

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 876

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Residential Property Insurance

DATE: March 24, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess	BI	Fav/CS
2.			GA	
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

Senate Bill 876 permits certain insurers meeting specified criteria to offer a residential property insurance policy<sup>1</sup> at a rate in excess of the otherwise applicable filed rate.<sup>2</sup> The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. The provision limits the initial rate increase to no more than a 5 percent statewide average rate over the most recently filed and approved rate; to 10 percent statewide average rate over the rates in effect at the time of filing; and to 15 percent statewide average rate for the second year following the implementation of such initial rates, or for any subsequent year.

The bill limits the authority of the Office of Insurance Regulation (OIR) to disapprove such a rate to two issues: whether the rate is inadequate or whether the rate filing charges the insured or applicant a higher premium solely because of the insured's or applicant's race, color, creed, marital status, sex, or national origin. Upon a finding that an insurer has used any such factor in

<sup>1</sup> Includes personal lines residential and commercial lines residential policies.

<sup>2</sup> In order to qualify to use a rate different than the filed rate, an insurer must hold a certificate of authority to write property insurance in Florida and must not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options. Residential property insurance policies that exclude windstorm coverage or are depopulated from Citizens Property Insurance Corporation cannot have rates different than the insurer's filed rates.

charging a higher premium, the OIR may require the insurer to make a new filing for a new rate that does not use such factor. The OIR cannot disapprove a rate filing because it is excessive or unfairly discriminatory on the basis of other factors.

The bill requires policyholder notification and acknowledgement before an insurer can charge a rate different than its otherwise applicable filed rate. For comparison purposes, policyholders must be given a premium estimate for the premium charged by Citizens Property Insurance Corporation (Citizens or corporation) when offered a policy with a rate different than an insurer's filed rate. Insurers must give policyholders 180 days' notice of nonrenewal if the company nonrenews a policy that charges a rate different than its filed rates.

The bill requires policyholders insured by Citizens and applicants for such coverage to receive notification and to acknowledge potential surcharges and assessments by Citizens. The bill also clarifies that a Citizens policyholder surcharge is payable upon renewal, cancellation, termination, or issuance of a new policy by Citizens within the first 12 months after the date of the levy, or the period of time necessary to fully collect the policyholder surcharge amount.

This bill substantially amends ss. 627.062 and 627.351 and creates s. 627.7031 of the Florida Statutes.

## II. Present Situation:

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- Personal lines residential coverage – homeowners', mobile home owners', dwelling, tenants', condominium unit owners', cooperative unit owner's and similar policies;
- Commercial lines residential coverage - coverage provided by a condominium association, cooperative association, apartment building and similar policies, and
- Commercial nonresidential coverage - coverage provided by commercial business policies.

Generally, residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage.

### **Ratemaking Regulation for Property, Casualty, and Surety Insurance**

The Rating Law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S. The primary purpose of the Rating Law is to ensure insurance rates are not excessive, inadequate, or unfairly discriminatory and these standards apply to every property insurance rate.

Section 627.0645, F.S, requires every property insurance company to make a rate filing with the Office of Insurance Regulation (OIR) each year. The rate filing contains the insurer's proposed rates, and the OIR reviews the rate filing and either approves or disapproves the proposed rates. If an insurer does not want to change its rates one year, instead of a rate filing, the insurer can file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the OIR uses the following statutory factors.

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- Projected hurricane losses, when applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

### **Excess Rates**

The consent to rate law (s. 627.171, F.S.) permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

### **Citizens Property Insurance Corporation (Citizens or 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.<sup>3</sup> It is not a private insurance company.<sup>4</sup> Citizens' book of business is divided into three separate accounts:<sup>5</sup>

1. **Personal Lines Account (PLA)** – Multiperil Policies<sup>6</sup>  
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property from windstorm and from other perils.
2. **Commercial Lines Account (CLA)** – Multiperil Policies  
Consists of condominium association, apartment building and homeowners' association policies covering damage to property from windstorm and from other perils.
3. **High-Risk Account (HRA)** – Wind-only<sup>7</sup> and Multiperil Policies

<sup>3</sup> Voluntary admitted market refers to insurers licensed to transact insurance in Florida.

