

1 A bill to be entitled
 2 An act relating to the depopulation programs of
 3 Citizens Property Insurance Corporation; amending s.
 4 627.351, F.S.; providing that eligible surplus lines
 5 insurers may participate, in the same manner and on
 6 the same terms as an authorized insurer, in
 7 depopulation, take-out, or keep-out programs relating
 8 to policies removed from Citizens Property Insurance
 9 Corporation; providing certain exceptions, conditions,
 10 and requirements relating to such participation by a
 11 surplus lines insurer in the corporation's
 12 depopulation, take-out, or keep-out programs;
 13 authorizing information from underwriting files and
 14 confidential files to be released by the corporation
 15 to specified entities that are considering writing or
 16 underwriting risks insured by the corporation under
 17 certain circumstances; specifying that only the
 18 corporation's transfer of a policy file to an insurer,
 19 as opposed to the transfer of any file, changes the
 20 file's public record status; providing an effective
 21 date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Paragraphs (q) and (x) of subsection (6) of
 26 section 627.351, Florida Statutes, are amended to read:

27 627.351 Insurance risk apportionment plans.—
 28 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

29 (q)1. The corporation shall certify to the office its
30 needs for annual assessments as to a particular calendar year,
31 and for any interim assessments that it deems to be necessary to
32 sustain operations as to a particular year pending the receipt
33 of annual assessments. Upon verification, the office shall
34 approve such certification, and the corporation shall levy such
35 annual or interim assessments. Such assessments shall be
36 prorated as provided in paragraph (b). The corporation shall
37 take all reasonable and prudent steps necessary to collect the
38 amount of assessment due from each assessable insurer,
39 including, if prudent, filing suit to collect such assessment.
40 If the corporation is unable to collect an assessment from any
41 assessable insurer, the uncollected assessments shall be levied
42 as an additional assessment against the assessable insurers and
43 any assessable insurer required to pay an additional assessment
44 as a result of such failure to pay shall have a cause of action
45 against such nonpaying assessable insurer. Assessments shall be
46 included as an appropriate factor in the making of rates. The
47 failure of a surplus lines agent to collect and remit any
48 regular or emergency assessment levied by the corporation is
49 considered to be a violation of s. 626.936 and subjects the
50 surplus lines agent to the penalties provided in that section.

51 2. The governing body of any unit of local government, any
52 residents of which are insured by the corporation, may issue
53 bonds as defined in s. 125.013 or s. 166.101 from time to time
54 to fund an assistance program, in conjunction with the
55 corporation, for the purpose of defraying deficits of the
56 corporation. In order to avoid needless and indiscriminate

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57 proliferation, duplication, and fragmentation of such assistance
58 programs, any unit of local government, any residents of which
59 are insured by the corporation, may provide for the payment of
60 losses, regardless of whether or not the losses occurred within
61 or outside of the territorial jurisdiction of the local
62 government. Revenue bonds under this subparagraph may not be
63 issued until validated pursuant to chapter 75, unless a state of
64 emergency is declared by executive order or proclamation of the
65 Governor pursuant to s. 252.36 making such findings as are
66 necessary to determine that it is in the best interests of, and
67 necessary for, the protection of the public health, safety, and
68 general welfare of residents of this state and declaring it an
69 essential public purpose to permit certain municipalities or
70 counties to issue such bonds as will permit relief to claimants
71 and policyholders of the corporation. Any such unit of local
72 government may enter into such contracts with the corporation
73 and with any other entity created pursuant to this subsection as
74 are necessary to carry out this paragraph. Any bonds issued
75 under this subparagraph shall be payable from and secured by
76 moneys received by the corporation from emergency assessments
77 under sub-subparagraph (b)3.d., and assigned and pledged to or
78 on behalf of the unit of local government for the benefit of the
79 holders of such bonds. The funds, credit, property, and taxing
80 power of the state or of the unit of local government shall not
81 be pledged for the payment of such bonds.

