

1 A bill to be entitled
 2 An act relating to property insurance; amending s.
 3 627.351, F.S.; requiring the corporation's board to
 4 contract with the Division of Administrative Hearings
 5 to hear protests of the corporation's decisions
 6 regarding the purchase of commodities and contractual
 7 services and issue a recommended order; requiring the
 8 board to take final action in a public meeting;
 9 revising the date for submitting the annual loss ratio
 10 report for residential coverage; amending s. 627.3518,
 11 F.S.; defining the term "surplus lines insurer";
 12 authorizing eligible surplus lines insurers to
 13 participate in the corporation's clearinghouse program
 14 and providing criteria for such eligibility;
 15 conforming cross-references; providing that certain
 16 applicants who accept an offer from a surplus lines
 17 insurer are considered a renewal; repealing s.
 18 627.3519, F.S., relating to an annual report
 19 requirement relating to aggregate net probable maximum
 20 losses; amending s. 627.35191, F.S.; requiring the
 21 corporation to annually provide certain estimates for
 22 the next 12-month period to the Legislature and the
 23 Financial Services Commission; providing an effective
 24 date.

26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Paragraphs (e), and (hh) of subsection (6) of
 29 section 627.351, Florida Statutes, are amended to read:
 30 627.351 Insurance risk apportionment plans.—
 31 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
 32 (e) The corporation is subject to s. 287.057 for the
 33 purchase of commodities and contractual services except as
 34 otherwise provided in this paragraph. Services provided by
 35 tradepersons or technical experts to assist a licensed adjuster
 36 in the evaluation of individual claims are not subject to the
 37 procurement requirements of this section. Additionally, the
 38 procurement of financial services providers and underwriters
 39 must be made pursuant to s. 627.3513. Contracts for goods or
 40 services valued at or more than \$100,000 are subject to approval
 41 by the board.
 42 1. The corporation is an agency for purposes of s.
 43 287.057, except that, for purposes of s. 287.057(22), the
 44 corporation is an eligible user.
 45 a. The authority of the Department of Management Services
 46 and the Chief Financial Officer under s. 287.057 extends to the
 47 corporation as if the corporation were an agency.
 48 b. The executive director of the corporation is the agency
 49 head under s. 287.057, except for resolution of bid protests for
 50 which the board would serve as the agency head.
 51 2. The corporation must provide notice of a decision or
 52 intended decision concerning a solicitation, contract award, or

53 | exceptional purchase by electronic posting. Such notice must
54 | contain the following statement: "Failure to file a protest
55 | within the time prescribed in this section constitutes a waiver
56 | of proceedings."

57 | a. A person adversely affected by the corporation's
58 | decision or intended decision to award a contract pursuant to s.
59 | 287.057(1) or (3)(c) who elects to challenge the decision must
60 | file a written notice of protest with the executive director of
61 | the corporation within 72 hours after the corporation posts a
62 | notice of its decision or intended decision. For a protest of
63 | the terms, conditions, and specifications contained in a
64 | solicitation, including ~~any~~ provisions governing the methods for
65 | ranking bids, proposals, replies, awarding contracts, reserving
66 | rights of further negotiation, or modifying or amending any
67 | contract, the notice of protest must be filed in writing within
68 | 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,
69 | Sundays, and state holidays are excluded in the computation of
70 | the 72-hour time period.

71 | b. A formal written protest must be filed within 10 days
72 | after the date the notice of protest is filed. The formal
73 | written protest must state with particularity the facts and law
74 | upon which the protest is based. Upon receipt of a formal
75 | written protest that has been timely filed, the corporation must
76 | stop the solicitation or contract award process until the
77 | subject of the protest is resolved by final board action unless
78 | the executive director sets forth in writing particular facts

79 and circumstances that require the continuance of the
 80 solicitation or contract award process without delay in order to
 81 avoid an immediate and serious danger to the public health,
 82 safety, or welfare.

83 (I) The corporation must provide an opportunity to resolve
 84 the protest by mutual agreement between the parties within 7
 85 business days after receipt of the formal written protest.