<sup>4</sup> s. 627.351(6)(a)1., F.S.

<sup>5</sup> s. 627.351(6)(b)2., F.S.

<sup>6</sup> 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.

Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and therefore has separate calculations of surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account.<sup>8</sup>

**Assessments:** In the event Citizens incurs a deficit, (i.e. its obligations to pay claims) exceed 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.<sup>9</sup> The three Citizens' accounts calculate deficits and resulting assessment needs independently.

**Citizens Policyholder Surcharges:**<sup>10</sup> If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

**Regular Assessments:**<sup>11</sup> Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.<sup>12</sup> Initially, property and casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens is able to collect regular assessment funds usually within 30 days after levy.

**Emergency Assessments:**<sup>13</sup> Upon the exhaustion of the Citizens policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up 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.<sup>14</sup> Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens.

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<sup>7</sup> A wind-only policy provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

<sup>8</sup> s. 627.351(6)(b)2.b., F.S.

<sup>9</sup> s. 627.351(6)(b)3.a., d., and i., F.S.

<sup>10</sup> s. 627.351(6)(b)3.i., F.S.

<sup>11</sup> s. 627.351(6)(b)3.a. and b., F.S.

<sup>12</sup> The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

<sup>13</sup> s. 627.352(6)(b)3.d., F.S.

<sup>14</sup> This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 627.062(2), F.S., relating to insurer rate standards. The bill allows insurers meeting specified criteria to use a rate for personal lines residential and commercial lines residential property insurance that is different than the insurer's filed rate.<sup>15</sup>

The legislation establishes maximum limits on the amount an insurer may increase its rates over a period of years. The initial rates used by an insurer under this provision cannot provide for rates that are more than a 5 percent statewide average increase over the most recently filed and approved rate. A rate filing submitted in the year following implementation of such initial rates is limited to 10 percent statewide average rate over the rates in effect at the time of filing, and to 15 percent statewide average rate for the second year following the implementation of such initial rates, or for any subsequent year. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase. For example, if an insurer avails itself to the full allowance for 3 years (5, 10 and 15 percent), the aggregate increase will be 32.8 percent.

The rates under this provision must be filed with the OIR as a separate filing and the office retains the authority to disapprove a rate as inadequate or to disapprove a rate filing for charging an insured or applicant a higher premium solely due to the insured's or applicant's race, color, creed, marital status, sex, or national origin. Upon a finding that an insurer has used any such factor in charging a higher premium, the OIR may require the insurer to make a new filing for a new rate that does not use that factor.

The office cannot disapprove a rate because it is excessive, or because it is unfairly discriminatory on the basis of factors other than those specified in the bill.<sup>16</sup> Finally, policies which are subject to this rate provision are not counted in the calculation of excess rates under s. 627.171, F.S.

The bill does not allow insurance companies to charge rates different than filed rates for commercial nonresidential property insurance policies, (i.e. property insurance covering businesses).

**Section 2.** Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation. The bill clarifies that the Citizens policyholder surcharge is payable upon renewal, cancellation, termination, or issuance of a new policy by Citizens within the first 12 months after the date of the levy, or the period of time necessary to fully collect the policyholder surcharge amount.

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<sup>15</sup> Under s. 627.4025, F.S., personal lines residential property insurance policies include homeowner, mobile homeowner, dwelling, tenant's, condominium unit owner's, and cooperative unit owner's policies. Commercial lines residential property insurance policies include condominium association, cooperative association, apartment building and similar policies.

<sup>16</sup> Section 627.062(2)(e), F.S., enumerates what standards the OIR can use under current law to find a rate filing is excessive, inadequate, or unfairly discriminatory.

Current law requires Citizens to collect the surcharge from policyholders over a 12 month period, but does not use the date of the surcharge levy as the date establishing who is responsible for paying the surcharge. As a result, under current law, policyholders of Citizens can avoid paying a Citizens' policyholder surcharge by nonrenewing their Citizens policy during the 12 month surcharge collection period and obtaining property insurance from an insurer in the voluntary market. The bill prevents the avoidance of surcharge payment in this manner by making Citizens' policyholders responsible, at the time the surcharge is levied, for payment of the surcharge. Citizens can collect the surcharge from unearned premium on the policy for policies that are cancelled by the policyholder before the expiration of the policy term so it is likely Citizens will be able to obtain payment of the surcharge under this circumstance.

