

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1503 Citizens Property Insurance Corporation

SPONSOR(S): Commerce Committee and Insurance & Banking Subcommittee, Esposito and others

TIED BILLS: IDEN./SIM. **BILLS:**

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/CS/HB 1503 passed the House on March 1, 2024, as amended. The bill was amended in the Senate on March 6, 2024, and was returned to the House. The House concurred in the Senate amendment and passed the bill, as amended by the Senate, on March 7, 2024.

The bill makes various changes to Citizens Property Insurance Corporation (Citizens), including:

- **Surplus Lines:** permits surplus lines insurers that meet certain financial requirements to take out policies from Citizens issued on dwellings that are not primary residences or homesteaded properties; provides definitions to accomplish these take outs.
- **Flood coverage:** effective upon becoming law, requires Citizens' policyholders who must purchase flood insurance as a condition of eligibility for Citizens' coverage to purchase only dwelling coverage for a flood loss rather than dwelling and contents coverage.
- **Combining Accounts:** eliminates a significant amount of statutory language that is no longer needed because Citizens has combined the Personal Lines Account, the Commercial Lines Account, and the Coastal Account, into one Citizens Account, as of January 1, 2024.
- **Operations and Management:** allows Citizens' executive director to appoint a designee to act as its agency head; allows Citizens to share information with NICB to assist in efforts to fight insurance fraud; allows Citizens to obtain patents, copyrights, and trademarks, and to enforce related rights.

The bill has no impact on local or state government revenues or expenditures. It has a likely indeterminate positive and negative direct economic impact on the private sector.

Subject to the Governor's veto powers, and except as otherwise provided, the effective date of the bill is July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

General Background

Citizens Property Insurance Corporation (Citizens) is a not-for-profit, tax-exempt government entity that provides property insurance to those who are unable to find affordable coverage in the private market. Citizens was created to serve as Florida's property insurer of last resort.¹ Applicants are eligible for coverage if no admitted private carrier² will write them a policy for a premium that is within 20 percent greater than what Citizens would offer for comparable coverage.³

The policies that Citizens writes include the following:

- Standard Personal Lines Policies – comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic Personal Lines Policies – similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial Lines Residential and Nonresidential Policies – generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal Lines and Commercial Lines Residential Property Insurance Policies – cover the peril of wind only;
- Commercial Lines Nonresidential Property Insurance Policies – cover the peril of wind only.⁴

Citizens' Rates

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, did 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 percentage point per year to 15 percent, as follows:⁵

- 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.⁶

¹ Citizens Property Insurance Corporation (Citizens), *Programs*, <https://www.citizensfla.com/programs> (last visited Jan. 30, 2024).

² The admitted market is comprised of insurance companies licenses to transact insurance in Florida.

³ S. 627.351(6)(c)5.a, F.S.

⁴ S. 627.351(6)(c)1., F.S.

⁵ S. 627.351(6)(n)5., F.S.

⁶ S. 627.351(6)(t), F.S. See also s. 627.351(6)(c)9. for information regarding Citizens purchase of reinsurance.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.⁷ In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it pays to the Florida Hurricane Catastrophe Fund (FHCF) as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.⁸

In addition to eventually being actuarially sound, Citizens' rates must not be competitive with approved rates charged by admitted insurers so that Citizens functions as a residual market to provide insurance only when it cannot be obtained from admitted insurers.⁹ This eliminates localized rate reductions among Citizens policies. Additionally, OIR must provide Citizens with the information necessary to determine whether Citizens' rates are competitive.¹⁰

Until Special Session 2022A, in December 2022, Citizens' rates did not differ based upon whether the property insured is a policyholders' primary residence, a policyholder's second home (e.g. a vacation home,) or occupied by a long-term tenant.¹¹ However, 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, 2023.¹² The rate for these residences rate 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.¹³

Eligibility for Coverage

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for coverage from Citizens, and specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens also has additional eligibility requirements set out in their underwriting rules. These rules are approved by OIR and set out in Citizens' underwriting manuals.¹⁴