82 3.a. The corporation shall adopt one or more programs
83 subject to approval by the office for the reduction of both new
84 and renewal writings in the corporation. Beginning January 1,

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85 | 2008, any program the corporation adopts for the payment of
86 | bonuses to an insurer for each risk the insurer removes from the
87 | corporation shall comply with s. 627.3511(2) and may not exceed
88 | the amount referenced in s. 627.3511(2) for each risk removed.
89 | The corporation may consider any prudent and not unfairly
90 | discriminatory approach to reducing corporation writings, and
91 | may adopt a credit against assessment liability or other
92 | liability that provides an incentive for insurers to take risks
93 | out of the corporation and to keep risks out of the corporation
94 | by maintaining or increasing voluntary writings in counties or
95 | areas in which corporation risks are highly concentrated and a
96 | program to provide a formula under which an insurer voluntarily
97 | taking risks out of the corporation by maintaining or increasing
98 | voluntary writings will be relieved wholly or partially from
99 | assessments under sub-subparagraphs (b)3.a. and b. However, any
100 | "take-out bonus" or payment to an insurer must be conditioned on
101 | the property being insured for at least 5 years by the insurer,
102 | unless canceled or nonrenewed by the policyholder. If the policy
103 | is canceled or nonrenewed by the policyholder before the end of
104 | the 5-year period, the amount of the take-out bonus must be
105 | prorated for the time period the policy was insured. When the
106 | corporation enters into a contractual agreement for a take-out
107 | plan, the producing agent of record of the corporation policy is
108 | entitled to retain any unearned commission on such policy, and
109 | the insurer shall either:

110 | (I) Pay to the producing agent of record of the policy,
111 | for the first year, an amount which is the greater of the
112 | insurer's usual and customary commission for the type of policy

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113 written or a policy fee equal to the usual and customary
114 commission of the corporation; or

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

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

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

134 d. Notwithstanding any other provision of law, for
135 purposes of a depopulation, take-out, or keep-out program
136 adopted by the corporation, including an initial or renewal
137 offer of coverage made to a policyholder removed from the
138 corporation pursuant to such program, an eligible surplus lines
139 insurer may participate in the program in the same manner and on
140 the same terms as an authorized insurer, except as provided

141 under this sub-subparagraph.

142 (I) To qualify for participation, the surplus lines
 143 insurer must first obtain approval from the office for its
 144 depopulation, take-out, or keep-out plan and then comply with
 145 all of the corporation's requirements for the plan applicable to
 146 admitted insurers and with all statutory provisions applicable
 147 to the removal of policies from the corporation.

148 (II) In considering a surplus lines insurer's request for
 149 approval for its plan, the office must determine that the
 150 surplus lines insurer meets the following requirements:

151 (A) Maintains surplus of \$50 million on a company or
 152 pooled basis;

153 (B) Maintains an A.M. Best Financial Strength Rating of A-
 154 or better;

155 (C) Maintains reserves, surplus, reinsurance, and
 156 reinsurance equivalents sufficient to cover the insurer's 100-
 157 year probable maximum hurricane loss at least twice in a single
 158 hurricane season, and submits such reinsurance to the office to
 159 review for purposes of the take-out;

160 (D) Provides prominent notice to the policyholder before
 161 the assumption of the policy that surplus lines policies are not
 162 provided coverage by the Florida Insurance Guaranty Association,
 163 and an outline of any substantial differences in coverage
 164 between the existing policy and the policy being offered to the
 165 insured; and

166 (E) Provides similar policy coverage.

167
 168 This sub-sub-subparagraph does not subject any surplus lines

169 insurer to requirements in addition to part VIII of chapter 626.
170 Surplus lines brokers making an offer of coverage under this
171 sub-subparagraph are not required to comply with s.
172 626.916(1)(a), (b), (c), and (e).

