

HB 761

2012

1 A bill to be entitled
2 An act relating to property loss appraisals; amending
3 s. 627.351, F.S.; requiring Citizens Property
4 Insurance Corporation's plan of operation to provide
5 for the adoption of policy forms that require
6 compliance with certain conditions and procedures
7 relating to the participation of umpires and
8 appraisers in the loss appraisal process under certain
9 circumstances; providing that either party may submit
10 a written demand to enter into the process of
11 appraisal when the insured and the corporation fail to
12 mutually agree to the actual cash value, the amount of
13 loss, or the cost of repair or replacement of property
14 for which a claim has been filed; providing an
15 exception upon which the corporation may refuse to
16 accept such demand; providing that the corporation
17 waives the right to demand an appraisal under certain
18 circumstances; requiring each party to select a
19 competent and independent appraiser and to notify the
20 opposing party within a specified period; requiring
21 the appraisers to select an appraisal umpire;
22 authorizing either party to file a petition, in a
23 county or circuit court in the jurisdiction in which
24 the covered property is located, to designate an
25 appraisal umpire if the appraisers cannot agree on the
26 selection of an umpire; providing that appraisal
27 proceedings are informal unless the corporation and
28 the insured agree otherwise; defining and providing

HB 761

2012

the scope of the term "informal" for purposes of appraisal proceedings; requiring each appraiser to submit a written report to the other appraiser; requiring that any differences in findings between the appraisers that cannot be resolved by the appraisers themselves within a specified period be submitted to the umpire for review; providing an exception; requiring the umpire to submit his or her conclusions regarding any unresolved differences in the findings of the appraisers within a specified period; providing that if either appraiser agrees with the conclusions of the umpire, an itemized written appraisal award signed by the umpire and appraiser shall be filed with the corporation and shall determine the amount of the loss; providing that the appraisal award is binding upon the corporation and the insured; providing for compensation of the appraisers and the umpire; providing applicability of the Florida Arbitration Code to residential or commercial residential property insurance loss appraisal proceedings and specified procedural matters; prohibiting the appraisal process from addressing issues involving coverage or lack thereof under an insurance contract; authorizing the umpire and appraisers to consider causation issues when necessary to determine the amount of loss; providing an effective date.

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

HB 761

2012

57
58 Section 1. Paragraph (c) of subsection (6) of section
59 627.351, Florida Statutes, is amended to read:

60 627.351 Insurance risk apportionment plans.—

61 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

62 (c) The corporation's plan of operation:

63 1. Must provide for adoption of residential property and
64 casualty insurance policy forms and commercial residential and
65 nonresidential property insurance forms, which must be approved
66 by the office before use. The corporation shall adopt the
67 following policy forms:

68 a. Standard personal lines policy forms that are
69 comprehensive multiperil policies providing full coverage of a
70 residential property equivalent to the coverage provided in the
71 private insurance market under an HO-3, HO-4, or HO-6 policy.

72 b. Basic personal lines policy forms that are policies
73 similar to an HO-8 policy or a dwelling fire policy that provide
74 coverage meeting the requirements of the secondary mortgage
75 market, but which is more limited than the coverage under a
76 standard policy.

77 c. Commercial lines residential and nonresidential policy
78 forms that are generally similar to the basic perils of full
79 coverage obtainable for commercial residential structures and
80 commercial nonresidential structures in the admitted voluntary
81 market.

82 d. Personal lines and commercial lines residential
83 property insurance forms that cover the peril of wind only. The
84 forms are applicable only to residential properties located in

HB 761

2012

85 areas eligible for coverage under the coastal account referred
86 to in sub-subparagraph (b)2.a.

87 e. Commercial lines nonresidential property insurance
88 forms that cover the peril of wind only. The forms are
89 applicable only to nonresidential properties located in areas
90 eligible for coverage under the coastal account referred to in
91 sub-subparagraph (b)2.a.