Citizens may cover homes if the cost of replacing the dwelling, or the dwelling and its' contents, is no more than \$700,000. In Miami-Dade and Monroe counties, Citizens may insure structures valued up to \$1 million as long as the Office of Insurance Regulation (OIR) continues to determine that these counties are not competitive.¹⁵

Eligibility for Personal and Commercial Lines Residential Coverage at Renewal

When Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than 20 percent greater than the rate for comparable coverage from Citizens, inclusive of surcharges and assessments being levied on the policy by Citizens.¹⁶ The bill also establishes that policies removed from Citizens under an assumption

⁷ S. 627.351(6)(n)7., F.S.

⁸ S. 627.351(6)(n)6., F.S.

⁹ S. 627.351(6)(n)1., F.S.

¹⁰ *Id.*

¹¹ 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. Citizens is currently prohibited from issuing wind-only policies to commercial lines residential condominiums when 50 percent or more of the units in the condominium are rented more than eight times per calendar year for less than 30 days in each rental period. S. 627.351(6)(a)6., F.S.

¹² S. 627.351(6)(n)8., F.S.

¹³ *Id.*

¹⁴ See Citizens, *Revised Underwriting Manuals*, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited Jan. 28, 2024).

¹⁵ S. 627.351(6)(a)3, F.S. If OIR makes a finding that other counties are not competitive, Citizens would be able to insure properties up to \$1 million in value in those counties, as well.

¹⁶ S. 627.351(6)(c)5., F.S.

agreement may remain on Citizen's policy forms through the end of the policy term, but policy administration and liability transfers to the assuming insurer.¹⁷

Eligibility after a Take-out Offer

Florida law requires that Citizens create programs to help return its policyholders to the private property insurance market and to reduce the risk of additional assessments for all Floridians in the event that Citizens is unable to meet its obligations.¹⁸ In 2016, the Legislature passed requirements that by January 1, 2017, Citizens amend its operations relating to take-out agreements, whereby private insurers remove policies from Citizens.¹⁹ As part of these requirements, a policy may not be taken out of Citizens, unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer requests to take out;²⁰
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; the list must include a description of the coverage offered and the estimated premium for each take-out request;
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with Citizens. The notice must be in a format prescribed by Citizens and include, for each take-out offer:
 - The amount of the estimated premium;
 - A description of coverage; and
 - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.²¹

When Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than 20 percent greater than Citizens' renewal premium for comparable coverage, inclusive of surcharges and assessments being levied on the policy by Citizens, they are no longer eligible for Citizens' coverage.²² Citizens' must notify policyholders that they have received a take-out offer and that the offer renders their risks ineligible for Citizens' coverage.²³

Effect of the Bill – Surplus Lines

The bill permits surplus lines insurers that meet certain financial requirements to take out policies from Citizens that are written on dwellings that are not primary residences or homesteaded properties.²⁴ The bill includes various definitions to assist Citizens with these take outs. While surplus lines insurers do not ordinarily have their rates approved by OIR, the bill requires these insurers to have rates approved for the purposes of their planned Citizens' take outs. The bill does not prohibit a risk that was taken out by a surplus lines insurer from returning to Citizens subject to existing eligibility criteria.

¹⁷ *Id.*

¹⁸ S. 627.351(6)(q)3.a., F.S.

¹⁹ Ch. 2016-229, Laws of Fla.

²⁰ These requests from insurers must include a description of the coverage offered and an estimated premium for it and must be submitted to Citizens in a form prescribed by Citizens.

²¹ S. 627.351(6)(ii), F.S.