86 (II) If the subject of a protest is not resolved by mutual
 87 agreement within 7 business days, the corporation's board must
 88 transmit the protest to the Division of Administrative Hearings
 89 and contract with the division to conduct a hearing to determine
 90 the merits of the protest and to issue a recommended order ~~place~~
 91 ~~the protest on the agenda and resolve it at its next regularly~~
 92 ~~scheduled meeting.~~ The contract must provide for the corporation
 93 to reimburse the division for any costs incurred by the division
 94 for court reporters, transcript preparation, travel, facility
 95 rental, and other customary hearing costs in the manner set
 96 forth in s. 120.65(9). The division has jurisdiction to
 97 determine the facts and law concerning the protest and to issue
 98 a recommended order. The division's rules and procedures apply
 99 to these proceedings; the division's applicable bond
 100 requirements do not apply. The protest must be heard by the
 101 division ~~board~~ at a publicly noticed meeting in accordance with
 102 procedures established by the division ~~board~~.

103 c. In a protest of an invitation-to-bid or request-for-
 104 proposals procurement, submissions made after the bid or

105 proposal opening which amend or supplement the bid or proposal
 106 may not be considered. In protesting an invitation-to-negotiate
 107 procurement, submissions made after the corporation announces
 108 its intent to award a contract, reject all replies, or withdraw
 109 the solicitation that amends or supplements the reply may not be
 110 considered. Unless otherwise provided by law, the burden of
 111 proof rests with the party protesting the corporation's action.
 112 In a competitive-procurement protest, other than a rejection of
 113 all bids, proposals, or replies, the corporation's board must
 114 conduct a de novo proceeding to determine whether the
 115 corporation's proposed action is contrary to the corporation's
 116 governing statutes, the corporation's rules or policies, or the
 117 solicitation specifications. The standard of proof for the
 118 proceeding is whether the corporation's action was clearly
 119 erroneous, contrary to competition, arbitrary, or capricious. In
 120 any bid-protest proceeding contesting an intended corporation
 121 action to reject all bids, proposals, or replies, the standard
 122 of review by the board is whether the corporation's intended
 123 action is illegal, arbitrary, dishonest, or fraudulent.

124 d. Failure to file a notice of protest or failure to file
 125 a formal written protest constitutes a waiver of proceedings.

126 3. The board, acting as agency head, shall consider the
 127 recommended order of an administrative law judge in a public
 128 meeting and take final action on the protest. ~~Contract actions~~
 129 ~~and decisions by the board under this paragraph are final.~~ Any
 130 further legal remedy lies with the First District Court of

131 Appeal ~~must be made in the Circuit Court of Leon County.~~

132 (hh) The corporation shall ~~must~~ prepare a report for each
 133 calendar year outlining both the statewide average and county-
 134 specific details of the loss ratio attributable to losses that
 135 are not catastrophic losses for residential coverage provided by
 136 the corporation, which information must be presented to the
 137 office and available for public inspection on the Internet
 138 website of the corporation by March 1 ~~January 15th~~ of the
 139 following calendar year.

140 Section 2. Paragraph (e) is added to subsection (1) of
 141 section 627.3518, Florida Statutes, subsection (2) and paragraph
 142 (e) of subsection (4) of that section are amended, present
 143 subsections (5) through (10) of that section are redesignated as
 144 subsections (6) through (11), respectively, present subsection
 145 (11) is redesignated as subsection (13), new subsections (5) and
 146 (12) are added to that section, and present subsections (5)
 147 through (7) of that section are amended, to read:

148 627.3518 Citizens Property Insurance Corporation
 149 policyholder eligibility clearinghouse program.—The purpose of
 150 this section is to provide a framework for the corporation to
 151 implement a clearinghouse program by January 1, 2014.

152 (1) As used in this section, the term:

153 (e) "Surplus lines insurer" means an unauthorized insurer
 154 that has been made eligible by the office to issue coverage
 155 under the Surplus Lines Law.

156 (2) In order to confirm eligibility with the corporation

157 and to enhance the access of new applicants for coverage and
 158 existing policyholders of the corporation to offers of coverage
 159 from authorized insurers and surplus lines insurers, the
 160 corporation shall establish a program for personal residential
 161 risks in order to facilitate the diversion of ineligible
 162 applicants and existing policyholders ~~from the corporation~~ into
 163 the voluntary insurance market. The corporation shall also
 164 develop appropriate procedures for facilitating the diversion of
 165 ineligible applicants and existing policyholders for commercial
 166 residential coverage into the private insurance market and shall
 167 report such procedures to the President of the Senate and the
 168 Speaker of the House of Representatives by January 1, 2014.