92 f. When the only issue remaining between an insured and
93 the corporation on a residential or commercial residential
94 property is the actual cash value, the amount of loss, or the
95 cost of repair or replacement of property for which a claim has
96 been filed, residential and commercial residential property
97 insurance forms that apply to the umpires and appraisers who
98 participate in the appraisal process and that require compliance
99 with the following conditions and procedures:

100 (I) Either party may submit a written demand to enter into
101 the process of appraisal.

102 (II) The corporation may refuse to accept the demand only
103 if the insured materially fails to comply with the proof-of-loss
104 obligations of the insured as set forth in the policy
105 conditions.

106 (III) The corporation is deemed to have waived its right
107 to demand an appraisal if it fails to invoke an appraisal within
108 30 days after the insured substantially complies with the proof-
109 of-loss obligation as set forth in the policy conditions.

110 (IV) Each party shall select a competent appraiser and
111 notify the other party of the appraiser selected within 20 days
112 after the date of the demand for an appraisal. The appraisers

HB 761

2012

113 shall select a competent, independent, and impartial umpire. If
114 the appraisers are unable to agree on an umpire within 15 days,
115 the insured or the corporation may file a petition with a county
116 or circuit court in the jurisdiction in which the covered
117 property is located to designate a property insurance appraisal
118 umpire for the appraisal.

119 (V) Appraisal proceedings are informal unless the insured
120 and the corporation mutually agree otherwise. As used in this
121 sub-sub-subparagraph, the term "informal" means that formal
122 discovery is not conducted, including depositions,
123 interrogatories, requests for admission, or other forms of
124 formal civil discovery; formal rules of evidence are not
125 applied; and a court reporter is not used for the proceedings.
126 However, either appraiser may rely on experts in reaching the
127 value of loss.

128 (VI) Within 60 days after being appointed, each appraiser
129 shall appraise the loss and submit a written report to the other
130 appraiser that separately states the cost of the loss, the
131 actual cash value, or the cost to repair or replace each item.
132 Within 30 days after submitting the reports, the appraisers
133 shall attempt to resolve any differences in the appraisals and
134 reach a mutual agreement on all matters. If the appraisers are
135 unable to agree, they shall, within 5 days after the end of the
136 30-day period, submit the differences in their findings in
137 writing to the umpire. However, the appraisers have an
138 additional 60 days after appointment to appraise the loss and
139 submit a written report if the loss is covered under a
140 commercial property insurance policy and the insured structure

HB 761

2012

141 is 10,000 square feet or more or is covered under a residential
142 or commercial residential insurance policy and the claim is
143 based on and made subsequent to a hurricane designated by the
144 National Hurricane Center or an emergency declared by the
145 Governor.

146 (VII) The umpire shall review any differences in
147 appraisals submitted by the appraisers and determine the amount
148 of the loss for each item submitted. Within 10 days after
149 receipt of any differences in appraisals, the umpire shall
150 submit his or her conclusions in writing to each appraiser.

151 (VIII) If either appraiser agrees with the conclusions of
152 the umpire, an itemized written appraisal award signed by the
153 umpire and the appraiser shall be filed with the corporation and
154 shall determine the amount of the loss.

155 (IX) The appraisal award is binding on the corporation and
156 the insured with regard to the amount of the loss. If the
157 insurance policy so provides, the corporation may assert that
158 there is no coverage under the policy for the loss as a whole or
159 that there has been a violation of the policy conditions with
160 respect to fraud, lack of notice, or failure to cooperate.

161 (X) Each appraiser shall be paid by the party who selects
162 the appraiser, and the expenses of the appraisal and fees of the
163 umpire shall be paid by the parties equally, except that if the
164 final determination of the amount of the loss exceeds the
165 corporation's preappraisal estimate of the loss communicated to
166 the insured in writing by 50 percent or more, the corporation
167 shall pay all expenses, including any fees and expenses charged
168 by the insured's appraiser and all fees and expenses of the

HB 761

2012

umpire. This sub-sub-subparagraph does not affect an insured's claim for attorney fees under s. 627.428.

(XI) The Florida Arbitration Code does not apply to residential and commercial residential property insurance loss appraisal proceedings, except for those provisions of the code regarding proceedings to compel and stay arbitration in s. 682.03; procedures for correcting, vacating, or modifying an award in ss. 682.10, 682.13, and 682.14; procedures for entry of judgment on the award in s. 682.15; and procedures regarding confirmation of an award in s. 682.12.

