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2008

1                   A bill to be entitled  
2           An act relating to commercial property insurance; amending  
3           s. 627.041, F.S.; defining the terms "assessable  
4           commercial property insurance" and "nonassessable  
5           commercial property insurance"; amending s. 627.062, F.S.;  
6           providing rate standards regarding nonassessable  
7           commercial property insurance; providing that  
8           nonassessable commercial property insurance is not subject  
9           to a determination that the rate is excessive or unfairly  
10          discriminatory; providing an exception; amending s.  
11          627.351, F.S.; excluding nonassessable commercial property  
12          insurance from the definition of "subject lines of  
13          business"; specifying that insurers issuing nonassessable  
14          commercial property insurance policies are not assessable  
15          for portions of assessments from which such policies are  
16          exempt; creating s. 627.7031, F.S.; authorizing insurers  
17          offering assessable commercial property insurance policies  
18          to offer potential insureds nonassessable commercial  
19          property insurance policies; authorizing owners of  
20          commercial property to purchase nonassessable commercial  
21          property insurance policies regarding that property under  
22          certain circumstances; requiring that an application for a  
23          nonassessable commercial property policy contain a  
24          specified disclaimer; requiring that the declarations page  
25          of a nonassessable commercial property policy contain a  
26          specified disclaimer; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29  
30 Section 1. Subsections (10) and (11) are added to section  
31 627.041, Florida Statutes, to read:

32 627.041 Definitions.--As used in this part:

33 (10) "Assessable commercial property insurance" means  
34 insurance on commercial property of every kind, as well as every  
35 interest therein, whether such property is on land, water, or in  
36 the air, against loss or damage from any and all hazard or  
37 cause, and against loss consequential upon such loss or damage,  
38 other than noncontractual legal liability for any such loss or  
39 damage that is subject to the rate standards set forth in s.  
40 627.062 and deficit assessments by Citizens Property Insurance  
41 Corporation. Assessable commercial property insurance may  
42 contain a provision for accidental death or injury as part of a  
43 multiple peril policy.

44 (11) "Nonassessable commercial property insurance" means  
45 insurance on commercial property of every kind, as well as every  
46 interest therein, whether such property is on land, water, or in  
47 the air, against loss or damage from any and all hazard or  
48 cause, and against loss consequential upon such loss or damage,  
49 other than noncontractual legal liability for any such loss or  
50 damage that is not subject to the rate standards set forth in s.  
51 627.062 or deficit assessments by Citizens Property Insurance  
52 Corporation. Nonassessable commercial property insurance may  
53 contain a provision for accidental death or injury as part of a  
54 multiple peril policy.

55 Section 2. Paragraph (k) is added to subsection (2) of  
56 section 627.062, Florida Statutes, to read:

57 627.062 Rate standards.--

58 (2) As to all such classes of insurance:

59 (k)1. Notwithstanding any other provisions of this  
 60 section, nonassessable commercial property insurance is not  
 61 subject to a determination that the rate is excessive or  
 62 unfairly discriminatory, except as provided in subparagraph 3.

63 2. This paragraph does not apply to filings for commercial  
 64 lines residential insurance, medical malpractice insurance,  
 65 workers' compensation insurance, or assessable commercial  
 66 property insurance.

67 3. This paragraph does not affect the power of the office  
 68 to disapprove a rate as inadequate or to disapprove a filing for  
 69 unlawful use of unfairly discriminatory rating factors that are  
 70 prohibited by Florida law.

71  
 72 The provisions of this subsection shall not apply to workers'  
 73 compensation and employer's liability insurance and to motor  
 74 vehicle insurance.

