

HB 1127

2012

1 A bill to be entitled
2 An act relating to Citizens Property Insurance
3 Corporation; amending s. 627.351, F.S.; conforming
4 cross-references; reducing to 2 percent from 6 percent
5 the amount of the projected deficit in the coastal
6 account for the prior calendar year which is recovered
7 through regular assessments; requiring that remaining
8 projected deficits in personal and commercial lines
9 accounts be recovered through emergency assessments
10 after accounting for the Citizens policyholder
11 surcharge; requiring the Office of Insurance
12 Regulation of the Financial Services Commission to
13 notify assessable insurers and the Florida Surplus
14 Lines Service Office of the dates assessable insurers
15 shall collect and pay emergency assessments; removing
16 reference to recoupment of residual market deficit
17 assessments; requiring the board of governors to make
18 a determination that an account has a projected
19 deficit before it levies a Citizens policy holder
20 surcharge; requiring that a limited apportionment
21 company begin collecting regular assessments within 90
22 days and pay in full within 15 months after the
23 assessment is levied; authorizing the Office of
24 Insurance Regulation to assist the Citizens Property
25 Insurance Corporation in the collection of
26 assessments; replacing the term "market equalization
27 surcharge" with the term "policyholder surcharge";
28 providing an effective date.

HB 1127

2012

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

Section 1. Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential

HB 1127

2012

57 policies issued by the corporation, or issued by the Residential
58 Property and Casualty Joint Underwriting Association and renewed
59 by the corporation, which provides comprehensive, multiperil
60 coverage on risks that are not located in areas eligible for
61 coverage by the Florida Windstorm Underwriting Association as
62 those areas were defined on January 1, 2002, and for policies
63 that do not provide coverage for the peril of wind on risks that
64 are located in such areas;

65 (II) A commercial lines account for commercial residential
66 and commercial nonresidential policies issued by the
67 corporation, or issued by the Residential Property and Casualty
68 Joint Underwriting Association and renewed by the corporation,
69 which provides coverage for basic property perils on risks that
70 are not located in areas eligible for coverage by the Florida
71 Windstorm Underwriting Association as those areas were defined
72 on January 1, 2002, and for policies that do not provide
73 coverage for the peril of wind on risks that are located in such
74 areas; and

75 (III) A coastal account for personal residential policies
76 and commercial residential and commercial nonresidential
77 property policies issued by the corporation, or transferred to
78 the corporation, which provides coverage for the peril of wind
79 on risks that are located in areas eligible for coverage by the
80 Florida Windstorm Underwriting Association as those areas were
81 defined on January 1, 2002. The corporation may offer policies
82 that provide multiperil coverage and the corporation shall
83 continue to offer policies that provide coverage only for the
84 peril of wind for risks located in areas eligible for coverage

HB 1127

2012

85 | in the coastal account. In issuing multiperil coverage, the
86 | corporation may use its approved policy forms and rates for the
87 | personal lines account. An applicant or insured who is eligible
88 | to purchase a multiperil policy from the corporation may
89 | purchase a multiperil policy from an authorized insurer without
90 | prejudice to the applicant's or insured's eligibility to
91 | prospectively purchase a policy that provides coverage only for
92 | the peril of wind from the corporation. An applicant or insured
93 | who is eligible for a corporation policy that provides coverage
94 | only for the peril of wind may elect to purchase or retain such
95 | policy and also purchase or retain coverage excluding wind from
96 | an authorized insurer without prejudice to the applicant's or
97 | insured's eligibility to prospectively purchase a policy that
98 | provides multiperil coverage from the corporation. It is the
99 | goal of the Legislature that there be an overall average savings
100 | of 10 percent or more for a policyholder who currently has a
101 | wind-only policy with the corporation, and an ex-wind policy
102 | with a voluntary insurer or the corporation, and who obtains a
103 | multiperil policy from the corporation. It is the intent of the
104 | Legislature that the offer of multiperil coverage in the coastal
105 | account be made and implemented in a manner that does not
106 | adversely affect the tax-exempt status of the corporation or
107 | creditworthiness of or security for currently outstanding
108 | financing obligations or credit facilities of the coastal
109 | account, the personal lines account, or the commercial lines
110 | account. The coastal account must also include quota share
111 | primary insurance under subparagraph (c)2. The area eligible for
112 | coverage under the coastal account also includes the area within

HB 1127

2012

113 Port Canaveral, which is bordered on the south by the City of
114 Cape Canaveral, bordered on the west by the Banana River, and
115 bordered on the north by Federal Government property.