(XII) The appraisal process may not address issues involving whether the loss or damage is covered under the terms of the insurance contract. However, the appraisers and the umpire may consider causation issues, if necessary, to determine the amount of loss.

~~f.~~ The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is

HB 761

2012

197 provided in specified percentages by the corporation and an
198 authorized insurer. The corporation and authorized insurer are
199 each solely responsible for a specified percentage of hurricane
200 coverage of an eligible risk as set forth in a quota share
201 primary insurance agreement between the corporation and an
202 authorized insurer and the insurance contract. The
203 responsibility of the corporation or authorized insurer to pay
204 its specified percentage of hurricane losses of an eligible
205 risk, as set forth in the agreement, may not be altered by the
206 inability of the other party to pay its specified percentage of
207 losses. Eligible risks that are provided hurricane coverage
208 through a quota share primary insurance arrangement must be
209 provided policy forms that set forth the obligations of the
210 corporation and authorized insurer under the arrangement,
211 clearly specify the percentages of quota share primary insurance
212 provided by the corporation and authorized insurer, and
213 conspicuously and clearly state that the authorized insurer and
214 the corporation may not be held responsible beyond their
215 specified percentage of coverage of hurricane losses.

216 (II) "Eligible risks" means personal lines residential and
217 commercial lines residential risks that meet the underwriting
218 criteria of the corporation and are located in areas that were
219 eligible for coverage by the Florida Windstorm Underwriting
220 Association on January 1, 2002.

221 b. The corporation may enter into quota share primary
222 insurance agreements with authorized insurers at corporation
223 coverage levels of 90 percent and 50 percent.

224 c. If the corporation determines that additional coverage

HB 761

2012

225 levels are necessary to maximize participation in quota share
226 primary insurance agreements by authorized insurers, the
227 corporation may establish additional coverage levels. However,
228 the corporation's quota share primary insurance coverage level
229 may not exceed 90 percent.

230 d. Any quota share primary insurance agreement entered
231 into between an authorized insurer and the corporation must
232 provide for a uniform specified percentage of coverage of
233 hurricane losses, by county or territory as set forth by the
234 corporation board, for all eligible risks of the authorized
235 insurer covered under the agreement.

236 e. Any quota share primary insurance agreement entered
237 into between an authorized insurer and the corporation is
238 subject to review and approval by the office. However, such
239 agreement shall be authorized only as to insurance contracts
240 entered into between an authorized insurer and an insured who is
241 already insured by the corporation for wind coverage.

242 f. For all eligible risks covered under quota share
243 primary insurance agreements, the exposure and coverage levels
244 for both the corporation and authorized insurers shall be
245 reported by the corporation to the Florida Hurricane Catastrophe
246 Fund. For all policies of eligible risks covered under such
247 agreements, the corporation and the authorized insurer must
248 maintain complete and accurate records for the purpose of
249 exposure and loss reimbursement audits as required by fund
250 rules. The corporation and the authorized insurer shall each
251 maintain duplicate copies of policy declaration pages and
252 supporting claims documents.

HB 761

2012

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3.a. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may

HB 761

2012

281 seek judicial validation of its bonds or other indebtedness
282 under chapter 75. The corporation may issue bonds or incur other
283 indebtedness, or have bonds issued on its behalf by a unit of
284 local government pursuant to subparagraph (q)2. in the absence
285 of a hurricane or other weather-related event, upon a
286 determination by the corporation, subject to approval by the
287 office, that such action would enable it to efficiently meet the
288 financial obligations of the corporation and that such
289 financings are reasonably necessary to effectuate the
290 requirements of this subsection. The corporation may take all
291 actions needed to facilitate tax-free status for such bonds or
292 indebtedness, including formation of trusts or other affiliated
293 entities. The corporation may pledge assessments, projected
294 recoveries from the Florida Hurricane Catastrophe Fund, other
295 reinsurance recoverables, market equalization and other
296 surcharges, and other funds available to the corporation as
297 security for bonds or other indebtedness. In recognition of s.
298 10, Art. I of the State Constitution, prohibiting the impairment
299 of obligations of contracts, it is the intent of the Legislature
300 that no action be taken whose purpose is to impair any bond
301 indenture or financing agreement or any revenue source committed
302 by contract to such bond or other indebtedness.