75 Section 3. Paragraph (b) of subsection (6) of section  
 76 627.351, Florida Statutes, is amended to read:

77 627.351 Insurance risk apportionment plans.--

78 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

79 (b)1. All insurers authorized to write one or more subject  
 80 lines of business in this state are subject to assessment by the  
 81 corporation and, for the purposes of this subsection, are  
 82 referred to collectively as "assessable insurers." Insurers  
 83 writing one or more subject lines of business in this state  
 84 pursuant to part VIII of chapter 626 are not assessable

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85 | insurers, but insureds who procure one or more subject lines of  
86 | business in this state pursuant to part VIII of chapter 626 are  
87 | subject to assessment by the corporation and are referred to  
88 | collectively as "assessable insureds." An authorized insurer's  
89 | assessment liability shall begin on the first day of the  
90 | calendar year following the year in which the insurer was issued  
91 | a certificate of authority to transact insurance for subject  
92 | lines of business in this state and shall terminate 1 year after  
93 | the end of the first calendar year during which the insurer no  
94 | longer holds a certificate of authority to transact insurance  
95 | for subject lines of business in this state.

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

99 |       (I) A personal lines account for personal residential  
100 | policies issued by the corporation or issued by the Residential  
101 | Property and Casualty Joint Underwriting Association and renewed  
102 | by the corporation that provide comprehensive, multiperil  
103 | coverage on risks that are not located in areas eligible for  
104 | coverage in the Florida Windstorm Underwriting Association as  
105 | those areas were defined on January 1, 2002, and for such  
106 | policies that do not provide coverage for the peril of wind on  
107 | risks that are located in such areas;

108 |       (II) A commercial lines account for commercial residential  
109 | and commercial nonresidential policies issued by the corporation  
110 | or issued by the Residential Property and Casualty Joint  
111 | Underwriting Association and renewed by the corporation that  
112 | provide coverage for basic property perils on risks that are not

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113 | located in areas eligible for coverage in the Florida Windstorm  
114 | Underwriting Association as those areas were defined on January  
115 | 1, 2002, and for such policies that do not provide coverage for  
116 | the peril of wind on risks that are located in such areas; and  
117 |       (III) A high-risk account for personal residential  
118 | policies and commercial residential and commercial  
119 | nonresidential property policies issued by the corporation or  
120 | transferred to the corporation that provide coverage for the  
121 | peril of wind on risks that are located in areas eligible for  
122 | coverage in the Florida Windstorm Underwriting Association as  
123 | those areas were defined on January 1, 2002. Subject to the  
124 | approval of a business plan by the Financial Services Commission  
125 | and Legislative Budget Commission as provided in this sub-sub-  
126 | subparagraph, but no earlier than March 31, 2007, the  
127 | corporation may offer policies that provide multiperil coverage  
128 | and the corporation shall continue to offer policies that  
129 | provide coverage only for the peril of wind for risks located in  
130 | areas eligible for coverage in the high-risk account. In issuing  
131 | multiperil coverage, the corporation may use its approved policy  
132 | forms and rates for the personal lines account. An applicant or  
133 | insured who is eligible to purchase a multiperil policy from the  
134 | corporation may purchase a multiperil policy from an authorized  
135 | insurer without prejudice to the applicant's or insured's  
136 | eligibility to prospectively purchase a policy that provides  
137 | coverage only for the peril of wind from the corporation. An  
138 | applicant or insured who is eligible for a corporation policy  
139 | that provides coverage only for the peril of wind may elect to  
140 | purchase or retain such policy and also purchase or retain