116 b. The three separate accounts must be maintained as long
117 as financing obligations entered into by the Florida Windstorm
118 Underwriting Association or Residential Property and Casualty
119 Joint Underwriting Association are outstanding, in accordance
120 with the terms of the corresponding financing documents. If the
121 financing obligations are no longer outstanding, the corporation
122 may use a single account for all revenues, assets, liabilities,
123 losses, and expenses of the corporation. Consistent with this
124 subparagraph and prudent investment policies that minimize the
125 cost of carrying debt, the board shall exercise its best efforts
126 to retire existing debt or obtain the approval of necessary
127 parties to amend the terms of existing debt, so as to structure
128 the most efficient plan to consolidate the three separate
129 accounts into a single account.

130 c. Creditors of the Residential Property and Casualty
131 Joint Underwriting Association and the accounts specified in
132 sub-sub-subparagraphs a.(I) and (II) may have a claim against,
133 and recourse to, those accounts and no claim against, or
134 recourse to, the account referred to in sub-sub-subparagraph
135 a.(III). Creditors of the Florida Windstorm Underwriting
136 Association have a claim against, and recourse to, the account
137 referred to in sub-sub-subparagraph a.(III) and no claim
138 against, or recourse to, the accounts referred to in sub-sub-
139 subparagraphs a.(I) and (II).

140 d. Revenues, assets, liabilities, losses, and expenses not

HB 1127

2012

141 attributable to particular accounts shall be prorated among the
142 accounts.

143 e. The Legislature finds that the revenues of the
144 corporation are revenues that are necessary to meet the
145 requirements set forth in documents authorizing the issuance of
146 bonds under this subsection.

147 f. ~~No part of~~ The income of the corporation may not inure
148 to the benefit of any private person.

149 3. With respect to a deficit in an account:

150 a. After accounting for the Citizens policyholder
151 surcharge imposed under sub-subparagraph i. h., if the remaining
152 projected deficit incurred in the coastal account in a
153 particular calendar year:

154 (I) Is not greater than 2 ½ percent of the aggregate
155 statewide direct written premium for the subject lines of
156 business for the prior calendar year, the entire deficit shall
157 be recovered through regular assessments of assessable insurers
158 under paragraph (q) and assessable insureds.

159 (II) Exceeds 2 ½ percent of the aggregate statewide direct
160 written premium for the subject lines of business for the prior
161 calendar year, the corporation shall levy regular assessments on
162 assessable insurers under paragraph (q) and on assessable
163 insureds in an amount equal to the greater of 2 ½ percent of the
164 projected deficit or 2 ½ percent of the aggregate statewide
165 direct written premium for the subject lines of business for the
166 prior calendar year. Any remaining projected deficit shall be
167 recovered through emergency assessments under sub-subparagraph
168 d. e.

HB 1127

2012

169 b. Each assessable insurer's share of the amount being
170 assessed under sub-subparagraph a. must be in the proportion
171 that the assessable insurer's direct written premium for the
172 subject lines of business for the year preceding the assessment
173 bears to the aggregate statewide direct written premium for the
174 subject lines of business for that year. The assessment
175 percentage applicable to each assessable insured is the ratio of
176 the amount being assessed under sub-subparagraph a. to the
177 aggregate statewide direct written premium for the subject lines
178 of business for the prior year. Assessments levied by the
179 corporation on assessable insurers under sub-subparagraph a.
180 must be paid as required by the corporation's plan of operation
181 and paragraph (q). Assessments levied by the corporation on
182 assessable insureds under sub-subparagraph a. shall be collected
183 by the surplus lines agent at the time the surplus lines agent
184 collects the surplus lines tax required by s. 626.932, and paid
185 to the Florida Surplus Lines Service Office at the time the
186 surplus lines agent pays the surplus lines tax to that office.
187 Upon receipt of regular assessments from surplus lines agents,
188 the Florida Surplus Lines Service Office shall transfer the
189 assessments directly to the corporation as determined by the
190 corporation.

191 c. After accounting for the Citizens policyholder
192 surcharge imposed under sub-subparagraph i., the remaining
193 projected deficits in the personal lines account and in the
194 commercial lines account in a particular calendar year shall be
195 recovered through emergency assessments under sub-subparagraph
196 d.