169 (4) Any authorized insurer may participate in the program;
 170 however, participation is not mandatory for any insurer.
 171 Insurers making offers of coverage to new applicants or renewal
 172 policyholders through the program:

173 (e) May participate through their single-designated
 174 managing general agent or broker; however, the provisions of
 175 paragraph (7) (a) ~~(6) (a)~~ regarding ownership, control, and use of
 176 the expirations continue to apply.

177 (5) Effective January 1, 2015, an eligible surplus lines
 178 insurer may make an offer of similar coverage on a risk
 179 submitted through the clearinghouse program if no offers of
 180 coverage were submitted by authorized insurers participating in
 181 the program and the office determines that the eligible surplus
 182 lines insurer:

- 183 (a) Maintains a surplus of \$50 million on a company or
 184 pooled basis;
- 185 (b) Is rated as having a superior, excellent, exceptional,
 186 or equally comparable financial strength by a rating agency
 187 acceptable to the office;
- 188 (c) Maintains reserves, surplus, reinsurance, and
 189 reinsurance equivalents to cover the eligible surplus lines
 190 insurer's 100-year probable maximum hurricane loss at least
 191 twice in a single hurricane season, and submits such reinsurance
 192 to the office for review for purposes of participation in the
 193 program; and
- 194 (d) Provides prominent notice to the policyholder:
- 195 1. That the policyholder does not have to accept an offer
 196 of coverage from a surplus lines insurer;
- 197 2. That an offer of coverage from a surplus lines insurer
 198 does not affect whether the policyholder is eligible for
 199 coverage from the corporation;
- 200 3. That a policyholder who accepts an offer of coverage
 201 from a surplus lines insurer may, at any time, submit a new
 202 application for coverage to the corporation;
- 203 4. That surplus lines policies are not covered by the
 204 Florida Insurance Guaranty Association;
- 205 5. That rates for surplus lines insurance are not subject
 206 to review by the office; and
- 207 6. Of any additional information required by the office.
- 208

209 Such notice must be signed by the policyholder and kept on file
 210 with the surplus lines insurer for as long as the policyholder
 211 remains insured by the surplus lines insurer.

212 (6)~~(5)~~ Notwithstanding s. 627.3517, an ~~any~~ applicant for
 213 new coverage from the corporation is not eligible for coverage
 214 from the corporation if provided an offer of coverage from an
 215 authorized insurer through the program at a premium that is at
 216 or below the eligibility threshold established in s.
 217 627.351(6)(c)5.a. Whenever an offer of coverage for a personal
 218 lines risk is received for a policyholder of the corporation at
 219 renewal from an authorized insurer through the program, if the
 220 offer is equal to or less than the corporation's renewal premium
 221 for comparable coverage, the risk is not eligible for coverage
 222 with the corporation. If ~~In the event~~ an offer of coverage for a
 223 new applicant is received from an authorized insurer through the
 224 program, and the premium offered exceeds the eligibility
 225 threshold contained in s. 627.351(6)(c)5.a., the applicant or
 226 insured may elect to accept such coverage, or may elect to
 227 accept or continue coverage with the corporation. If ~~In the~~
 228 ~~event~~ an offer of coverage for a personal lines risk is received
 229 from an authorized insurer at renewal through the program~~7~~ and
 230 if the premium offered is more than the corporation's renewal
 231 premium for comparable coverage, the insured may elect to accept
 232 such coverage~~7~~ or may elect to accept or continue coverage with
 233 the corporation. Section 627.351(6)(c)5.a.(I) does not apply to
 234 an offer of coverage from an authorized insurer obtained through

235 the program. An applicant for personal lines residential
 236 coverage from the corporation who was declared ineligible for
 237 coverage at renewal by the corporation in the previous 36 months
 238 due to an offer of coverage pursuant to this subsection ~~is shall~~
 239 ~~be~~ considered a renewal under this section if the corporation
 240 determines that the authorized insurer making the offer of
 241 coverage pursuant to this subsection continues to insure the
 242 applicant and increased the rate on the policy in excess of the
 243 increase allowed for the corporation under s. 627.351(6)(n)6.

244 (7)~~(6)~~ Independent insurance agents submitting new
 245 applications for coverage or that are the agent of record on a
 246 renewal policy submitted to the program:

247 (a) Are granted and must maintain ownership and the
 248 exclusive use of expirations, records, or other written or
 249 electronic information directly related to such applications or
 250 renewals written through the corporation or through an insurer
 251 participating in the program, notwithstanding s.
 252 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted
 253 for as long as the insured remains with the agency or until sold
 254 or surrendered in writing by the agent. Contracts with the
 255 corporation or required by the corporation must not amend,
 256 modify, interfere with, or limit such rights of ownership. Such
 257 expirations, records, or other written or electronic information
 258 may be used to review an application, issue a policy, or for any
 259 other purpose necessary for placing such business through the
 260 program.

