

Bill No. CS for CS for SB 1912

Barcode 861332

CHAMBER ACTION

Senate

House

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Senator Argenziano moved the following amendment:

**Senate Amendment (with title amendment)**

On page 39, between lines 20 and 21,

insert:

Section 34. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS PROPERTY INSURANCE CORPORATION.--

(c) The plan of operation of the corporation:

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

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

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

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

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

20           2.a. Must provide that the corporation adopt a program  
 21 in which the corporation and authorized insurers enter into  
 22 quota share primary insurance agreements for hurricane  
 23 coverage, as defined in s. 627.4025(2)(a), for eligible risks,  
 24 and adopt property insurance forms for eligible risks which  
 25 cover the peril of wind only. As used in this subsection, the  
 26 term:

27           (I) "Quota share primary insurance" means an  
 28 arrangement in which the primary hurricane coverage of an  
 29 eligible risk is provided in specified percentages by the  
 30 corporation and an authorized insurer. The corporation and  
 31 authorized insurer are each solely responsible for a specified

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1 percentage of hurricane coverage of an eligible risk as set  
 2 forth in a quota share primary insurance agreement between the  
 3 corporation and an authorized insurer and the insurance  
 4 contract. The responsibility of the corporation or authorized  
 5 insurer to pay its specified percentage of hurricane losses of  
 6 an eligible risk, as set forth in the quota share primary  
 7 insurance agreement, may not be altered by the inability of  
 8 the other party to the agreement to pay its specified  
 9 percentage of hurricane losses. Eligible risks that are  
 10 provided hurricane coverage through a quota share primary  
 11 insurance arrangement must be provided policy forms that set  
 12 forth the obligations of the corporation and authorized  
 13 insurer under the arrangement, clearly specify the percentages  
 14 of quota share primary insurance provided by the corporation  
 15 and authorized insurer, and conspicuously and clearly state  
 16 that neither the authorized insurer nor the corporation may be  
 17 held responsible beyond its specified percentage of coverage  
 18 of hurricane losses.

19 (II) "Eligible risks" means personal lines residential  
 20 and commercial lines residential risks that meet the  
 21 underwriting criteria of the corporation and are located in  
 22 areas that were eligible for coverage by the Florida Windstorm  
 23 Underwriting Association on January 1, 2002.

24 b. The corporation may enter into quota share primary  
 25 insurance agreements with authorized insurers at corporation  
 26 coverage levels of 90 percent and 50 percent.

27 c. If the corporation determines that additional  
 28 coverage levels are necessary to maximize participation in  
 29 quota share primary insurance agreements by authorized  
 30 insurers, the corporation may establish additional coverage  
 31 levels. However, the corporation's quota share primary

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1 insurance coverage level may not exceed 90 percent.

2 d. Any quota share primary insurance agreement entered  
3 into between an authorized insurer and the corporation must  
4 provide for a uniform specified percentage of coverage of  
5 hurricane losses, by county or territory as set forth by the  
6 corporation board, for all eligible risks of the authorized  
7 insurer covered under the quota share primary insurance  
8 agreement.

9 e. Any quota share primary insurance agreement entered  
10 into between an authorized insurer and the corporation is  
11 subject to review and approval by the office. However, such  
12 agreement shall be authorized only as to insurance contracts  
13 entered into between an authorized insurer and an insured who  
14 is already insured by the corporation for wind coverage.

15 f. For all eligible risks covered under quota share  
16 primary insurance agreements, the exposure and coverage levels  
17 for both the corporation and authorized insurers shall be  
18 reported by the corporation to the Florida Hurricane  
19 Catastrophe Fund. For all policies of eligible risks covered  
20 under quota share primary insurance agreements, the  
21 corporation and the authorized insurer shall maintain complete  
22 and accurate records for the purpose of exposure and loss  
23 reimbursement audits as required by Florida Hurricane  
24 Catastrophe Fund rules. The corporation and the authorized  
25 insurer shall each maintain duplicate copies of policy  
26 declaration pages and supporting claims documents.

27 g. The corporation board shall establish in its plan  
28 of operation standards for quota share agreements which ensure  
29 that there is no discriminatory application among insurers as  
30 to the terms of quota share agreements, pricing of quota share  
31 agreements, incentive provisions if any, and consideration

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1 paid for servicing policies or adjusting claims.

