HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBS 13-01 Citizens Property Insurance Corporation Clearinghouse Program
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (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. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure.

In general, current law prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner property insurance for a premium that is up to 15 percent more than the Citizens' premium. Currently, to comply with this premium restriction, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium. Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when a private insurer will write insurance within the restriction by shopping for property insurance with multiple agents.

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens.

The bill requires all new applications and all renewals for insurance in Citizens to be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the premium eligibility restrictions. Insurers are not required to participate in the clearinghouse. When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If no insurer selects the property, Citizens will insure it. If an insurer selects the property and the premium offered by that insurer is within the premium eligibility guidelines, then the homeowner is not eligible for insurance in Citizens. Surplus lines insurers are allowed to participate in the clearinghouse, but the homeowner remains eligible for insurance in Citizens if the property is selected by a surplus lines insurer, regardless of the premium for the insurance. The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. The bill also allows Citizens to recognize a clearinghouse-type mechanism that is administered by a private entity as an alternative to the one administered by Citizens.

The bill has no fiscal impact on state or local government. The bill has a myriad of fiscal impacts on homeowners in Citizens, on homeowners not in Citizens, on some insurance agents, and on Citizens. These impacts are outlined in the Fiscal Analysis. The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Citizens Property Insurance Corporation (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. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure. Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met and requires Citizens to have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

Currently, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent, either captive or not, to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium.

Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents. If one agent denies the homeowner insurance in Citizens because he or she represents a private insurer that will write the policy for a premium up to 15 percent more than the Citizens' premium, the homeowner can go to a different agent. If that agent does not represent a private insurer willing to write the policy within the 15 percent premium eligibility restriction, the agent can place the policy into Citizens. Thus, the policy goes into Citizens even though there is a private insurer willing to write it within the 15 percent premium restriction simply because the agent selling the policy does not represent that private insurer.

Effect of Proposed Changes

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens.

The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens. This is a new premium eligibility restriction for Citizens. Currently, the only eligibility restriction for coverage by Citizens applies to new coverage and not renewals. The renewal restriction provided in the bill prevents a homeowner from renewing insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium up to 5 percent more than the Citizens' renewal premium.

All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the statutory premium eligibility restrictions of 15 percent for new insurance applications and five percent for renewals. Insurers are not required to participate in the clearinghouse.

When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If the 48 hour period expires and no insurer has elected to insure the property, Citizens will insure it. If the property is selected by an insurer and the premium offered by the insurer is within the statutory premium eligibility guideline for new applications, then the homeowner is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the homeowner can choose to buy insurance with the insurer or buy insurance with Citizens.

The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. If property insured by Citizens is up for renewal and is selected from the clearinghouse by an insurer with a premium from the insurer within the statutory renewal premium eligibility guidelines, then the homeowner is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the homeowner can choose to buy insurance with the insurer or renew their insurance with Citizens.

Surplus lines insurers[1] can also participate in the clearinghouse. A surplus lines insurer cannot offer to insure a property if a Florida licensed insurer[2] makes an offer. Unlike offers of insurance made to homeowners through the clearinghouse from Florida licensed insurers, if a homeowner receives an offer of insurance through the clearinghouse from a surplus lines insurer within the Citizens' premium eligibility restrictions, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer within the renewal premium eligibility guidelines.

The bill specifies additional parameters for the clearinghouse. The clearinghouse must be an organizational unit within Citizens. Citizens is authorized to employ or contract with outside vendors for operation of the clearinghouse. To fund the clearinghouse, the bill allows Citizens to charge a reasonable percentage fee of the agent commission on policies written by an insurer through the clearinghouse. The bill provides exceptions to current law requiring insurance agents to be appointed by each insurer the agent sells insurance for in order to effectuate efficient implementation of the clearinghouse by independent and captive insurance agents.[3]

In order to allow homeowners to stay with their insurance agent, even if the agent is not appointed by the insurer that selected the property from the clearinghouse, the bill allows agents and insurers to enter into limited agency or service agreements. In effect, a limited agency or service agreement allows the agent to keep his or her book of business, continue to be the agent on the policy, and to continue to continue to service the policy, which gives the homeowner a smooth transition to their new insurer. Independent agents are required to enter into limited agency agreements with insurers that do not currently appoint the agent but who write insurance through the clearinghouse for the agent's

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[1] Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.

[2] Admitted insurer is one licensed to transact insurance in Florida.