261 (b) May not be required to be appointed by any insurer
 262 participating in the program for policies written solely through
 263 the program, notwithstanding ~~the provisions of~~ s. 626.112.

264 (c) May accept an appointment from an ~~any~~ insurer
 265 participating in the program.

266 (d) May enter into ~~either~~ a standard or limited agency
 267 agreement with the insurer, at the insurer's option.

268
 269 Applicants ineligible for coverage in accordance with subsection
 270 (6) ~~(5)~~ remain ineligible if their independent agent is
 271 unwilling or unable to enter into a standard or limited agency
 272 agreement with an insurer participating in the program.

273 (8) ~~(7)~~ Exclusive agents submitting new applications for
 274 coverage or that are the agent of record on a renewal policy
 275 submitted to the program:

276 (a) Must maintain ownership and the exclusive use of
 277 expirations, records, or other written or electronic information
 278 directly related to such applications or renewals written
 279 through the corporation or through an insurer participating in
 280 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 281 (II)(B). Contracts with the corporation or required by the
 282 corporation must not amend, modify, interfere with, or limit
 283 such rights of ownership. Such expirations, records, or other
 284 written or electronic information may be used to review an
 285 application, issue a policy, or for any other purpose necessary
 286 for placing such business through the program.

287 (b) May not be required to be appointed by any insurer
 288 participating in the program for policies written solely through
 289 the program, notwithstanding ~~the provisions of~~ s. 626.112.

290 (c) Must only facilitate the placement of an offer of
 291 coverage from an insurer whose limited servicing agreement is
 292 approved by that exclusive agent's exclusive insurer.

293 (d) May enter into a limited servicing agreement with the
 294 insurer making an offer of coverage, and only after the
 295 exclusive agent's insurer has approved the limited servicing
 296 agreement terms. The exclusive agent's insurer must approve a
 297 limited service agreement for the program for an ~~any~~ insurer for
 298 which it has approved a service agreement for other purposes.

299
 300 Applicants ineligible for coverage in accordance with subsection
 301 (6) ~~(5)~~ remain ineligible if their exclusive agent is unwilling
 302 or unable to enter into a standard or limited agency agreement
 303 with an insurer making an offer of coverage to that applicant.

304 (12) An applicant for coverage from the corporation who
 305 was a policyholder of the corporation within the previous 36
 306 months and who subsequently accepted an offer of coverage from a
 307 surplus lines insurer is considered a renewal under this
 308 section.

309 Section 3. Section 627.3519, Florida Statutes, is
 310 repealed.

311 Section 4. Section 627.35191, Florida Statutes, is amended
 312 to read:

313 627.35191 Required reports ~~Annual report of aggregate net~~
 314 ~~probable maximum losses, financing options, and potential~~
 315 ~~assessments.~~—

316 (1) By ~~No later than~~ February 1 of each year, the Florida
 317 Hurricane Catastrophe Fund and Citizens Property Insurance
 318 Corporation shall each submit a report to the Legislature and
 319 the Financial Services Commission identifying their respective
 320 aggregate net probable maximum losses, financing options, and
 321 potential assessments. The report issued by the fund and the
 322 corporation must include their respective 50-year, 100-year, and
 323 250-year probable maximum losses; analysis of all reasonable
 324 financing strategies for each such probable maximum loss,
 325 including the amount and term of debt instruments; specification
 326 of the percentage assessments that would be needed to support
 327 each of the financing strategies; and calculations of the
 328 aggregate assessment burden on Florida property and casualty
 329 policyholders for each of the probable maximum losses.

330 (2) In May of each year, Citizens Property Insurance
 331 Corporation shall also provide to the Legislature and the
 332 Financial Services Commission a statement of the estimated
 333 borrowing capacity of the corporation for the next 12-month
 334 period, the estimated claims-paying capacity of the corporation,
 335 and the corporation's estimated balance as of December 31 of the
 336 current calendar year. Such estimates must take into account
 337 that the corporation, the Florida Hurricane Catastrophe Fund,
 338 and the Florida Insurance Guaranty Association may all be

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339 concurrently issuing debt instruments following a catastrophic
340 event.

341 Section 5. This act shall take effect July 1,2014.