

By Senator Bennett

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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"; providing that insurers issuing nonassessable  
14          commercial property insurance policies are not assessable  
15          for the portion of the assessment from which the  
16          nonassessable commercial property insurance policy is  
17          exempt; creating s. 627.7031, F.S.; authorizing insurers  
18          offering policies covering commercial property risks to  
19          offer potential insureds assessable commercial property  
20          insurance policies and nonassessable commercial property  
21          insurance policies; requiring that an owner of commercial  
22          property have the option to purchase either a  
23          nonassessable commercial property insurance policy or an  
24          assessable commercial property insurance policy regarding  
25          that property, if an assessable commercial property  
26          insurance policy is offered by the insurer; requiring that  
27          an application for a nonassessable commercial property  
28          policy contain a specified disclaimer; requiring that the  
29          declarations page of a nonassessable commercial property

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30 policy contain a specified disclaimer; providing an  
31 effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Subsections (10) and (11) are added to section  
36 627.041, Florida Statutes, to read:

37 627.041 Definitions.--As used in this part:

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

49 (11) "Nonassessable commercial property insurance" means  
50 insurance on commercial property of every kind, as well as every  
51 interest therein, whether such property is on land, water, or in  
52 the air, against loss or damage from any and all hazard or cause,  
53 and against loss consequential upon such loss or damage, other  
54 than noncontractual legal liability for any such loss or damage  
55 that is not subject to the rate standards set forth in s. 627.062  
56 or deficit assessments by Citizens Property Insurance  
57 Corporation. Nonassessable commercial property insurance may

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58 contain a provision for accidental death or injury as part of a  
59 multiple peril policy.

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

62 627.062 Rate standards.--

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

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

68 2. This paragraph does not apply to filings for commercial  
69 lines residential insurance, medical malpractice insurance,  
70 workers' compensation insurance, or assessable commercial  
71 property insurance.

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

76

77 The provisions of this subsection shall not apply to workers'  
78 compensation and employer's liability insurance and to motor  
79 vehicle insurance.

80 Section 3. Paragraph (b) of subsection (6) of section  
81 627.351, Florida Statutes, is amended to read:

82 627.351 Insurance risk apportionment plans.--

83 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

84 (b)1. All insurers authorized to write one or more subject  
85 lines of business in this state are subject to assessment by the  
86 corporation and, for the purposes of this subsection, are

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87 referred to collectively as "assessable insurers." Insurers  
88 writing one or more subject lines of business in this state  
89 pursuant to part VIII of chapter 626 are not assessable insurers,  
90 but insureds who procure one or more subject lines of business in  
91 this state pursuant to part VIII of chapter 626 are subject to  
92 assessment by the corporation and are referred to collectively as  
93 "assessable insureds." An authorized insurer's assessment  
94 liability shall begin on the first day of the calendar year  
95 following the year in which the insurer was issued a certificate  
96 of authority to transact insurance for subject lines of business  
97 in this state and shall terminate 1 year after the end of the  
98 first calendar year during which the insurer no longer holds a  
99 certificate of authority to transact insurance for subject lines  
100 of business in this state.

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

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

113 (II) A commercial lines account for commercial residential  
114 and commercial nonresidential policies issued by the corporation  
115 or issued by the Residential Property and Casualty Joint

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

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

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

186 |       b. The three separate accounts must be maintained as long  
187 | as financing obligations entered into by the Florida Windstorm  
188 | Underwriting Association or Residential Property and Casualty  
189 | Joint Underwriting Association are outstanding, in accordance  
190 | with the terms of the corresponding financing documents. When the  
191 | financing obligations are no longer outstanding, in accordance  
192 | with the terms of the corresponding financing documents, the  
193 | corporation may use a single account for all revenues, assets,  
194 | liabilities, losses, and expenses of the corporation. Consistent  
195 | with the requirement of this subparagraph and prudent investment  
196 | policies that minimize the cost of carrying debt, the board shall  
197 | exercise its best efforts to retire existing debt or to obtain  
198 | approval of necessary parties to amend the terms of existing  
199 | debt, so as to structure the most efficient plan to consolidate  
200 | the three separate accounts into a single account. By February 1,  
201 | 2007, the board shall submit a report to the Financial Services  
202 | Commission, the President of the Senate, and the Speaker of the

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203 House of Representatives which includes an analysis of  
204 consolidating the accounts, the actions the board has taken to  
205 minimize the cost of carrying debt, and its recommendations for  
206 executing the most efficient plan.

