

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.

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

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

627.041 Definitions.--As used in this part:

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

(11) "Nonassessable commercial property insurance" means insurance on commercial property of every kind, as well as every interest therein, whether such property is on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage that is not subject to the rate standards set forth in s. 627.062, except as provided in s. 627.062(2)(k), or deficit assessments by Citizens Property Insurance Corporation. Nonassessable commercial property insurance may contain a provision for accidental death or injury as part of a multiple peril policy.

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

58 627.062 Rate standards.--

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

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

64 2. This paragraph does not apply to filings for commercial
 65 lines residential insurance or assessable commercial property
 66 insurance.

67 3. This paragraph does not affect the power of the office
 68 to disapprove rates as inadequate or to disapprove a rate filing
 69 for the use of a rating factor that is unlawful under the laws
 70 of this state.

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
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
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
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
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
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
 409 | SUBJECT TO LIMITED RATE REGULATION REQUIREMENTS OF FLORIDA LAW
 410 | AND IS NOT SUBJECT TO DEFICIT ASSESSMENTS BY CITIZENS PROPERTY
 411 | INSURANCE CORPORATION. A COMMERCIAL PROPERTY POLICY THAT IS
 412 | SUBJECT TO RATE REGULATION REQUIREMENTS AND DEFICIT ASSESSMENT
 413 | BY CITIZENS PROPERTY INSURANCE CORPORATION IS AVAILABLE. PLEASE
 414 | DISCUSS YOUR POLICY 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 SUBJECT TO LIMITED RATE
421 REGULATION REQUIREMENTS OF FLORIDA LAW AND IS NOT SUBJECT TO
422 DEFICIT ASSESSMENTS BY CITIZENS PROPERTY INSURANCE CORPORATION.
423 A COMMERCIAL PROPERTY POLICY THAT IS SUBJECT TO RATE REGULATION
424 REQUIREMENTS AND DEFICIT ASSESSMENT BY CITIZENS PROPERTY
425 INSURANCE CORPORATION IS AVAILABLE. PLEASE DISCUSS YOUR POLICY
426 OPTIONS WITH YOUR INSURANCE AGENT.

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