173 (III) Within 10 days after the date of assumption, the
174 surplus lines insurer assuming policies from the corporation
175 must remit a special deposit equal to the unearned premium net
176 of unearned commissions on the assumed block of business to the
177 Department of Financial Services, Bureau of Collateral
178 Securities. The surplus lines insurer must submit to the office
179 with the initial deposit an accounting of the policies assumed
180 and the amount of unearned premium for such policies along with
181 a sworn affidavit attesting to its accuracy by an officer of the
182 surplus lines insurer. Thereafter, the surplus lines insurer
183 must make a filing within 10 days after each calendar quarter,
184 attesting to the unearned premium in force for the previous
185 quarter on policies assumed from the corporation, and must
186 submit additional funds if the special deposit is insufficient
187 to cover the unearned premium on assumed policies, or must
188 receive a return of funds within 60 days if the special deposit
189 exceeds the amount of unearned premium required for assumed
190 policies. The special deposit is an asset of the surplus lines
191 insurer which is held by the department for the benefit of state
192 policyholders of the surplus lines insurer in the event of the
193 insolvency of the surplus lines insurer. If an order of
194 liquidation is entered in any state against the surplus lines
195 insurer, the department may use the special deposit for payment
196 of unearned premium or policy claims, return all or part of the

197 deposit to the domiciliary receiver, or use the funds in
 198 accordance with any action authorized under part I of chapter
 199 631 or in compliance with any order of a court with jurisdiction
 200 over the insolvency.

201 (IV) Surplus lines brokers representing a surplus lines
 202 insurer on a take-out program must obtain confirmation, in
 203 written or e-mail form, from each producing agent in advance
 204 stating that the agent is willing to participate in the take-out
 205 program with the surplus lines insurer engaging in the take-out
 206 program. The take-out program is also subject to s. 627.3517. If
 207 a policyholder is selected for removal from the corporation by a
 208 surplus lines insurer and an admitted carrier, the offer of
 209 coverage from the admitted carrier shall be given priority by
 210 the corporation.

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

221 5. Effective July 1, 2007, in order to evaluate the costs
 222 and benefits of approved take-out plans, if the corporation pays
 223 a bonus or other payment to an insurer for an approved take-out
 224 plan, it shall maintain a record of the address or such other

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225 identifying information on the property or risk removed in order
226 to track if and when the property or risk is later insured by
227 the corporation.

228 6. Any policy taken out, assumed, or removed from the
229 corporation is, as of the effective date of the take-out,
230 assumption, or removal, direct insurance issued by the insurer
231 and not by the corporation, even if the corporation continues to
232 service the policies. This subparagraph applies to policies of
233 the corporation and not policies taken out, assumed, or removed
234 from any other entity.

235 (x)1. The following records of the corporation are
236 confidential and exempt from the provisions of s. 119.07(1) and
237 s. 24(a), Art. I of the State Constitution:

238 a. Underwriting files, except that a policyholder or an
239 applicant shall have access to his or her own underwriting
240 files. Confidential and exempt underwriting file records may
241 also be released to other governmental agencies upon written
242 request and demonstration of need; such records held by the
243 receiving agency remain confidential and exempt as provided
244 herein.

245 b. Claims files, until termination of all litigation and
246 settlement of all claims arising out of the same incident,
247 although portions of the claims files may remain exempt, as
248 otherwise provided by law. Confidential and exempt claims file
249 records may be released to other governmental agencies upon
250 written request and demonstration of need; such records held by
251 the receiving agency remain confidential and exempt as provided
252 herein.

253 c. Records obtained or generated by an internal auditor
254 pursuant to a routine audit, until the audit is completed, or if
255 the audit is conducted as part of an investigation, until the
256 investigation is closed or ceases to be active. An investigation
257 is considered "active" while the investigation is being
258 conducted with a reasonable, good faith belief that it could
259 lead to the filing of administrative, civil, or criminal
260 proceedings.

261 d. Matters reasonably encompassed in privileged attorney-
262 client communications.

263 e. Proprietary information licensed to the corporation
264 under contract and the contract provides for the confidentiality
265 of such proprietary information.

266 f. All information relating to the medical condition or
267 medical status of a corporation employee which is not relevant
268 to the employee's capacity to perform his or her duties, except
269 as otherwise provided in this paragraph. Information that is
270 exempt shall include, but is not limited to, information
271 relating to workers' compensation, insurance benefits, and
272 retirement or disability benefits.