HB 1127

2012

197 ~~d.e.~~ Upon a determination by the board of governors that a
198 projected deficit in an account exceeds the amount that is
199 expected to ~~will~~ be recovered through regular assessments under
200 sub-subparagraph a., plus the amount that is expected to be
201 recovered through surcharges under sub-subparagraph i. ~~h.~~, the
202 board, after verification by the office, shall levy emergency
203 assessments for as many years as necessary to cover the
204 deficits, to be collected by assessable insurers and the
205 corporation and collected from assessable insureds upon issuance
206 or renewal of policies for subject lines of business, excluding
207 National Flood Insurance policies. The amount collected in a
208 particular year must be a uniform percentage of that year's
209 direct written premium for subject lines of business and all
210 accounts of the corporation, excluding National Flood Insurance
211 Program policy premiums, as annually determined by the board and
212 verified by the office. The office shall verify the arithmetic
213 calculations involved in the board's determination within 30
214 days after receipt of the information on which the determination
215 was based. The office shall notify assessable insurers and the
216 Florida Surplus Lines Service Office of the date on which
217 assessable insurers shall begin to collect and assessable
218 insureds shall begin to pay such assessment. The date may be not
219 less than 90 days after the date the corporation levies
220 emergency assessments pursuant to this sub-subparagraph.
221 Notwithstanding any other provision of law, the corporation and
222 each assessable insurer that writes subject lines of business
223 shall collect emergency assessments from its policyholders
224 without such obligation being affected by any credit,

HB 1127

2012

225 limitation, exemption, or deferment. Emergency assessments
226 levied by the corporation on assessable insureds shall be
227 collected by the surplus lines agent at the time the surplus
228 lines agent collects the surplus lines tax required by s.
229 626.932 and paid to the Florida Surplus Lines Service Office at
230 the time the surplus lines agent pays the surplus lines tax to
231 that office. The emergency assessments collected shall be
232 transferred directly to the corporation on a periodic basis as
233 determined by the corporation and held by the corporation solely
234 in the applicable account. The aggregate amount of emergency
235 assessments levied for an account under this sub-subparagraph in
236 any calendar year may be less than but not exceed the greater of
237 10 percent of the amount needed to cover the deficit, plus
238 interest, fees, commissions, required reserves, and other costs
239 associated with financing the original deficit, or 10 percent of
240 the aggregate statewide direct written premium for subject lines
241 of business and all accounts of the corporation for the prior
242 year, plus interest, fees, commissions, required reserves, and
243 other costs associated with financing the deficit.

244 ~~e.d.~~ The corporation may pledge the proceeds of
245 assessments, projected recoveries from the Florida Hurricane
246 Catastrophe Fund, other insurance and reinsurance recoverables,
247 policyholder surcharges and other surcharges, and other funds
248 available to the corporation as the source of revenue for and to
249 secure bonds issued under paragraph (q), bonds or other
250 indebtedness issued under subparagraph (c)3., or lines of credit
251 or other financing mechanisms issued or created under this
252 subsection, or to retire any other debt incurred as a result of

HB 1127

2012

253 deficits or events giving rise to deficits, or in any other way
254 that the board determines will efficiently recover such
255 deficits. The purpose of the lines of credit or other financing
256 mechanisms is to provide additional resources to assist the
257 corporation in covering claims and expenses attributable to a
258 catastrophe. As used in this subsection, the term "assessments"
259 includes regular assessments under sub-subparagraph a. or
260 subparagraph (q)1. and emergency assessments under sub-
261 subparagraph d. Emergency assessments collected under sub-
262 subparagraph d. are not part of an insurer's rates, are not
263 premium, and are not subject to premium tax, fees, or
264 commissions; however, failure to pay the emergency assessment
265 shall be treated as failure to pay premium. The emergency
266 assessments under sub-subparagraph d. ~~e.~~ shall continue as long
267 as any bonds issued or other indebtedness incurred with respect
268 to a deficit for which the assessment was imposed remain
269 outstanding, unless adequate provision has been made for the
270 payment of such bonds or other indebtedness pursuant to the
271 documents governing such bonds or indebtedness.