303 b. To ensure that the corporation is operating in an
304 efficient and economic manner while providing quality service to
305 policyholders, applicants, and agents, the board shall
306 commission an independent third-party consultant having
307 expertise in insurance company management or insurance company
308 management consulting to prepare a report and make

HB 761

2012

309 recommendations on the relative costs and benefits of
310 outsourcing various policy issuance and service functions to
311 private servicing carriers or entities performing similar
312 functions in the private market for a fee, rather than
313 performing such functions in-house. In making such
314 recommendations, the consultant shall consider how other
315 residual markets, both in this state and around the country,
316 outsource appropriate functions or use servicing carriers to
317 better match expenses with revenues that fluctuate based on a
318 widely varying policy count. The report must be completed by
319 July 1, 2012. Upon receiving the report, the board shall develop
320 a plan to implement the report and submit the plan for review,
321 modification, and approval to the Financial Services Commission.
322 Upon the commission's approval of the plan, the board shall
323 begin implementing the plan by January 1, 2013.

324 4. Must require that the corporation operate subject to
325 the supervision and approval of a board of governors consisting
326 of eight individuals who are residents of this state, from
327 different geographical areas of this state.

328 a. The Governor, the Chief Financial Officer, the
329 President of the Senate, and the Speaker of the House of
330 Representatives shall each appoint two members of the board. At
331 least one of the two members appointed by each appointing
332 officer must have demonstrated expertise in insurance and is
333 deemed to be within the scope of the exemption provided in s.
334 112.313(7)(b). The Chief Financial Officer shall designate one
335 of the appointees as chair. All board members serve at the
336 pleasure of the appointing officer. All members of the board are

HB 761

2012

337 subject to removal at will by the officers who appointed them.
338 All board members, including the chair, must be appointed to
339 serve for 3-year terms beginning annually on a date designated
340 by the plan. However, for the first term beginning on or after
341 July 1, 2009, each appointing officer shall appoint one member
342 of the board for a 2-year term and one member for a 3-year term.
343 A board vacancy shall be filled for the unexpired term by the
344 appointing officer. The Chief Financial Officer shall appoint a
345 technical advisory group to provide information and advice to
346 the board in connection with the board's duties under this
347 subsection. The executive director and senior managers of the
348 corporation shall be engaged by the board and serve at the
349 pleasure of the board. Any executive director appointed on or
350 after July 1, 2006, is subject to confirmation by the Senate.
351 The executive director is responsible for employing other staff
352 as the corporation may require, subject to review and
353 concurrence by the board.

354 b. The board shall create a Market Accountability Advisory
355 Committee to assist the corporation in developing awareness of
356 its rates and its customer and agent service levels in
357 relationship to the voluntary market insurers writing similar
358 coverage.

359 (I) The members of the advisory committee consist of the
360 following 11 persons, one of whom must be elected chair by the
361 members of the committee: four representatives, one appointed by
362 the Florida Association of Insurance Agents, one by the Florida
363 Association of Insurance and Financial Advisors, one by the
364 Professional Insurance Agents of Florida, and one by the Latin

HB 761

2012

American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the

HB 761

2012

393 risk is not able to obtain such offer, the risk is eligible for
394 a standard policy including wind coverage or a basic policy
395 including wind coverage issued by the corporation; however, if
396 the risk could not be insured under a standard policy including
397 wind coverage regardless of market conditions, the risk is
398 eligible for a basic policy including wind coverage unless
399 rejected under subparagraph 8. However, a policyholder of the
400 corporation or a policyholder removed from the corporation
401 through an assumption agreement until the end of the assumption
402 period remains eligible for coverage from the corporation
403 regardless of any offer of coverage from an authorized insurer
404 or surplus lines insurer. The corporation shall determine the
405 type of policy to be provided on the basis of objective
406 standards specified in the underwriting manual and based on
407 generally accepted underwriting practices.