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141 coverage excluding wind from an authorized insurer without  
142 prejudice to the applicant's or insured's eligibility to  
143 prospectively purchase a policy that provides multiperil  
144 coverage from the corporation. It is the goal of the Legislature  
145 that there would be an overall average savings of 10 percent or  
146 more for a policyholder who currently has a wind-only policy  
147 with the corporation, and an ex-wind policy with a voluntary  
148 insurer or the corporation, and who then obtains a multiperil  
149 policy from the corporation. It is the intent of the Legislature  
150 that the offer of multiperil coverage in the high-risk account  
151 be made and implemented in a manner that does not adversely  
152 affect the tax-exempt status of the corporation or  
153 creditworthiness of or security for currently outstanding  
154 financing obligations or credit facilities of the high-risk  
155 account, the personal lines account, or the commercial lines  
156 account. By March 1, 2007, the corporation shall prepare and  
157 submit for approval by the Financial Services Commission and  
158 Legislative Budget Commission a report detailing the  
159 corporation's business plan for issuing multiperil coverage in  
160 the high-risk account. The business plan shall be approved or  
161 disapproved within 30 days after receipt, as submitted or  
162 modified and resubmitted by the corporation. The business plan  
163 must include: the impact of such multiperil coverage on the  
164 corporation's financial resources, the impact of such multiperil  
165 coverage on the corporation's tax-exempt status, the manner in  
166 which the corporation plans to implement the processing of  
167 applications and policy forms for new and existing  
168 policyholders, the impact of such multiperil coverage on the

169 corporation's ability to deliver customer service at the high  
170 level required by this subsection, the ability of the  
171 corporation to process claims, the ability of the corporation to  
172 quote and issue policies, the impact of such multiperil coverage  
173 on the corporation's agents, the impact of such multiperil  
174 coverage on the corporation's existing policyholders, and the  
175 impact of such multiperil coverage on rates and premium. The  
176 high-risk account must also include quota share primary  
177 insurance under subparagraph (c)2. The area eligible for  
178 coverage under the high-risk account also includes the area  
179 within Port Canaveral, which is bordered on the south by the  
180 City of Cape Canaveral, bordered on the west by the Banana  
181 River, and bordered on the north by Federal Government property.

182       b. The three separate accounts must be maintained as long  
183 as financing obligations entered into by the Florida Windstorm  
184 Underwriting Association or Residential Property and Casualty  
185 Joint Underwriting Association are outstanding, in accordance  
186 with the terms of the corresponding financing documents. When  
187 the financing obligations are no longer outstanding, in  
188 accordance with the terms of the corresponding financing  
189 documents, the corporation may use a single account for all  
190 revenues, assets, liabilities, losses, and expenses of the  
191 corporation. Consistent with the requirement of this  
192 subparagraph and prudent investment policies that minimize the  
193 cost of carrying debt, the board shall exercise its best efforts  
194 to retire existing debt or to obtain approval of necessary  
195 parties to amend the terms of existing debt, so as to structure  
196 the most efficient plan to consolidate the three separate

197 | accounts into a single account. By February 1, 2007, the board  
 198 | shall submit a report to the Financial Services Commission, the  
 199 | President of the Senate, and the Speaker of the House of  
 200 | Representatives which includes an analysis of consolidating the  
 201 | accounts, the actions the board has taken to minimize the cost  
 202 | of carrying debt, and its recommendations for executing the most  
 203 | efficient plan.

204 |         c. Creditors of the Residential Property and Casualty  
 205 | Joint Underwriting Association and of the accounts specified in  
 206 | sub-sub-subparagraphs a.(I) and (II) may have a claim against,  
 207 | and recourse to, the accounts referred to in sub-sub-  
 208 | subparagraphs a.(I) and (II) and shall have no claim against, or  
 209 | recourse to, the account referred to in sub-sub-subparagraph  
 210 | a.(III). Creditors of the Florida Windstorm Underwriting  
 211 | Association shall have a claim against, and recourse to, the  
 212 | account referred to in sub-sub-subparagraph a.(III) and shall  
 213 | have no claim against, or recourse to, the accounts referred to  
 214 | in sub-sub-subparagraphs a.(I) and (II).

215 |         d. Revenues, assets, liabilities, losses, and expenses not  
 216 | attributable to particular accounts shall be prorated among the  
 217 | accounts.

218 |         e. The Legislature finds that the revenues of the  
 219 | corporation are revenues that are necessary to meet the  
 220 | requirements set forth in documents authorizing the issuance of  
 221 | bonds under this subsection.