272 f. ~~e.~~ As used in this subsection for purposes of any
273 deficit incurred on or after January 25, 2007, the term "subject
274 lines of business" means insurance written by assessable
275 insurers or procured by assessable insureds for all property and
276 casualty lines of business in this state, but not including
277 workers' compensation or medical malpractice. As used in this
278 sub-subparagraph, the term "property and casualty lines of
279 business" includes all lines of business identified on Form 2,
280 Exhibit of Premiums and Losses, in the annual statement required

HB 1127

2012

of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

~~g.f.~~ The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

~~h.g.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

~~i.h.~~ ~~If a deficit is incurred in any account~~ In 2008 or thereafter, upon a determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such

HB 1127

2012

309 premium, which funds shall be used to offset the deficit.

310 (II) The surcharge is payable upon cancellation or
311 termination of the policy, upon renewal of the policy, or upon
312 issuance of a new policy by the corporation within the first 12
313 months after the date of the levy or the period of time
314 necessary to fully collect the surcharge amount.

315 (III) The corporation may not levy any regular assessments
316 under paragraph (q) pursuant to sub-subparagraph a. or sub-
317 subparagraph b. with respect to a particular year's deficit
318 until the corporation has first levied the full amount of the
319 surcharge authorized by this sub-subparagraph.

320 (IV) The surcharge is not considered premium and is not
321 subject to commissions, fees, or premium taxes. However, failure
322 to pay the surcharge shall be treated as failure to pay premium.

323 ~~j.i.~~ If the amount of any assessments or surcharges
324 collected from corporation policyholders, assessable insurers or
325 their policyholders, or assessable insureds exceeds the amount
326 of the deficits, such excess amounts shall be remitted to and
327 retained by the corporation in a reserve to be used by the
328 corporation, as determined by the board of governors and
329 approved by the office, to pay claims or reduce any past,
330 present, or future plan-year deficits or to reduce outstanding
331 debt.

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

333 1. Must provide for adoption of residential property and
334 casualty insurance policy forms and commercial residential and
335 nonresidential property insurance forms, which must be approved
336 by the office before use. The corporation shall adopt the

HB 1127

2012

following policy forms:

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

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

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

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

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

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

HB 1127

2012

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

371 a. As used in this subsection, the term:

372 (I) "Quota share primary insurance" means an arrangement
373 in which the primary hurricane coverage of an eligible risk is
374 provided in specified percentages by the corporation and an
375 authorized insurer. The corporation and authorized insurer are
376 each solely responsible for a specified percentage of hurricane
377 coverage of an eligible risk as set forth in a quota share
378 primary insurance agreement between the corporation and an
379 authorized insurer and the insurance contract. The
380 responsibility of the corporation or authorized insurer to pay
381 its specified percentage of hurricane losses of an eligible
382 risk, as set forth in the agreement, may not be altered by the
383 inability of the other party to pay its specified percentage of
384 losses. Eligible risks that are provided hurricane coverage
385 through a quota share primary insurance arrangement must be
386 provided policy forms that set forth the obligations of the
387 corporation and authorized insurer under the arrangement,
388 clearly specify the percentages of quota share primary insurance
389 provided by the corporation and authorized insurer, and
390 conspicuously and clearly state that the authorized insurer and
391 the corporation may not be held responsible beyond their
392 specified percentage of coverage of hurricane losses.

HB 1127

2012

393 (II) "Eligible risks" means personal lines residential and
394 commercial lines residential risks that meet the underwriting
395 criteria of the corporation and are located in areas that were
396 eligible for coverage by the Florida Windstorm Underwriting
397 Association on January 1, 2002.

398 b. The corporation may enter into quota share primary
399 insurance agreements with authorized insurers at corporation
400 coverage levels of 90 percent and 50 percent.

401 c. If the corporation determines that additional coverage
402 levels are necessary to maximize participation in quota share
403 primary insurance agreements by authorized insurers, the
404 corporation may establish additional coverage levels. However,
405 the corporation's quota share primary insurance coverage level
406 may not exceed 90 percent.

407 d. Any quota share primary insurance agreement entered
408 into between an authorized insurer and the corporation must
409 provide for a uniform specified percentage of coverage of
410 hurricane losses, by county or territory as set forth by the
411 corporation board, for all eligible risks of the authorized
412 insurer covered under the agreement.

413 e. Any quota share primary insurance agreement entered
414 into between an authorized insurer and the corporation is
415 subject to review and approval by the office. However, such
416 agreement shall be authorized only as to insurance contracts
417 entered into between an authorized insurer and an insured who is
418 already insured by the corporation for wind coverage.