408 (I) If the risk accepts an offer of coverage through the
409 market assistance plan or through a mechanism established by the
410 corporation before a policy is issued to the risk by the
411 corporation or during the first 30 days of coverage by the
412 corporation, and the producing agent who submitted the
413 application to the plan or to the corporation is not currently
414 appointed by the insurer, the insurer shall:

415 (A) Pay to the producing agent of record of the policy for
416 the first year, an amount that is the greater of the insurer's
417 usual and customary commission for the type of policy written or
418 a fee equal to the usual and customary commission of the
419 corporation; or

420 (B) Offer to allow the producing agent of record of the

HB 761

2012

421 policy to continue servicing the policy for at least 1 year and
422 offer to pay the agent the greater of the insurer's or the
423 corporation's usual and customary commission for the type of
424 policy written.

425
426 If the producing agent is unwilling or unable to accept
427 appointment, the new insurer shall pay the agent in accordance
428 with sub-sub-sub-subparagraph (A).

429 (II) If the corporation enters into a contractual
430 agreement for a take-out plan, the producing agent of record of
431 the corporation policy is entitled to retain any unearned
432 commission on the policy, and the insurer shall:

433 (A) Pay to the producing agent of record, for the first
434 year, an amount that is the greater of the insurer's usual and
435 customary commission for the type of policy written or a fee
436 equal to the usual and customary commission of the corporation;
437 or

438 (B) Offer to allow the producing agent of record to
439 continue servicing the policy for at least 1 year and offer to
440 pay the agent the greater of the insurer's or the corporation's
441 usual and customary commission for the type of policy written.

442
443 If the producing agent is unwilling or unable to accept
444 appointment, the new insurer shall pay the agent in accordance
445 with sub-sub-sub-subparagraph (A).

446 b. With respect to commercial lines residential risks, for
447 a new application to the corporation for coverage, if the risk
448 is offered coverage under a policy including wind coverage from

HB 761

2012

an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of an offer of coverage from an authorized insurer or surplus lines insurer.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of

HB 761

2012

477 policy written.

478
479 If the producing agent is unwilling or unable to accept
480 appointment, the new insurer shall pay the agent in accordance
481 with sub-sub-sub-subparagraph (A).

482 (II) If the corporation enters into a contractual
483 agreement for a take-out plan, the producing agent of record of
484 the corporation policy is entitled to retain any unearned
485 commission on the policy, and the insurer shall:

486 (A) Pay to the producing agent of record, for the first
487 year, an amount that is the greater of the insurer's usual and
488 customary commission for the type of policy written or a fee
489 equal to the usual and customary commission of the corporation;
490 or

491 (B) Offer to allow the producing agent of record to
492 continue servicing the policy for at least 1 year and offer to
493 pay the agent the greater of the insurer's or the corporation's
494 usual and customary commission for the type of policy written.

495
496 If the producing agent is unwilling or unable to accept
497 appointment, the new insurer shall pay the agent in accordance
498 with sub-sub-sub-subparagraph (A).

499 c. For purposes of determining comparable coverage under
500 sub-subparagraphs a. and b., the comparison must be based on
501 those forms and coverages that are reasonably comparable. The
502 corporation may rely on a determination of comparable coverage
503 and premium made by the producing agent who submits the
504 application to the corporation, made in the agent's capacity as

HB 761

2012

the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

HB 761

2012

533 6. Must include rules for classifications of risks and
534 rates.

535 7. Must provide that if premium and investment income for
536 an account attributable to a particular calendar year are in
537 excess of projected losses and expenses for the account
538 attributable to that year, such excess shall be held in surplus
539 in the account. Such surplus must be available to defray
540 deficits in that account as to future years and used for that
541 purpose before assessing assessable insurers and assessable
542 insureds as to any calendar year.

543 8. Must provide objective criteria and procedures to be
544 uniformly applied to all applicants in determining whether an
545 individual risk is so hazardous as to be uninsurable. In making
546 this determination and in establishing the criteria and
547 procedures, the following must be considered:

548 a. Whether the likelihood of a loss for the individual
549 risk is substantially higher than for other risks of the same
550 class; and

551 b. Whether the uncertainty associated with the individual
552 risk is such that an appropriate premium cannot be determined.