222 |         f. No part of the income of the corporation may inure to  
 223 | the benefit of any private person.

224 |         3. With respect to a deficit in an account:



225           a. When the deficit incurred in a particular calendar year  
226 is not greater than 10 percent of the aggregate statewide direct  
227 written premium for the subject lines of business for the prior  
228 calendar year, the entire deficit shall be recovered through  
229 regular assessments of assessable insurers under paragraph (p)  
230 and assessable insureds.

231           b. When the deficit incurred in a particular calendar year  
232 exceeds 10 percent of the aggregate statewide direct written  
233 premium for the subject lines of business for the prior calendar  
234 year, the corporation shall levy regular assessments on  
235 assessable insurers under paragraph (p) and on assessable  
236 insureds in an amount equal to the greater of 10 percent of the  
237 deficit or 10 percent of the aggregate statewide direct written  
238 premium for the subject lines of business for the prior calendar  
239 year. Any remaining deficit shall be recovered through emergency  
240 assessments under sub-subparagraph d.

241           c. Each assessable insurer's share of the amount being  
242 assessed under sub-subparagraph a. or sub-subparagraph b. shall  
243 be in the proportion that the assessable insurer's direct  
244 written premium for the subject lines of business for the year  
245 preceding the assessment bears to the aggregate statewide direct  
246 written premium for the subject lines of business for that year.  
247 The assessment percentage applicable to each assessable insured  
248 is the ratio of the amount being assessed under sub-subparagraph  
249 a. or sub-subparagraph b. to the aggregate statewide direct  
250 written premium for the subject lines of business for the prior  
251 year. Assessments levied by the corporation on assessable  
252 insurers under sub-subparagraphs a. and b. shall be paid as

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253 required by the corporation's plan of operation and paragraph  
254 (p). Notwithstanding any other provision of this subsection, the  
255 aggregate amount of a regular assessment for a deficit incurred  
256 in a particular calendar year shall be reduced by the estimated  
257 amount to be received by the corporation from the Citizens  
258 policyholder surcharge under subparagraph (c)10. and the amount  
259 collected or estimated to be collected from the assessment on  
260 Citizens policyholders pursuant to sub-subparagraph i.

261 Assessments levied by the corporation on assessable insureds  
262 under sub-subparagraphs a. and b. shall be collected by the  
263 surplus lines agent at the time the surplus lines agent collects  
264 the surplus lines tax required by s. 626.932 and shall be paid  
265 to the Florida Surplus Lines Service Office at the time the  
266 surplus lines agent pays the surplus lines tax to the Florida  
267 Surplus Lines Service Office. Upon receipt of regular  
268 assessments from surplus lines agents, the Florida Surplus Lines  
269 Service Office shall transfer the assessments directly to the  
270 corporation as determined by the corporation.

271 d. Upon a determination by the board of governors that a  
272 deficit in an account exceeds the amount that will be recovered  
273 through regular assessments under sub-subparagraph a. or sub-  
274 subparagraph b., the board shall levy, after verification by the  
275 office, emergency assessments, for as many years as necessary to  
276 cover the deficits, to be collected by assessable insurers and  
277 the corporation and collected from assessable insureds upon  
278 issuance or renewal of policies for subject lines of business,  
279 excluding National Flood Insurance policies. The amount of the  
280 emergency assessment collected in a particular year shall be a

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281 uniform percentage of that year's direct written premium for  
282 subject lines of business and all accounts of the corporation,  
283 excluding National Flood Insurance Program policy premiums, as  
284 annually determined by the board and verified by the office. The  
285 office shall verify the arithmetic calculations involved in the  
286 board's determination within 30 days after receipt of the  
287 information on which the determination was based.