419 f. For all eligible risks covered under quota share
420 primary insurance agreements, the exposure and coverage levels

HB 1127

2012

421 for both the corporation and authorized insurers shall be
422 reported by the corporation to the Florida Hurricane Catastrophe
423 Fund. For all policies of eligible risks covered under such
424 agreements, the corporation and the authorized insurer must
425 maintain complete and accurate records for the purpose of
426 exposure and loss reimbursement audits as required by fund
427 rules. The corporation and the authorized insurer shall each
428 maintain duplicate copies of policy declaration pages and
429 supporting claims documents.

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

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

HB 1127

2012

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 seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges ~~market equalization~~ and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is

HB 1127

2012

the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

b. To ensure that the corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall commission an independent third-party consultant having expertise in insurance company management or insurance company management consulting to prepare a report and make recommendations on the relative costs and benefits of outsourcing various policy issuance and service functions to private servicing carriers or entities performing similar functions in the private market for a fee, rather than performing such functions in-house. In making such recommendations, the consultant shall consider how other residual markets, both in this state and around the country, outsource appropriate functions or use servicing carriers to better match expenses with revenues that fluctuate based on a widely varying policy count. The report must be completed by July 1, 2012. Upon receiving the report, the board shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from

HB 1127

2012

different geographical areas of this state.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and is deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory

HB 1127

2012

Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

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

HB 1127

2012

561 a. Subject to s. 627.3517, with respect to personal lines
562 residential risks, if the risk is offered coverage from an
563 authorized insurer at the insurer's approved rate under a
564 standard policy including wind coverage or, if consistent with
565 the insurer's underwriting rules as filed with the office, a
566 basic policy including wind coverage, for a new application to
567 the corporation for coverage, the risk is not eligible for any
568 policy issued by the corporation unless the premium for coverage
569 from the authorized insurer is more than 15 percent greater than
570 the premium for comparable coverage from the corporation. If the
571 risk is not able to obtain such offer, the risk is eligible for
572 a standard policy including wind coverage or a basic policy
573 including wind coverage issued by the corporation; however, if
574 the risk could not be insured under a standard policy including
575 wind coverage regardless of market conditions, the risk is
576 eligible for a basic policy including wind coverage unless
577 rejected under subparagraph 8. However, a policyholder of the
578 corporation or a policyholder removed from the corporation
579 through an assumption agreement until the end of the assumption
580 period remains eligible for coverage from the corporation
581 regardless of any offer of coverage from an authorized insurer
582 or surplus lines insurer. The corporation shall determine the
583 type of policy to be provided on the basis of objective
584 standards specified in the underwriting manual and based on
585 generally accepted underwriting practices.

586 (I) If the risk accepts an offer of coverage through the
587 market assistance plan or through a mechanism established by the
588 corporation before a policy is issued to the risk by the

HB 1127

2012

589 corporation or during the first 30 days of coverage by the
590 corporation, and the producing agent who submitted the
591 application to the plan or to the corporation is not currently
592 appointed by the insurer, the insurer shall:

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

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

603
604 If the producing agent is unwilling or unable to accept
605 appointment, the new insurer shall pay the agent in accordance
606 with sub-sub-sub-subparagraph (A).

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

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

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

HB 1127

2012

617 continue servicing the policy for at least 1 year and offer to
618 pay the agent the greater of the insurer's or the corporation's
619 usual and customary commission for the type of policy written.

620
621 If the producing agent is unwilling or unable to accept
622 appointment, the new insurer shall pay the agent in accordance
623 with sub-sub-sub-subparagraph (A).

624 b. With respect to commercial lines residential risks, for
625 a new application to the corporation for coverage, if the risk
626 is offered coverage under a policy including wind coverage from
627 an authorized insurer at its approved rate, the risk is not
628 eligible for a policy issued by the corporation unless the
629 premium for coverage from the authorized insurer is more than 15
630 percent greater than the premium for comparable coverage from
631 the corporation. If the risk is not able to obtain any such
632 offer, the risk is eligible for a policy including wind coverage
633 issued by the corporation. However, a policyholder of the
634 corporation or a policyholder removed from the corporation
635 through an assumption agreement until the end of the assumption
636 period remains eligible for coverage from the corporation
637 regardless of an offer of coverage from an authorized insurer or
638 surplus lines insurer.