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

15           3. May provide that the corporation may employ or  
16 otherwise contract with individuals or other entities to  
17 provide administrative or professional services that may be  
18 appropriate to effectuate the plan. The corporation shall have  
19 the power to borrow funds, by issuing bonds or by incurring  
20 other indebtedness, and shall have other powers reasonably  
21 necessary to effectuate the requirements of this subsection.  
22 The corporation may, but is not required to, seek judicial  
23 validation of its bonds or other indebtedness under chapter  
24 75. The corporation may issue bonds or incur other  
25 indebtedness, or have bonds issued on its behalf by a unit of  
26 local government pursuant to subparagraph (g)2., in the  
27 absence of a hurricane or other weather-related event, upon a  
28 determination by the corporation, subject to approval by the  
29 office, that such action would enable it to efficiently meet  
30 the financial obligations of the corporation and that such  
31 financings are reasonably necessary to effectuate the

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1 requirements of this subsection. The corporation is authorized  
2 to take all actions needed to facilitate tax-free status for  
3 any such bonds or indebtedness, including formation of trusts  
4 or other affiliated entities. The corporation shall have the  
5 authority to pledge assessments, projected recoveries from the  
6 Florida Hurricane Catastrophe Fund, other reinsurance  
7 recoverables, market equalization and other surcharges, and  
8 other funds available to the corporation as security for bonds  
9 or other indebtedness. In recognition of s. 10, Art. I of the  
10 State Constitution, prohibiting the impairment of obligations  
11 of contracts, it is the intent of the Legislature that no  
12 action be taken whose purpose is to impair any bond indenture  
13 or financing agreement or any revenue source committed by  
14 contract to such bond or other indebtedness.

15           4. Must require that the corporation operate subject  
16 to the supervision and approval of a board of governors  
17 consisting of 7 individuals who are residents of this state,  
18 from different geographical areas of this state, appointed by  
19 the Chief Financial Officer. The Chief Financial Officer shall  
20 designate one of the appointees as chair. All board members  
21 serve at the pleasure of the Chief Financial Officer. All  
22 board members, including the chair, must be appointed to serve  
23 for 3-year terms beginning annually on a date designated by  
24 the plan. Any board vacancy shall be filled for the unexpired  
25 term by the Chief Financial Officer. The Chief Financial  
26 Officer shall appoint a technical advisory group to provide  
27 information and advice to the board of governors in connection  
28 with the board's duties under this subsection. The executive  
29 director and senior managers of the corporation shall be  
30 engaged by the Chief Financial Officer and serve at the  
31 pleasure of the Chief Financial Officer. The executive

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1 director is responsible for employing other staff as the  
2 corporation may require, subject to review and concurrence by  
3 the office of the Chief Financial Officer.

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

6 a. Subject to the provisions of s. 627.3517, with  
7 respect to personal lines residential risks, if the risk is  
8 offered coverage from an authorized insurer at the insurer's  
9 approved rate under either a standard policy including wind  
10 coverage or, if consistent with the insurer's underwriting  
11 rules as filed with the office, a basic policy including wind  
12 coverage, the risk is not eligible for any policy issued by  
13 the corporation. If the risk is not able to obtain any such  
14 offer, the risk is eligible for either a standard policy  
15 including wind coverage or a basic policy including wind  
16 coverage issued by the corporation; however, if the risk could  
17 not be insured under a standard policy including wind coverage  
18 regardless of market conditions, the risk shall be eligible  
19 for a basic policy including wind coverage unless rejected  
20 under subparagraph 8. The corporation shall determine the type  
21 of policy to be provided on the basis of objective standards  
22 specified in the underwriting manual and based on generally  
23 accepted underwriting practices.

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

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

6           (B) Offer to allow the producing agent of record of  
 7 the policy to continue servicing the policy for a period of  
 8 not less than 1 year and offer to pay the agent the greater of  
 9 the insurer's or the corporation's usual and customary  
 10 commission for the type of policy written.

11  
 12 If the producing agent is unwilling or unable to accept  
 13 appointment, the new insurer shall pay the agent in accordance  
 14 with sub-sub-sub-subparagraph (A).

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

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

24           (B) Offer to allow the producing agent of record of  
 25 the corporation policy to continue servicing the policy for a  
 26 period of not less than 1 year and offer to pay the agent the  
 27 greater of the insurer's or the corporation's usual and  
 28 customary commission for the type of policy written.

29  
 30 If the producing agent is unwilling or unable to accept  
 31 appointment, the new insurer shall pay the agent in accordance



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1 with sub-sub-sub-subparagraph (A).

2           b. With respect to commercial lines residential risks,  
3 if the risk is offered coverage under a policy including wind  
4 coverage from an authorized insurer at its approved rate, the  
5 risk is not eligible for any policy issued by the corporation.  
6 If the risk is not able to obtain any such offer, the risk is  
7 eligible for a policy including wind coverage issued by the  
8 corporation.

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

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

21           (B) Offer to allow the producing agent of record of  
22 the policy to continue servicing the policy for a period of  
23 not less than 1 year and offer to pay the agent the greater of  
24 the insurer's or the corporation's usual and customary  
25 commission for the type of policy written.

26  
27 If the producing agent is unwilling or unable to accept  
28 appointment, the new insurer shall pay the agent in accordance  
29 with sub-sub-sub-subparagraph (A).