²² *Id.*

²³ *Id.*

²⁴ Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

Flood Coverage Requirements

Until Special Session 2022A, in December 2022, Citizens could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signs a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant does not obtain flood coverage in addition to a policy from Citizens, the risk is not covered for flood damage.²⁵ 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.²⁶

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.²⁷

In April 2023, Citizens began to require personal lines residential policyholders and applicants purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP.²⁸ 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.²⁹ Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.³⁰

The purchase of flood coverage by personal lines residential policyholders and applicants has been implemented as follows:³¹

- The following Citizens' policyholders are not required to purchase flood coverage as a condition of maintain their Citizens policies:
 - policyholders whose Citizens policies do not provide wind coverage; and
 - policyholders whose Citizens policies provide coverage under a condominium unit owners form.
- All policyholders whose Citizens-insured property 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.

The law requiring certain Citizens' policyholders to purchase flood coverage has been interpreted to require the purchase of both dwelling and contents coverage for flood losses. When policyholders with existing flood policies have added contents coverage to policies that covered the dwelling only, this has triggered huge premium increases under the NFIP's newly-implemented Risk Rating 2.0 pricing approach.³²

²⁵ See ch. 2022-271, Laws of Fla.

²⁶ *Id.*

²⁷ Current NFIP personal lines flood policies have limits of \$250,000 per claim.

²⁸ S. 627.351(6)(aa), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² See Federal Emergency Management Agency, *NFIP's Pricing Approach*, <https://www.fema.gov/flood-insurance/risk-rating> (last visited Jan. 29, 2024).

Effect of the Bill – Flood Coverage Requirements

The bill requires Citizens' policyholders who must purchase flood insurance as a condition of eligibility for Citizens' coverage to purchase only dwelling coverage for a flood loss rather than dwelling and contents coverage. This will eliminate or avoid flood insurance rate increases triggered solely by the purchase of contents coverage under a flood insurance policy in order to maintain eligibility for Citizens' coverage.

Combining of Accounts

Three Accounts

Until very recently, Citizens had three different accounts through which it offered property insurance: a personal lines account (PLA), a commercial lines account (CLA), and a Coastal Account. The PLA offered personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also wrote policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners', mobile home owners', dwellings, tenants', and condominium unit owners' policies.³³

The CLA offered commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also wrote policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.³⁴

The Coastal Account offered personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.³⁵

Financial Resources

Citizens' financial resources include:

- Insurance premiums
- Investment income and operating surplus from prior years
- FHCF reimbursements
- Private reinsurance
- Policyholder surcharges
- Regular assessments
- Emergency assessments

Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.³⁶ In the event of a catastrophic storm or series of smaller storms, reserves could be

³³ See s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (March 2016) (last visited Jan. 28, 2024).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, <https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last visited Jan. 28, 2024).

exhausted, leaving Citizens unable to pay all claims.³⁷ Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments³⁸ on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.³⁹ Citizens could impose three assessment tiers.⁴⁰

A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. When Citizens had three separate accounts, this 15 percent assessment could be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account—that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.⁴¹

If the Citizens' surcharge was insufficient to cure the deficit for the Coastal Account, Citizens could require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.⁴² This assessment is not levied against Citizens' policyholders.

An emergency assessment provision requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders, except medical malpractice and workers' compensation, but including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.⁴³ The assessments may be cumulative.

During Special Session 2022A, the Legislature gave Citizens the authority to combine its three accounts into a single account upon Citizens eliminating all outstanding financing obligations.⁴⁴ A single account structure allows Citizens to access its entire surplus to pay claims. Previously, surplus in a particular account could only be used to pay claims in that account.

OIR approved changes to "Citizens' underwriting guidelines and application statements regarding possible assessment and surcharge amounts to support the merging of Citizens' three accounts. . . ." into the Citizens Account.⁴⁵ The Citizens policyholder surcharge imposed in the event of a deficit has been revised from 15 percent per account (maximum 45 percent total) to 25 percent for the single account (an initial assessment of up to 15 percent plus a potential emergency assessment of up to 10 percent).⁴⁶ Effective January 1, 2024, Citizens combined the three accounts into the Citizens Account.⁴⁷

³⁷ Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Jan. 28, 2024).

³⁸ Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

³⁹ Accident and health insurance and policies written under the NFIP or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. S. 627.351.(6)(b)3.f.-h., F.S.