288 Notwithstanding any other provision of law, the corporation and  
289 each assessable insurer that writes subject lines of business  
290 shall collect emergency assessments from its policyholders  
291 without such obligation being affected by any credit,  
292 limitation, exemption, or deferment. Emergency assessments  
293 levied by the corporation on assessable insureds shall be  
294 collected by the surplus lines agent at the time the surplus  
295 lines agent collects the surplus lines tax required by s.  
296 626.932 and shall be paid to the Florida Surplus Lines Service  
297 Office at the time the surplus lines agent pays the surplus  
298 lines tax to the Florida Surplus Lines Service Office. The  
299 emergency assessments so collected shall be transferred directly  
300 to the corporation on a periodic basis as determined by the  
301 corporation and shall be held by the corporation solely in the  
302 applicable account. The aggregate amount of emergency  
303 assessments levied for an account under this sub-subparagraph in  
304 any calendar year may not exceed the greater of 10 percent of  
305 the amount needed to cover the original deficit, plus interest,  
306 fees, commissions, required reserves, and other costs associated  
307 with financing of the original deficit, or 10 percent of the  
308 aggregate statewide direct written premium for subject lines of

309 business and for all accounts of the corporation for the prior  
310 year, plus interest, fees, commissions, required reserves, and  
311 other costs associated with financing the original deficit.

312 e. The corporation may pledge the proceeds of assessments,  
313 projected recoveries from the Florida Hurricane Catastrophe  
314 Fund, other insurance and reinsurance recoverables, policyholder  
315 surcharges and other surcharges, and other funds available to  
316 the corporation as the source of revenue for and to secure bonds  
317 issued under paragraph (p), bonds or other indebtedness issued  
318 under subparagraph (c)3., or lines of credit or other financing  
319 mechanisms issued or created under this subsection, or to retire  
320 any other debt incurred as a result of deficits or events giving  
321 rise to deficits, or in any other way that the board determines  
322 will efficiently recover such deficits. The purpose of the lines  
323 of credit or other financing mechanisms is to provide additional  
324 resources to assist the corporation in covering claims and  
325 expenses attributable to a catastrophe. As used in this  
326 subsection, the term "assessments" includes regular assessments  
327 under sub-subparagraph a., sub-subparagraph b., or subparagraph  
328 (p)1. and emergency assessments under sub-subparagraph d.  
329 Emergency assessments collected under sub-subparagraph d. are  
330 not part of an insurer's rates, are not premium, and are not  
331 subject to premium tax, fees, or commissions; however, failure  
332 to pay the emergency assessment shall be treated as failure to  
333 pay premium. The emergency assessments under sub-subparagraph d.  
334 shall continue as long as any bonds issued or other indebtedness  
335 incurred with respect to a deficit for which the assessment was  
336 imposed remain outstanding, unless adequate provision has been

337 made for the payment of such bonds or other indebtedness  
 338 pursuant to the documents governing such bonds or other  
 339 indebtedness.

340 f. As used in this subsection for purposes of any deficit  
 341 incurred on or after January 25, 2007, the term "subject lines  
 342 of business" means insurance written by assessable insurers or  
 343 procured by assessable insureds for all property and casualty  
 344 lines of business in this state, but not including workers'  
 345 compensation, ~~or~~ medical malpractice, or nonassessable  
 346 commercial property insurance as defined in s. 627.041. As used  
 347 in the sub-subparagraph, the term "property and casualty lines  
 348 of business" includes all lines of business identified on Form  
 349 2, Exhibit of Premiums and Losses, in the annual statement  
 350 required of authorized insurers by s. 624.424 and any rule  
 351 adopted under this section, except for those lines identified as  
 352 accident and health insurance and except for policies written  
 353 under the National Flood Insurance Program or the Federal Crop  
 354 Insurance Program. Insurers that issue nonassessable commercial  
 355 property insurance policies are not assessable for the portion  
 356 of the assessment from which the nonassessable commercial  
 357 property insurance policy is exempt. For purposes of this sub-  
 358 subparagraph, the term "workers' compensation" includes both  
 359 workers' compensation insurance and excess workers' compensation  
 360 insurance.