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

213 Creditors of the Florida Windstorm Underwriting Association shall  
214 have a claim against, and recourse to, the account referred to in  
215 sub-sub-subparagraph a.(III) and shall have no claim against, or  
216 recourse to, the accounts referred to in sub-sub-subparagraphs  
217 a.(I) and (II).

218 d. Revenues, assets, liabilities, losses, and expenses not  
219 attributable to particular accounts shall be prorated among the  
220 accounts.

221 e. The Legislature finds that the revenues of the  
222 corporation are revenues that are necessary to meet the  
223 requirements set forth in documents authorizing the issuance of  
224 bonds under this subsection.

225 f. No part of the income of the corporation may inure to  
226 the benefit of any private person.

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

228 a. When the deficit incurred in a particular calendar year  
229 is not greater than 10 percent of the aggregate statewide direct  
230 written premium for the subject lines of business for the prior  
231 calendar year, the entire deficit shall be recovered through



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232 regular assessments of assessable insurers under paragraph (p)  
233 and assessable insureds.

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

244 c. Each assessable insurer's share of the amount being  
245 assessed under sub-subparagraph a. or sub-subparagraph b. shall  
246 be in the proportion that the assessable insurer's direct written  
247 premium for the subject lines of business for the year preceding  
248 the assessment bears to the aggregate statewide direct written  
249 premium for the subject lines of business for that year. The  
250 assessment percentage applicable to each assessable insured is  
251 the ratio of the amount being assessed under sub-subparagraph a.  
252 or sub-subparagraph b. to the aggregate statewide direct written  
253 premium for the subject lines of business for the prior year.  
254 Assessments levied by the corporation on assessable insurers  
255 under sub-subparagraphs a. and b. shall be paid as required by  
256 the corporation's plan of operation and paragraph (p).  
257 Notwithstanding any other provision of this subsection, the  
258 aggregate amount of a regular assessment for a deficit incurred  
259 in a particular calendar year shall be reduced by the estimated  
260 amount to be received by the corporation from the Citizens

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261 | policyholder surcharge under subparagraph (c)10. and the amount  
262 | collected or estimated to be collected from the assessment on  
263 | Citizens policyholders pursuant to sub-subparagraph i.  
264 | Assessments levied by the corporation on assessable insureds  
265 | under sub-subparagraphs a. and b. shall be collected by the  
266 | surplus lines agent at the time the surplus lines agent collects  
267 | the surplus lines tax required by s. 626.932 and shall be paid to  
268 | the Florida Surplus Lines Service Office at the time the surplus  
269 | lines agent pays the surplus lines tax to the Florida Surplus  
270 | Lines Service Office. Upon receipt of regular assessments from  
271 | surplus lines agents, the Florida Surplus Lines Service Office  
272 | shall transfer the assessments directly to the corporation as  
273 | determined by the corporation.

274 |       d. Upon a determination by the board of governors that a  
275 | deficit in an account exceeds the amount that will be recovered  
276 | through regular assessments under sub-subparagraph a. or sub-  
277 | subparagraph b., the board shall levy, after verification by the  
278 | office, emergency assessments, for as many years as necessary to  
279 | cover the deficits, to be collected by assessable insurers and  
280 | the corporation and collected from assessable insureds upon  
281 | issuance or renewal of policies for subject lines of business,  
282 | excluding National Flood Insurance policies. The amount of the  
283 | emergency assessment collected in a particular year shall be a  
284 | uniform percentage of that year's direct written premium for  
285 | subject lines of business and all accounts of the corporation,  
286 | excluding National Flood Insurance Program policy premiums, as  
287 | annually determined by the board and verified by the office. The  
288 | office shall verify the arithmetic calculations involved in the  
289 | board's determination within 30 days after receipt of the