⁴⁰ Citizens Property Insurance Corporation, *Citizens Property Insurance Corporation: General Overview and Recent Issues*, p. 14 7, <https://myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorJResources/Attachments/75/Citizens%20General%20Overview%20and%20Recent%20Issues%20Presentation%2020221206.pdf> (last visited Jan. 28, 2024).

⁴¹ Sections 627.351.(6)(b)3.i.(l) and 627.351.(6)(c)21., F.S. (2021).

⁴² S. 627.351(6)(b)3.a., F.S.

⁴³ S. 627.351(6)(b)3.d., F.S.

⁴⁴ S. 627.351(b)(b)2.b., F.S. The PLA, CLA, and coastal accounts combined to form one account known as the Citizens account.

⁴⁵ Citizens, *Combined Assessments and Surcharge Amounts*, <https://www.citizensfla.com/-/20231103-combined-assessments-and-surcharge-amounts> (last visited Jan. 28, 2024).

⁴⁶ S. 627.351(6)b.5., F.S. While the text of SB 2-A (2022A) appeared to authorize Citizens to collect new, or additional surcharges, it did not. Due to drafting requirements it establishes a new surcharge framework within the law to become effective upon the combining of the accounts, but does not actually authorize higher surcharges than those presently in law. See also Citizens, *supra* note 42.

⁴⁷ Citizens, *supra* note 42.

Effect of the Bill – Combining Accounts

The bill eliminates a significant amount of statutory language that is no longer needed because Citizens has combined its three accounts into one account. These statutory deletions include references to the PLA, CLA, and Coastal Account. Citizens is now permitted to use its entire surplus to pay claims. The bill does not make any additional changes regarding assessments beyond those that were enacted during Special Session 2022A.

Citizens' Operations and Management

Citizens is overseen by a board and operated by an executive director. Citizens' board consists of nine individuals who must be residents of different geographical areas of Florida.⁴⁸ The Governor, Chief Financial Officer, President of the Senate, and Speaker of the House, each appoint two members of the board.⁴⁹ The Governor appoints one additional member who serves solely to advocate on behalf of consumers.⁵⁰ At least one of the two members appointed by each appointing officer must have demonstrated experience in insurance.⁵¹

Citizens' executive director, often referred to as its president or chief executive officer, is engaged by the board and serves "at the pleasure of the board."⁵² The executive director is subject to confirmation by the Senate.⁵³ He or she is responsible for employing other staff as Citizens requires, subject to review and agreement by the board.⁵⁴ However, current law does not specify the experience, character, or qualifications that an individual must have in order to be qualified to serve as Citizens' executive director.

The special investigative units of private insurers typically share information with the National Insurance Crime Bureau (NICB) to help fight insurance fraud.⁵⁵ However, current law does not allow Citizens to share information with NICB.

In addition, current law does not permit Citizens to obtain patents, copyrights, or trademarks, and to enforce its related rights.

Effect of the Bill – Operations and Management

The bill makes the following changes regarding Citizens' operations and management:

- Allows Citizens' executive director to appoint a designee to act as its agency head.⁵⁶
- Allows Citizens to share information with NICB to assist in efforts to fight insurance fraud.
- Allows Citizens to obtain patents, copyrights, and trademarks, and to enforce related rights to the same.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁴⁸ S. 627.351(6)(c)4., F.S.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See National Insurance Crime Bureau, *Member Benefits*, <https://www.nicb.org/membership/member-benefits> (last visited Jan. 28, 2024).

⁵⁶ Allowing Citizens' executive director to appoint a designee is consistent with the permission granted to state agency heads to appoint designees that is found throughout ch. 287, F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate positive and negative effect on the private sector. Citizens' policyholders who are required to purchase flood coverage will likely see a decrease in their flood insurance premiums as a result of only having to buy dwelling coverage.

It may have a negative effect on non-primary residential policyholders who must take an offer from a surplus lines carrier and end up paying more in premium than they were paying for a Citizens policy.

D. FISCAL COMMENTS:

None.