639 (I) If the risk accepts an offer of coverage through the
640 market assistance plan or through a mechanism established by the
641 corporation before a policy is issued to the risk by the
642 corporation or during the first 30 days of coverage by the
643 corporation, and the producing agent who submitted the
644 application to the plan or the corporation is not currently

HB 1127

2012

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 policy written.

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

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

(A) Pay to the producing agent of record, 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 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 policy written.

673
674 If the producing agent is unwilling or unable to accept
675 appointment, the new insurer shall pay the agent in accordance
676 with sub-sub-sub-subparagraph (A).

677 c. For purposes of determining comparable coverage under
678 sub-subparagraphs a. and b., the comparison must be based on
679 those forms and coverages that are reasonably comparable. The
680 corporation may rely on a determination of comparable coverage
681 and premium made by the producing agent who submits the
682 application to the corporation, made in the agent's capacity as
683 the corporation's agent. A comparison may be made solely of the
684 premium with respect to the main building or structure only on
685 the following basis: the same coverage A or other building
686 limits; the same percentage hurricane deductible that applies on
687 an annual basis or that applies to each hurricane for commercial
688 residential property; the same percentage of ordinance and law
689 coverage, if the same limit is offered by both the corporation
690 and the authorized insurer; the same mitigation credits, to the
691 extent the same types of credits are offered both by the
692 corporation and the authorized insurer; the same method for loss
693 payment, such as replacement cost or actual cash value, if the
694 same method is offered both by the corporation and the
695 authorized insurer in accordance with underwriting rules; and
696 any other form or coverage that is reasonably comparable as
697 determined by the board. If an application is submitted to the
698 corporation for wind-only coverage in the coastal account, the
699 premium for the corporation's wind-only policy plus the premium
700 for the ex-wind policy that is offered by an authorized insurer

HB 1127

2012

701 to the applicant must be compared to the premium for multiperil
702 coverage offered by an authorized insurer, subject to the
703 standards for comparison specified in this subparagraph. If the
704 corporation or the applicant requests from the authorized
705 insurer a breakdown of the premium of the offer by types of
706 coverage so that a comparison may be made by the corporation or
707 its agent and the authorized insurer refuses or is unable to
708 provide such information, the corporation may treat the offer as
709 not being an offer of coverage from an authorized insurer at the
710 insurer's approved rate.

711 6. Must include rules for classifications of risks and
712 rates.

713 7. Must provide that if premium and investment income for
714 an account attributable to a particular calendar year are in
715 excess of projected losses and expenses for the account
716 attributable to that year, such excess shall be held in surplus
717 in the account. Such surplus must be available to defray
718 deficits in that account as to future years and used for that
719 purpose before assessing assessable insurers and assessable
720 insureds as to any calendar year.

721 8. Must provide objective criteria and procedures to be
722 uniformly applied to all applicants in determining whether an
723 individual risk is so hazardous as to be uninsurable. In making
724 this determination and in establishing the criteria and
725 procedures, the following must be considered:

726 a. Whether the likelihood of a loss for the individual
727 risk is substantially higher than for other risks of the same
728 class; and

HB 1127

2012

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

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

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

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

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

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and

HB 1127

2012

757 competitive in such area or for such line or type of coverage
758 and that consumers who, in good faith, are unable to obtain
759 insurance through the voluntary market through ordinary methods
760 continue to have access to coverage from the corporation. If
761 coverage is sought in connection with a real property transfer,
762 the requirements and procedures may not provide an effective
763 date of coverage later than the date of the closing of the
764 transfer as established by the transferor, the transferee, and,
765 if applicable, the lender.

766 13. Must provide that, with respect to the coastal
767 account, any assessable insurer with a surplus as to
768 policyholders of \$25 million or less writing 25 percent or more
769 of its total countrywide property insurance premiums in this
770 state may petition the office, within the first 90 days of each
771 calendar year, to qualify as a limited apportionment company. A
772 regular assessment levied by the corporation on a limited
773 apportionment company for a deficit incurred by the corporation
774 for the coastal account may be paid to the corporation on a
775 monthly basis as the assessments are collected by the limited
776 apportionment company from its insureds ~~pursuant to s. 627.3512,~~
777 but a limited apportionment company must begin collecting the
778 regular assessments not later than 90 days after the regular
779 assessments are levied by the corporation, and the regular
780 assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months
781 after being levied by the corporation. A limited apportionment
782 company shall collect from its policyholders any emergency
783 assessment imposed under sub-subparagraph (b)3.d. The plan must
784 provide that, if the office determines that any regular