30           (II) When the corporation enters into a contractual  
31 agreement for a take-out plan, the producing agent of record

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1 of the corporation policy is entitled to retain any unearned  
2 commission on the policy, and the insurer shall:

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

8 (B) Offer to allow the producing agent of record of  
9 the corporation policy to continue servicing the policy for a  
10 period of not less than 1 year and offer to pay the agent the  
11 greater of the insurer's or the corporation's usual and  
12 customary commission for the type of policy written.

13  
14 If the producing agent is unwilling or unable to accept  
15 appointment, the new insurer shall pay the agent in accordance  
16 with sub-sub-sub-subparagraph (A).

17 6. Must include rules for classifications of risks and  
18 rates therefor.

19 7. Must provide that if premium and investment income  
20 for an account attributable to a particular calendar year are  
21 in excess of projected losses and expenses for the account  
22 attributable to that year, such excess shall be held in  
23 surplus in the account. Such surplus shall be available to  
24 defray deficits in that account as to future years and shall  
25 be used for that purpose prior to assessing assessable  
26 insurers and assessable insureds as to any calendar year.

27 8. Must provide objective criteria and procedures to  
28 be uniformly applied for all applicants in determining whether  
29 an individual risk is so hazardous as to be uninsurable. In  
30 making this determination and in establishing the criteria and  
31 procedures, the following shall be considered:

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1           a. Whether the likelihood of a loss for the individual  
2 risk is substantially higher than for other risks of the same  
3 class; and

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

7  
8 The acceptance or rejection of a risk by the corporation shall  
9 be construed as the private placement of insurance, and the  
10 provisions of chapter 120 shall not apply.

11           9. Must provide that the corporation shall make its  
12 best efforts to procure catastrophe reinsurance at reasonable  
13 rates, as determined by the board of governors.

14           10. Must provide that in the event of regular deficit  
15 assessments under sub-subparagraph (b)3.a. or sub-subparagraph  
16 (b)3.b., in the personal lines account, the commercial lines  
17 residential account, or the high-risk account, the corporation  
18 shall levy upon corporation policyholders in its next rate  
19 filing, or by a separate rate filing solely for this purpose,  
20 a market equalization surcharge arising from a regular  
21 assessment in such account in a percentage equal to the total  
22 amount of such regular assessments divided by the aggregate  
23 statewide direct written premium for subject lines of business  
24 for the prior calendar year. Market equalization surcharges  
25 under this subparagraph are not considered premium and are not  
26 subject to commissions, fees, or premium taxes; however,  
27 failure to pay a market equalization surcharge shall be  
28 treated as failure to pay premium.

29           11. The policies issued by the corporation must  
30 provide that, if the corporation or the market assistance plan  
31 obtains an offer from an authorized insurer to cover the risk

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1 at its approved rates, the risk is no longer eligible for  
2 renewal through the corporation.

3           12. Corporation policies and applications must include  
4 a notice that the corporation policy could, under this  
5 section, be replaced with a policy issued by an authorized  
6 insurer that does not provide coverage identical to the  
7 coverage provided by the corporation. The notice shall also  
8 specify that acceptance of corporation coverage creates a  
9 conclusive presumption that the applicant or policyholder is  
10 aware of this potential.

11           13. May establish, subject to approval by the office,  
12 different eligibility requirements and operational procedures  
13 for any line or type of coverage for any specified county or  
14 area if the board determines that such changes to the  
15 eligibility requirements and operational procedures are  
16 justified due to the voluntary market being sufficiently  
17 stable and competitive in such area or for such line or type  
18 of coverage and that consumers who, in good faith, are unable  
19 to obtain insurance through the voluntary market through  
20 ordinary methods would continue to have access to coverage  
21 from the corporation. When coverage is sought in connection  
22 with a real property transfer, such requirements and  
23 procedures shall not provide for an effective date of coverage  
24 later than the date of the closing of the transfer as  
25 established by the transferor, the transferee, and, if  
26 applicable, the lender.

27           14. Must provide that, with respect to the high-risk  
28 account, any assessable insurer with a surplus as to  
29 policyholders of \$25 million or less writing 25 percent or  
30 more of its total countrywide property insurance premiums in  
31 this state may petition the office, within the first 90 days



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1 ===== T I T L E   A M E N D M E N T =====

2 And the title is amended as follows:

3           On page 4, line 6, after the semicolon,

4

5 insert:

6           amending s. 627.351, F.S.; providing for the  
7           plan of operation of the Citizens Property  
8           Insurance Corporation to require that insurance  
9           agents hold a specified appointment status with  
10          certain insurers to be eligible for  
11          reappointment by the corporation; requiring  
12          that an agent must meet certain educational  
13          requirements and enter into an agreement with  
14          the corporation prior to appointment by the  
15          corporation;

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