553
554 The acceptance or rejection of a risk by the corporation shall
555 be construed as the private placement of insurance, and the
556 provisions of chapter 120 do not apply.

557 9. Must provide that the corporation make its best efforts
558 to procure catastrophe reinsurance at reasonable rates, to cover
559 its projected 100-year probable maximum loss as determined by
560 the board of governors.

HB 761

2012

561 10. The policies issued by the corporation must provide
562 that if the corporation or the market assistance plan obtains an
563 offer from an authorized insurer to cover the risk at its
564 approved rates, the risk is no longer eligible for renewal
565 through the corporation, except as otherwise provided in this
566 subsection.

567 11. Corporation policies and applications must include a
568 notice that the corporation policy could, under this section, be
569 replaced with a policy issued by an authorized insurer which
570 does not provide coverage identical to the coverage provided by
571 the corporation. The notice must also specify that acceptance of
572 corporation coverage creates a conclusive presumption that the
573 applicant or policyholder is aware of this potential.

574 12. May establish, subject to approval by the office,
575 different eligibility requirements and operational procedures
576 for any line or type of coverage for any specified county or
577 area if the board determines that such changes are justified due
578 to the voluntary market being sufficiently stable and
579 competitive in such area or for such line or type of coverage
580 and that consumers who, in good faith, are unable to obtain
581 insurance through the voluntary market through ordinary methods
582 continue to have access to coverage from the corporation. If
583 coverage is sought in connection with a real property transfer,
584 the requirements and procedures may not provide an effective
585 date of coverage later than the date of the closing of the
586 transfer as established by the transferor, the transferee, and,
587 if applicable, the lender.

588 13. Must provide that, with respect to the coastal

HB 761

2012

589 account, any assessable insurer with a surplus as to
590 policyholders of \$25 million or less writing 25 percent or more
591 of its total countrywide property insurance premiums in this
592 state may petition the office, within the first 90 days of each
593 calendar year, to qualify as a limited apportionment company. A
594 regular assessment levied by the corporation on a limited
595 apportionment company for a deficit incurred by the corporation
596 for the coastal account may be paid to the corporation on a
597 monthly basis as the assessments are collected by the limited
598 apportionment company from its insureds pursuant to s. 627.3512,
599 but the regular assessment must be paid in full within 12 months
600 after being levied by the corporation. A limited apportionment
601 company shall collect from its policyholders any emergency
602 assessment imposed under sub-subparagraph (b)3.d. The plan must
603 provide that, if the office determines that any regular
604 assessment will result in an impairment of the surplus of a
605 limited apportionment company, the office may direct that all or
606 part of such assessment be deferred as provided in subparagraph
607 (q)4. However, an emergency assessment to be collected from
608 policyholders under sub-subparagraph (b)3.d. may not be limited
609 or deferred.

610 14. Must provide that the corporation appoint as its
611 licensed agents only those agents who also hold an appointment
612 as defined in s. 626.015(3) with an insurer who at the time of
613 the agent's initial appointment by the corporation is authorized
614 to write and is actually writing personal lines residential
615 property coverage, commercial residential property coverage, or
616 commercial nonresidential property coverage within the state.

HB 761

2012

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE

AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE

HB 761

2012

645 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
646 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
647 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
648 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
649 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
650 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
651 LEGISLATURE.

652 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
653 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
654 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
655 FLORIDA LEGISLATURE.

656 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
657 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
658 STATE OF FLORIDA.

659 a. The corporation shall maintain, in electronic format or
660 otherwise, a copy of the applicant's signed acknowledgement and
661 provide a copy of the statement to the policyholder as part of
662 the first renewal after the effective date of this subparagraph.

663 b. The signed acknowledgement form creates a conclusive
664 presumption that the policyholder understood and accepted his or
665 her potential surcharge and assessment liability as a
666 policyholder of the corporation.

667 Section 2. This act shall take effect July 1, 2012.