HB 1127

2012

assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

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

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

HB 1127

2012

813 appurtenant structures, driveways, sidewalks, decks, or patios
814 that are directly or indirectly caused by sinkhole activity. The
815 corporation shall exclude such coverage using a notice of
816 coverage change, which may be included with the policy renewal,
817 and not by issuance of a notice of nonrenewal of the excluded
818 coverage upon renewal of the current policy.

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

823
824 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
825 AND ASSESSMENT LIABILITY:
826

827 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
828 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
829 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
830 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
831 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
832 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
833 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
834 LEGISLATURE.

835 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
836 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
837 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
838 FLORIDA LEGISLATURE.

839 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
840 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE

HB 1127

2012

STATE OF FLORIDA.

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

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

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments ~~assessment~~ due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate ~~such assessment~~. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action

HB 1127

2012

869 against such nonpaying assessable insurer. Assessments shall be
870 included as an appropriate factor in the making of rates. The
871 failure of a surplus lines agent to collect and remit any
872 regular or emergency assessment levied by the corporation is
873 considered to be a violation of s. 626.936 and subjects the
874 surplus lines agent to the penalties provided in that section.

875 2. The governing body of any unit of local government, any
876 residents of which are insured by the corporation, may issue
877 bonds as defined in s. 125.013 or s. 166.101 from time to time
878 to fund an assistance program, in conjunction with the
879 corporation, for the purpose of defraying deficits of the
880 corporation. In order to avoid needless and indiscriminate
881 proliferation, duplication, and fragmentation of such assistance
882 programs, any unit of local government, any residents of which
883 are insured by the corporation, may provide for the payment of
884 losses, regardless of whether or not the losses occurred within
885 or outside of the territorial jurisdiction of the local
886 government. Revenue bonds under this subparagraph may not be
887 issued until validated pursuant to chapter 75, unless a state of
888 emergency is declared by executive order or proclamation of the
889 Governor pursuant to s. 252.36 making such findings as are
890 necessary to determine that it is in the best interests of, and
891 necessary for, the protection of the public health, safety, and
892 general welfare of residents of this state and declaring it an
893 essential public purpose to permit certain municipalities or
894 counties to issue such bonds as will permit relief to claimants
895 and policyholders of the corporation. Any such unit of local
896 government may enter into such contracts with the corporation

HB 1127

2012

and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. However, any "take-out bonus" or payment to an insurer must be conditioned on

HB 1127

2012

the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

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

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the

HB 1127

2012

insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed

HB 1127

2012

981 from any other entity.

982 (w) Notwithstanding any other provision of law:

983 1. The pledge or sale of, the lien upon, and the security
984 interest in any rights, revenues, or other assets of the
985 corporation created or purported to be created pursuant to any
986 financing documents to secure any bonds or other indebtedness of
987 the corporation shall be and remain valid and enforceable,
988 notwithstanding the commencement of and during the continuation
989 of, and after, any rehabilitation, insolvency, liquidation,
990 bankruptcy, receivership, conservatorship, reorganization, or
991 similar proceeding against the corporation under the laws of
992 this state.

993 2. The ~~No such~~ proceeding does not shall relieve the
994 corporation of its obligation, or otherwise affect its ability
995 to perform its obligation, to continue to collect, or levy and
996 collect, assessments, policyholder surcharges ~~market~~
997 ~~equalization~~ or other surcharges under sub-subparagraph (b)3.i.
998 ~~subparagraph (c)10.~~, or any other rights, revenues, or other
999 assets of the corporation pledged pursuant to any financing
1000 documents.

1001 3. Each such pledge or sale of, lien upon, and security
1002 interest in, including the priority of such pledge, lien, or
1003 security interest, any such assessments, policyholder surcharges
1004 ~~market equalization~~ or other surcharges, or other rights,
1005 revenues, or other assets which are collected, or levied and
1006 collected, after the commencement of and during the pendency of,
1007 or after, any such proceeding shall continue unaffected by such
1008 proceeding. As used in this subsection, the term "financing

HB 1127

2012

documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or

HB 1127

2012

other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

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