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

315 e. The corporation may pledge the proceeds of assessments,  
316 projected recoveries from the Florida Hurricane Catastrophe Fund,  
317 other insurance and reinsurance recoverables, policyholder  
318 surcharges and other surcharges, and other funds available to the

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319 corporation as the source of revenue for and to secure bonds  
320 issued under paragraph (p), bonds or other indebtedness issued  
321 under subparagraph (c)3., or lines of credit or other financing  
322 mechanisms issued or created under this subsection, or to retire  
323 any other debt incurred as a result of deficits or events giving  
324 rise to deficits, or in any other way that the board determines  
325 will efficiently recover such deficits. The purpose of the lines  
326 of credit or other financing mechanisms is to provide additional  
327 resources to assist the corporation in covering claims and  
328 expenses attributable to a catastrophe. As used in this  
329 subsection, the term "assessments" includes regular assessments  
330 under sub-subparagraph a., sub-subparagraph b., or subparagraph  
331 (p)1. and emergency assessments under sub-subparagraph d.  
332 Emergency assessments collected under sub-subparagraph d. are not  
333 part of an insurer's rates, are not premium, and are not subject  
334 to premium tax, fees, or commissions; however, failure to pay the  
335 emergency assessment shall be treated as failure to pay premium.  
336 The emergency assessments under sub-subparagraph d. shall  
337 continue as long as any bonds issued or other indebtedness  
338 incurred with respect to a deficit for which the assessment was  
339 imposed remain outstanding, unless adequate provision has been  
340 made for the payment of such bonds or other indebtedness pursuant  
341 to the documents governing such bonds or other indebtedness.

342 f. As used in this subsection for purposes of any deficit  
343 incurred on or after January 25, 2007, the term "subject lines of  
344 business" means insurance written by assessable insurers or  
345 procured by assessable insureds for all property and casualty  
346 lines of business in this state, but not including workers'  
347 compensation, ~~or~~ medical malpractice, or nonassessable commercial

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348 property insurance as defined in s. 627.041(11). As used in the  
349 sub-subparagraph, the term "property and casualty lines of  
350 business" includes all lines of business identified on Form 2,  
351 Exhibit of Premiums and Losses, in the annual statement required  
352 of authorized insurers by s. 624.424 and any rule adopted under  
353 this section, except for those lines identified as accident and  
354 health insurance and except for policies written under the  
355 National Flood Insurance Program or the Federal Crop Insurance  
356 Program. For purposes of this sub-subparagraph, the term  
357 "workers' compensation" includes both workers' compensation  
358 insurance and excess workers' compensation insurance. Insurers  
359 issuing nonassessable commercial property insurance policies are  
360 not assessable for the portion of the assessment from which the  
361 nonassessable commercial property insurance policy is exempt.

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

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

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

389 j. The board of governors shall maintain separate  
390 accounting records that consolidate data for nonhomestead  
391 properties, including, but not limited to, number of policies,  
392 insured values, premiums written, and losses. The board of  
393 governors shall annually report to the office and the Legislature  
394 a summary of such data.

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

397 627.7031 Commercial property insurance.--

398 (1) Insurers offering policies of insurance covering  
399 commercial property risks may offer assessable commercial  
400 property insurance policies as defined in s. 627.041(10) and  
401 nonassessable commercial property insurance policies as defined  
402 in s. 627.041(11).

403 (2) An owner of commercial property shall have the option to  
404 purchase either a nonassessable commercial property insurance

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405 policy or an assessable commercial property insurance policy, if an  
406 assessable commercial property insurance policy is offered by the  
407 insurer.

408 (3) The application for a nonassessable commercial property  
409 insurance policy shall contain the following disclaimer printed in  
410 at least 12-point boldfaced type:

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

419  
420 (4) The declarations page of a nonassessable commercial  
421 property insurance policy shall contain the following disclaimer  
422 printed in at least 12-point boldfaced type:

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

430

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