The bill clarifies current law relating to the timing of Citizens' levy of regular assessments against insurance companies with respect to a particular year's deficit. The bill prohibits Citizens from levying regular assessments against insurers until Citizens has first levied a Citizens' policyholder surcharge in the maximum statutorily allowed amount against Citizens' policyholders. According to a representative of Citizens, this is consistent with how Citizens currently levies regular assessments.

The bill requires insurance agents issuing property insurance in Citizens to obtain an acknowledgement signed by the applicant for insurance relating to the potential surcharges imposed on the policy by Citizens. The agent is also required to obtain the same acknowledgement form for existing Citizens' policies before the policy renews. Thus, potential and current policyholders of Citizens will be informed about the potential surcharges that can be imposed on their policy. The form also provides that such policyholders may be subject to emergency assessments to the same extent as policyholders of other insurance companies. The signed acknowledgement creates a conclusive presumption that the prospective or current policyholder understood and accepted the Citizens' surcharge and assessment liability. Citizens is required to keep a permanent copy of the signed acknowledgement and the agent may retain a copy.

**Section 3.** Creates s. 627.7031, F.S., relating to the residential property insurance option. The bill specifies that an insurer holding a certificate of authority<sup>17</sup> to write property insurance in Florida may offer or renew policies at a rate different than the insurer's filed rates, however, it may not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options (TICL options).<sup>18</sup> Before a property insurance policy can be issued or renewed by the insurer, the insurer must provide notice to the applicant or policyholder in 12-point boldfaced type that the policy's rate is not fully regulated by the OIR and may have a higher rate than rates approved by the OIR. The notice must indicate that a policy subject to full rate regulation may be purchased. The bill specifies how this notice must be given for policy renewals.

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<sup>17</sup> Citizens Property Insurance Corporation (Citizens) will not be able to offer property policies with rates different than the rate filed and approved by OIR because Citizens does not hold a certificate of authority. Citizens is a 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 an insurance company and thus not required to obtain a certificate of insurance in order to transact insurance. (s. 627.3351(6)(a)1., F.S.)

<sup>18</sup> The TICL options allow insurers to purchase reinsurance through the Florida Hurricane Catastrophe Fund in an amount up to \$8 billion in excess of the reinsurance required by law to be purchased through the Fund.

The insurer writing a policy with a rate different than its filed rate must provide an applicant for new coverage with a comparable premium estimate for a policy written by Citizens and this estimate must be given before the effective date of the new policy. Likewise, a premium estimate for a similar policy written by Citizens must be given before renewal to an existing policyholder whose policy is going to have a rate different than the insurer's filed rate at renewal.

An applicant or renewal policyholder must also sign an acknowledgement form relating to review of the required disclosures and premium comparison, an acknowledgement about the deregulated rate applicable to the policy, and the availability of a policy with a regulated rate, and a notification about the assessability of the policy for deficits in Citizens. This form must be retained by the insurance company or insurance agent for at least 3 years. If an insurer receives a premium payment for a policy with a rate different than the filed rate, the insurer is deemed to comply with the acknowledgment form and premium estimate requirements as long as the company provided such form and premium estimate to the policyholder.

The bill requires a property insurer to give a policyholder 180 days written notice of nonrenewal if the policyholder has a policy with the insurer with a rate that is different than the insurer's filed rate. Insurers cancelling property insurance policies with rates different than the insurer's filed rate must follow the cancellation protocol under current law (s. 627.4133, F.S.).<sup>19</sup>

Finally, the bill provides that the following residential property insurance policies are not eligible for rates that are different than the insurer's filed rate: policies that exclude coverage for windstorm or hurricane, and policies that are subject to a consent decree, agreement, or other arrangement between the insurer and the OIR relating to rates or premiums for policies removed from Citizens.