361 g. The Florida Surplus Lines Service Office shall  
 362 determine annually the aggregate statewide written premium in  
 363 subject lines of business procured by assessable insureds and  
 364 shall report that information to the corporation in a form and

365 at a time the corporation specifies to ensure that the  
366 corporation can meet the requirements of this subsection and the  
367 corporation's financing obligations.

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

375 i. If a deficit is incurred in any account in 2008 or  
376 thereafter, the board of governors shall levy an immediate  
377 assessment against the premium of each nonhomestead property  
378 policyholder in all accounts of the corporation, as a uniform  
379 percentage of the premium of the policy of up to 10 percent of  
380 such premium, which funds shall be used to offset the deficit.  
381 If this assessment is insufficient to eliminate the deficit, the  
382 board of governors shall levy an additional assessment against  
383 all policyholders of the corporation, which shall be collected  
384 at the time of issuance or renewal of a policy, as a uniform  
385 percentage of the premium for the policy of up to 10 percent of  
386 such premium, which funds shall be used to further offset the  
387 deficit.

388 j. The board of governors shall maintain separate  
389 accounting records that consolidate data for nonhomestead  
390 properties, including, but not limited to, number of policies,  
391 insured values, premiums written, and losses. The board of

392 | governors shall annually report to the office and the  
 393 | Legislature a summary of such data.

394 | Section 4. Section 627.7031, Florida Statutes, is created  
 395 | to read:

396 | 627.7031 Commercial property insurance.--

397 | (1) Insurers offering assessable commercial property  
 398 | insurance policies as defined in s. 627.041(10) may offer  
 399 | nonassessable commercial property insurance policies as defined  
 400 | in s. 627.041(11).

401 | (2) An owner of commercial property may purchase a  
 402 | nonassessable commercial property insurance policy if such a  
 403 | policy is offered by the insurer.

404 | (3) The application for a nonassessable commercial  
 405 | property insurance policy shall contain the following disclaimer  
 406 | printed in at least 12-point boldfaced type:

407 |  
 408 | THIS APPLICATION IS FOR A COMMERCIAL PROPERTY POLICY THAT IS NOT  
 409 | SUBJECT TO RATE REGULATION REQUIREMENTS OF FLORIDA LAW OR  
 410 | DEFICIT ASSESSMENTS BY CITIZENS PROPERTY INSURANCE CORPORATION.  
 411 | A COMMERCIAL PROPERTY POLICY THAT IS SUBJECT TO RATE REGULATION  
 412 | REQUIREMENTS AND DEFICIT ASSESSMENT BY CITIZENS PROPERTY  
 413 | INSURANCE CORPORATION IS AVAILABLE. PLEASE DISCUSS YOUR POLICY  
 414 | OPTIONS WITH YOUR INSURANCE AGENT.

415 |  
 416 | (4) The declarations page of a nonassessable commercial  
 417 | property insurance policy shall contain the following disclaimer  
 418 | printed in at least 12-point boldfaced type:

419 |

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420 THIS COMMERCIAL PROPERTY POLICY IS NOT SUBJECT TO RATE  
421 REGULATION REQUIREMENTS OF FLORIDA LAW OR DEFICIT ASSESSMENTS BY  
422 CITIZENS PROPERTY INSURANCE CORPORATION. A COMMERCIAL PROPERTY  
423 POLICY THAT IS SUBJECT TO RATE REGULATION REQUIREMENTS AND  
424 DEFICIT ASSESSMENT BY CITIZENS PROPERTY INSURANCE CORPORATION IS  
425 AVAILABLE. PLEASE DISCUSS YOUR POLICY OPTIONS WITH YOUR  
426 INSURANCE AGENT.

427 Section 5. This act shall take effect July 1, 2008.