[3] Independent insurance agents are those that are authorized by multiple insurers to place insurance with the insurers. Captive agents are those that are authorized to place insurance with one insurer only and operate as an exclusive agent for that insurer. Independent agents cannot place insurance with insurers that use captive agents.

existing customer. Exclusive agents (i.e., captive agents) must enter into limited servicing agreements with these insurers only if the insurer appointing the exclusive agent approves the agreement.

The bill also provides exceptions to current law relating to payment of agent commissions for risks kept out of Citizens or taken out within the first 30 days of the policy to effectuate implementation of the clearinghouse. Finally, the bill requires insurance agents to retain expirations and records related to any insurance written through the clearinghouse.

The bill allows Citizens to recognize a clearinghouse-type mechanism that is administered by a private entity as an alternative to the one administered by Citizens. Citizens must publish standards for this private alternative by January 1, 2014. If this alternative is recognized, new applications for Citizens and Citizens' renewals can be submitted to the alternative instead of the Citizens' clearinghouse. Insurers are allowed to choose to participate only in the clearinghouse, but are not allowed to choose to participate only in the private alternative. Thus, insurers participating in the private alternative must also participate in the clearinghouse.

The clearinghouse established in the bill does not replace or supplant other depopulation programs by Citizens.[4] Depopulation of Citizens can occur two ways. One way is by keeping policies currently insured in the private market out of Citizens and keeping them in the private market. The second way is by taking policies out of Citizens by insurers in the private market. To date, most of Citizens' depopulation programs have focused on taking policies out of Citizens and the bill provides a new option for keeping policies out of Citizens.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.752, F.S., relating to exchange of business.

Section 2: Creates s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[4] Section 627.351(6)(q)3., F.S., requires Citizens to develop and maintain one or more depopulation programs to reduce its policy count and exposure. The depopulation programs must be approved by the Office of Insurance Regulation and be prudent and not unfairly discriminatory.

The number of policies obtaining insurance in Citizens and the number of policies currently insured by Citizens is expected to decline under the bill because the clearinghouse provides a way to ensure Citizens' eligibility restrictions are met before a policy is insured or renewed by them. A decline in the number of policies in Citizens will lower Citizens' exposure which in turn lowers the likelihood and amount of assessments levied by Citizens against Citizens' and non-Citizens' policyholders.[5] Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse are no longer subject to a maximum 45 percent assessment levied by Citizens against its policyholders.[6]

Some homeowners currently insured in Citizens may not be able to renew their insurance in Citizens under the bill if their policy is selected by an insurer participating in the clearinghouse. In addition, these homeowners may see premium increases for property insurance under the bill. Insurers using the clearinghouse to select a policy currently insured by Citizens can charge a premium for that policy that is up to 5 percent more than the Citizens' renewal premium. Conversely, some homeowners currently insured by Citizens may see a premium decrease if the private market insurer selecting their policy from the clearinghouse has premiums lower than Citizens.

Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse may obtain property insurance with expanded coverages. Recently, Citizens has significantly reduced coverages and reduced the policy limits on certain coverage.[7] For example, Citizens no longer insures screen enclosures or carports. And, Citizens now has a 10 percent mandatory sinkhole deductible and a policy limit for personal liability of $100,000, instead of $300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made.

Insurance agents that enter into a limited agency arrangement with insurers participating in the clearinghouse with which they do not have an appointment should not be impacted by the bill. The limited agency agreement should allow the agent to continue to receive commissions on the policy, continue to service the policy, and continue to have the policy in the agent's book of business. However, exclusive insurance agents (i.e., captive agents) not approved by their insurer to enter into limited service arrangements with other insurers participating in the clearinghouse may lose some of their current business. These agents will no longer be able to renew or service the policy because they will have no contractual relationship with the new insurer on the policy. And, homeowners who use these agents will no longer be able to use them and will have to change agents.

D. FISCAL COMMENTS:

None.

[5] In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent. If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account. The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

[6] In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

[7] See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at https://www.citizensfla.com/about/mediaresources.cfm (last viewed February 22, 2013).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the clearinghouse checks all participating private insurers to determine if one of them will insure the property within the statutory premium eligibility restrictions, use of the clearinghouse should ensure the current law relating to Citizens' eligibility is implemented. Use of the clearinghouse should mean only policies meeting the premium eligibility for new and renewal insurance in Citizens' are insured by Citizens. The clearinghouse will also prevent homeowners from shopping for insurance through various agents to work around the Citizens' eligibility premium restrictions.

The effectiveness of the clearinghouse to keep policies out of Citizens at issuance or renewal depends on the number of private insurers participating in the clearinghouse. If many or all private insurers participate, then the clearinghouse should be a more effective method of ensuring only policies eligible for Citizens are insured by Citizens.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES