

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1109	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Wood	117 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 1672	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/HB 1109 passed the House on April 30, 2014, as CS/CS/SB 1672. The bill provides numerous changes to property insurance. Specifically, the bill:

- Prohibits a public adjuster, public adjuster apprentice, or anyone acting on their behalf to accept a power of attorney relating to the choice of a repair contractor in a property insurance claim;
- Prohibits contractors from paying, waiving, or rebating property insurance deductibles if done knowingly, willfully, and with intent to injure, defraud, or deceive and makes doing so a third degree felony;
- Prohibits Citizens Property Insurance Corporation (Citizens) from writing new multiperil commercial residential policies starting July 1, 2014 in the Coastal Account, but allows renewal of the policies that are currently written;
- Requires Citizens' procurement disputes to be heard by the Division of Administrative Hearings (DOAH), with any appeal heard by the First District Court of Appeal;
- Changes the date for Citizens' annual report on non-catastrophic losses from January 15th to March 1st;
- Repeals a duplicative annual report on Citizens and the Florida Hurricane Catastrophe Fund (FHCF);
- Requires a new annual report from Citizens on its borrowing capacity, claims-paying capacity, and year end cash balance;
- Exempts mitigation discount forms from independent verification if the mitigation inspector or inspection company has a quality assurance program;
- Prohibits Citizens from independently verifying mitigation discount forms or reinspecting property for mitigation discount purposes if the mitigation inspector that completed the form has a quality assurance program and the form was submitted to the program before being submitted to Citizens;
- Prohibits mitigation inspectors from giving referral fees to insurance agents, insurance agencies, customer representatives or employees of insurance agencies;
- Prohibits insurance agents, insurance agencies, customer representatives or employees of insurance agencies from accepting referral fees from mitigation inspectors; and
- Authorizes the Department of Financial Services (DFS) to take action against a license of or an application for a license as an insurance agent, adjuster, customer representative, service representative, or managing general agent if the agent, adjuster, or representative accepts a referral fee from an inspector or inspection company for a property insurance inspection.

The bill has no fiscal impact on local government. The fiscal impact to Citizens and to the DOAH is outlined in the Fiscal Analysis.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1109z.IBS

DATE: May 15, 2014

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state. The Department of Financial Services (DFS) regulates all types of adjusters.

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies.

Current law provides numerous restrictions and parameters on activities of public adjusters.¹ Administrative rules also address public adjuster activities.² Public adjuster activities addressed by current law include: advertisement and solicitation, referrals, referral fees, loans to clients or prospective clients, notice of property loss claims, and allowing access to damaged property by other parties involved in the claim.

The bill prohibits a public adjuster, a public adjuster apprentice, or anyone acting on either's behalf, from accepting a power of attorney giving the public adjuster, public adjuster apprentice, or anyone acting on their behalf, authority to choose the person or entity to repair the property that is the subject of the property insurance claim. This provision is similar to an existing administrative rule³ relating to public adjusters, although the bill broadens the application of the existing rule to public adjuster apprentices or anyone acting on the behalf of a public adjuster or public adjuster apprentice.

Rebating Property Insurance Deductibles

Current law does not address rebating of property insurance deductibles by contractors. The bill prohibits contractors from paying, waiving, or rebating property insurance deductibles if done knowingly, willfully, and with intent to injure, defraud, or deceive and makes doing so a third degree felony.

Citizens Property Insurance Corporation (Citizens)

Citizens 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. It is not a private insurance company.

As of February 12, 2014, Citizens is the largest property insurer in Florida with over one million policies extending approximately \$315 billion of property coverage to Floridians.⁴ Citizens insures over 383,000 residential and commercial policies in Florida's coastal areas and over 600,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

¹ Laws enacted in 2008 (Ch. 2008-220, L.O.F.), in 2009 (Ch. 2009-87, L.O.F.), and 2011 (Ch. 2011-39, L.O.F.) provided significant changes relating to public adjusters.

² Rule 69B-220.201(4) and (5), F.A.C.

³ Rule 69B-220.201(4)(h), F.A.C. The administrative rule only applies to public adjusters.

⁴ <https://www.citizensfla.com/about/bookofbusiness/> (last viewed March 11, 2014).

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts:

1. Personal Lines Account (PLA) – Multiperil Policies⁵
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies
Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only⁶ and Multiperil Policies
Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

The bill prohibits Citizens from writing new multiperil commercial residential policies starting July 1, 2014 in the Coastal Account, but allows renewal of the policies that are currently written.

Procurement Protests Against Citizens Property Insurance Corporation

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.⁷ 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.⁸ Requests for hearings are initially made to the appropriate state agency.⁹ If the case does not involve disputed facts, the agency itself will conduct a proceeding and subsequently render a decision.¹⁰ 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.¹¹

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 Order and issues a final decision which usually adopts the Judge's factual findings, but may under certain circumstances reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. If the final decision is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.¹²

Legislation enacted in 2013¹³ required Citizens' purchase of commodities and contractual services to comply with s. 287.057, F.S., which governs the purchase of commodities and contractual services by state agencies. The law makes Citizens an "agency" for purposes of s. 287.057, F.S., with one limited exception.¹⁴ The executive director of Citizens is the "agency head," except for bid protests where the

⁵ A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

⁶ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

⁷ Ch. 120, F.S.

⁸ s. 120.68(1), F.S.

⁹ See Uniform Rule 28-106.201(2).

¹⁰ s. 120.57(2), F.S.

¹¹ s. 120.57(1), F.S.

¹² s. 120.68(2)(a), F.S.

¹³ Ch. 2013, 60, L.O.F.

¹⁴ s. 627.351(6)(e)1., F.S.

Citizens' Board of Governors¹⁵ (Board) is the "agency head."¹⁶ For protests relating to solicitations or contract awards, the law specifies the protest must be decided by the Board at the board meeting after Citizens tries to resolve the protest by mutual agreement. Once the Board decides the protest, the Circuit Court of Leon County has jurisdiction for any further legal proceedings.

The bill removes the authority for the Citizens' Board to decide protests relating to solicitations or contract awards and requires those protests to be heard by DOAH instead. DOAH is required to do a recommended order on the protest and the Citizens' Board, as the "agency head" must consider the recommended order in a public meeting and take final action on the protest. Once the Board takes final action, the bill gives the First District Court of Appeal, rather than Leon County Circuit Court, jurisdiction for any further legal proceeding.

Annual Reports Required From Citizens Property Insurance Corporation & The Florida Hurricane Catastrophe Fund

Current law requires annual reports from Citizens on a variety of issues. By January 15th each year, Citizens must report its loss ratios for residential non-catastrophic losses on statewide average and county basis to the OIR.¹⁷ This information must also be put on Citizens' website. The bill changes the reporting date from January 15th to March 1st to allow Citizens more time to gather, calculate, and report the data from the prior year. Under current law, Citizens only has 15 days to gather, calculate, and report data from the previous calendar year.

Citizens and the Florida Hurricane Catastrophe Fund (FHCF)¹⁸ must also annually report to the Legislature and the Financial Services Commission¹⁹ (FSC) on their aggregate net probable maximum loss,²⁰ financing options, and potential assessments by February 1st.²¹ The report must also include the amount and term of debt needed to be issued by each entity to support the probable maximum loss reported. The assessment percentage that is needed to support the debt must also be reported. A similar report is also required to be done by the FSC under current law (s. 627.3519, F.S.). The bill repeals the report to be done by the FSC as it is duplicative of the one required from Citizens and the FHCF in s. 627.35191, F.S. The report required from Citizens and the FHCF by s. 627.35191, F.S., is not changed by the bill and will thus, still be provided to the Legislature and the FSC.

The bill requires Citizens to provide a new annual report. This report is due to the Legislature and the FSC each May. The report must estimate Citizens': 12-month borrowing capacity, claims-paying capacity, and calendar year end balance. In determining these estimates, Citizens must consider that the Florida Hurricane Catastrophe Fund²² and the Florida Insurance Guaranty Fund may be concurrently issuing debt. The report required by the bill is similar to the one required by current law (s. 627.35191, F.S.) on Citizens' financing options and potential assessments, but not identical.

¹⁵ Citizens operates under the direction of an nine member Board of Governors (Board). The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the Board, with one member appointed chair by the Chief Financial Officer. Board members serve three year staggered terms. At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. The board members are not Citizens' employees and are not paid. There is also a consumer representative on the Board that is appointed by the Governor.

¹⁶ s. 627.351(6)(e)1.b., F.S.

¹⁷ s. 627.351(6)(hh), F.S.

¹⁸ The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. Revenue bonds issued by the FHCF to pay claims when the FHCF's funds are inadequate are funded by emergency assessments on property and casualty policyholders. The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2016, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other FHCF resources are insufficient to cover the FHCF's obligations.

¹⁹ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

²⁰ Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

²¹ s. 627.35191, F.S.

²² The Florida Hurricane Catastrophe Fund is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Mitigation Discounts

Current law requires insurers to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.²³

Section 627.711, F.S., requires insurers to clearly notify an applicant for or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed and provided on a form developed by the Office of Insurance Regulation.

Typically, policyholders are responsible for substantiating to their insurers the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. All insurers must use the uniform mitigation verification inspection form developed by rule by the FSC.²⁴ The current version of the form was approved by the FSC in 2012.²⁵

Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form. Insurers can require mitigation forms provided to the insurer by mitigation inspectors or mitigation inspection companies to be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.²⁶ At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

The bill provides an exception to the mitigation form independent verification process for Citizens. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a quality assurance program approved by Citizens reviewed and verified the form when it was submitted. Similarly, the bill allows insurers, including Citizens, to exempt from verification mitigation discount forms from a mitigation inspector or inspection company with a quality assurance program. In addition, Citizens is not allowed to reinspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by them.

The bill prohibits referral fees between mitigation inspectors and insurance agents, insurance agencies, customer representatives or employees of insurance agencies. It also authorizes the DFS to take action against a license of or an application for a license as an insurance agent, adjuster, customer representative, service representative, or managing general agent if the agent, adjuster, or representative accepts a referral fee from an inspector or inspection company for a property insurance inspection.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²³ s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).

²⁴ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.). The form is adopted by Rule 69O-170.0155, F.A.C.

²⁵ Information about the form adopted in 2012 is available at <http://www.floir.com/sections/pandc/productreview/uniformmitigationform.aspx> (last viewed March 11, 2014).

²⁶ s. 627.711(8), F.S.

DOAH will receive payment from Citizens for their expenses associated with hearing Citizens protests relating to solicitations or contract awards, although the net fiscal impact of this payment should be zero as the payment received from Citizens should equal DOAH's expenses associated with each protest determined by DOAH.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Citizens will incur additional costs to pay DOAH for their expenses associated with determining protests relating to solicitations and contract awards. Currently, the Citizens Board determines bid protests at regularly scheduled board meetings, so any additional cost to Citizens for the determination by their Board is minimal.

D. FISCAL COMMENTS:

None.