sup> Insurance Information Institute, *Does my Business Need Flood Insurance?*, <https://www.iii.org/article/does-my-business-need-flood-insurance> (last visited Mar. 7, 2023).

<sup>33</sup> Insurance Information Institute, *Hurricane Insurance FAQ: What Your Insurance Does—and does not—Cover*, <https://www.iii.org/article/hurricane-insurance-faq> (last visited Mar. 7, 2023).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have a positive direct economic impact on the private sector if rates are reduced due to the consideration required by the bill.

D. FISCAL COMMENTS:

None.