**Section 4.** Provides that the act shall take effect January 1, 2011.

Proponents of the bill state that over the past several years insurance rates have been suppressed, which has caused the deterioration of the state's private insurance market and resulted in the insolvency of several Florida insurance companies. Therefore, it is necessary to allow insurers to charge rates that are market-based. Furthermore, the bill protects consumers by ensuring that insurers have sufficient capital to pay claims should their homes suffer damage or destruction.

**Other Potential Implications:**

The OIR submitted the following comments in their agency bill analysis:

The OIR is opposed to this proposal. Regarding the issue of reinsurance, while this legislation does not permit insurers using the rate deregulation provision to purchase coverage under the TICL reinsurance option of the FHCF, the legislation does not prohibit the purchase of FHCF coverage in its entirety.

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<sup>19</sup> This provision requires written notice of cancellation 100 days before the cancellation is effective or by June 1st, whichever is earlier, or written notice 180 days before the cancellation's effective date if the policyholder has been insured with the company for the prior five years. Cancellation of a policy for nonpayment of premium only requires a 10 day written notice.

An insurer exempt from rate regulation and review will benefit from lower cost reinsurance from the FHCF, thus increasing the insurer's profit margin. The purpose of the FHCF is to provide low cost reinsurance to insurers doing business in Florida, thus lowering the premium paid by consumers. To allow insurers to benefit from this reinsurance program and not pass through that savings to policyholders is antithetical to the purpose of this program.

Insurers filing under this provision should be prohibited from purchasing reinsurance from the FHCF to reinsure these policies.

As to the issue of the impact on property insurance rates, the OIR stated that it is concerned that this change will yield dramatic rate increases for consumers, a concern bolstered by previous experience in Florida when motor vehicle insurance rates were "deregulated" in the 1960s, and again when the change to consent to rate laws led to dramatic increases in condominium association rates in the early years of this decade.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Property insurance policies with rates different than an insurer's filed rates are likely to have higher premiums than those policies with rates that are fully regulated by the OIR; however, some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase and if such increases make the premiums for a policy 15 percent higher than a comparable policy from Citizens, then some policyholders of insurers may opt to cancel their existing property policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may

move from the voluntary market to Citizens cannot be calculated. Policyholders who buy property insurance based solely on price are more likely to move their policy to Citizens under this scenario. However, policyholders who base their property insurance purchase on loyalty to an insurer or on being insured by a particular insurer that is well capitalized, may opt to stay with their insurer in the private market even if that company increases its rates as allowed under the bill.

The bill may incentivize insurance companies in the private market to write multi-peril policies<sup>20</sup> currently written by Citizens. If insurers determine it is advantageous for their company to write these policies at rates different than their filed rates, then these companies will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer.

The bill may also incentivize insurance companies in the private market to assume the wind coverage on wind-only policies<sup>21</sup> currently written by Citizens. If insurers charge rates different than their filed rates and determine it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies could be written by the private market. Again, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may not move their policy to the private market insurer if that insurer charges more than they currently pay for a policy with non-wind coverage from the insurer plus a policy with wind only coverage from Citizens. However, policyholders who base their property insurance purchase on being insured by a particular insurer or who want one comprehensive property insurance policy may opt to move to the private market insurer for a policy with wind and non-wind coverage, even if that company charges more for the policy than the price of the Citizens wind-only policy added to the price of the private insurer's non-wind coverage.

**C. Government Sector Impact:**

It is not anticipated that this legislation will result in a fiscal impact, according to OIR officials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>20</sup> 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.

<sup>21</sup> 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 is available in a separate policy.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 24, 2010:**

- Establishes maximum limits on the amount an insurer may increase its rates over a period of years. The provision limits the initial rate increase to no more than a 5 percent statewide average rate over the most recently filed and approved rate; to 10 percent statewide average rate over the rates in effect at the time of filing; and to 15 percent statewide average rate for the second year following the implementation of such initial rates, or for any subsequent year.
- Clarifies that a Citizens policyholder surcharge is payable upon renewal, cancellation, termination, or issuance of a new policy by Citizens within the first 12 months after the date of the levy, or the period of time necessary to fully collect the policyholder surcharge amount.

- B. **Amendments:**

None.