273 g. Upon an employee's entrance into the employee
274 assistance program, a program to assist any employee who has a
275 behavioral or medical disorder, substance abuse problem, or
276 emotional difficulty which affects the employee's job
277 performance, all records relative to that participation shall be
278 confidential and exempt from the provisions of s. 119.07(1) and
279 s. 24(a), Art. I of the State Constitution, except as otherwise
280 provided in s. 112.0455(11).

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281 h. Information relating to negotiations for financing,
282 reinsurance, depopulation, or contractual services, until the
283 conclusion of the negotiations.

284 i. Minutes of closed meetings regarding underwriting
285 files, and minutes of closed meetings regarding an open claims
286 file until termination of all litigation and settlement of all
287 claims with regard to that claim, except that information
288 otherwise confidential or exempt by law shall be redacted.

289 2. If an authorized insurer, reinsurance intermediary,
290 eligible surplus lines insurer, or entity that has been created
291 to seek authority to write property insurance in this state is
292 considering writing or assisting in the underwriting of a risk
293 insured by the corporation, relevant information from both the
294 underwriting files and confidential claims files may be released
295 to the insurer, reinsurance intermediary, eligible surplus lines
296 insurer, or entity that has been created to seek authority to
297 write property insurance in this state provided the recipient
298 ~~insurer~~ agrees in writing, notarized and under oath, to maintain
299 the confidentiality of such files. If a policy file is
300 transferred to an insurer, that policy file is no longer a
301 public record because it is not held by an agency subject to the
302 provisions of the public records law. Underwriting files and
303 confidential claims files may also be released to staff and the
304 board of governors of the market assistance plan established
305 pursuant to s. 627.3515, who must retain the confidentiality of
306 such files, except such files may be released to authorized
307 insurers that are considering assuming the risks to which the
308 files apply, provided the insurer agrees in writing, notarized

309 and under oath, to maintain the confidentiality of such files.
310 Finally, the corporation or the board or staff of the market
311 assistance plan may make the following information obtained from
312 underwriting files and confidential claims files available to
313 licensed general lines insurance agents: name, address, and
314 telephone number of the residential property owner or insured;
315 location of the risk; rating information; loss history; and
316 policy type. The receiving licensed general lines insurance
317 agent must retain the confidentiality of the information
318 received.

319 3. A policyholder who has filed suit against the
320 corporation has the right to discover the contents of his or her
321 own claims file to the same extent that discovery of such
322 contents would be available from a private insurer in litigation
323 as provided by the Florida Rules of Civil Procedure, the Florida
324 Evidence Code, and other applicable law. Pursuant to subpoena, a
325 third party has the right to discover the contents of an
326 insured's or applicant's underwriting or claims file to the same
327 extent that discovery of such contents would be available from a
328 private insurer by subpoena as provided by the Florida Rules of
329 Civil Procedure, the Florida Evidence Code, and other applicable
330 law, and subject to any confidentiality protections requested by
331 the corporation and agreed to by the seeking party or ordered by
332 the court. The corporation may release confidential underwriting
333 and claims file contents and information as it deems necessary
334 and appropriate to underwrite or service insurance policies and
335 claims, subject to any confidentiality protections deemed
336 necessary and appropriate by the corporation.

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337 4. Portions of meetings of the corporation are exempt from
338 the provisions of s. 286.011 and s. 24(b), Art. I of the State
339 Constitution wherein confidential underwriting files or
340 confidential open claims files are discussed. All portions of
341 corporation meetings which are closed to the public shall be
342 recorded by a court reporter. The court reporter shall record
343 the times of commencement and termination of the meeting, all
344 discussion and proceedings, the names of all persons present at
345 any time, and the names of all persons speaking. No portion of
346 any closed meeting shall be off the record. Subject to the
347 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's
348 notes of any closed meeting shall be retained by the corporation
349 for a minimum of 5 years. A copy of the transcript, less any
350 exempt matters, of any closed meeting wherein claims are
351 discussed shall become public as to individual claims after
352 settlement of the claim.

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