

By the Committee on Banking and Insurance; and 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 assessable commercial property insurance policies
19 to offer nonassessable commercial property insurance
20 policies; authorizing an owner of a commercial property to
21 purchase a nonassessable commercial property insurance
22 policy if such a policy is offered by the insurer;
23 requiring that an application for a nonassessable
24 commercial property policy contain a specified disclaimer;
25 requiring that the declarations page of a nonassessable
26 commercial property policy contain a specified disclaimer;
27 providing an effective date.

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

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30
31 Section 1. Subsections (10) and (11) are added to section
32 627.041, Florida Statutes, to read:

33 627.041 Definitions.--As used in this part:

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

45 (11) "Nonassessable commercial property insurance" means
46 insurance on commercial property of every kind, as well as every
47 interest therein, whether such property is on land, water, or in
48 the air, against loss or damage from any and all hazard or cause,
49 and against loss consequential upon such loss or damage, other
50 than noncontractual legal liability for any such loss or damage
51 that is not subject to the rate standards set forth in s.
52 627.062, except as provided in s. 627.062(2)(k), or deficit
53 assessments by Citizens Property Insurance Corporation.
54 Nonassessable commercial property insurance may contain a
55 provision for accidental death or injury as part of a multiple
56 peril policy.

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

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59 627.062 Rate standards.--

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

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

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

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

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

76 Section 3. Paragraph (b) of subsection (6) of section
77 627.351, Florida Statutes, is amended to read:

78 627.351 Insurance risk apportionment plans.--

79 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

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

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88 assessment by the corporation and are referred to collectively as
89 "assessable insureds." An authorized insurer's assessment
90 liability shall begin on the first day of the calendar year
91 following the year in which the insurer was issued a certificate
92 of authority to transact insurance for subject lines of business
93 in this state and shall terminate 1 year after the end of the
94 first calendar year during which the insurer no longer holds a
95 certificate of authority to transact insurance for subject lines
96 of business in this state.

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

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

109 (II) A commercial lines account for commercial residential
110 and commercial nonresidential policies issued by the corporation
111 or issued by the Residential Property and Casualty Joint
112 Underwriting Association and renewed by the corporation that
113 provide coverage for basic property perils on risks that are not
114 located in areas eligible for coverage in the Florida Windstorm
115 Underwriting Association as those areas were defined on January
116 1, 2002, and for such policies that do not provide coverage for

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117 | the peril of wind on risks that are located in such areas; and
118 | (III) A high-risk account for personal residential policies
119 | and commercial residential and commercial nonresidential property
120 | policies issued by the corporation or transferred to the
121 | corporation that provide coverage for the peril of wind on risks
122 | that are located in areas eligible for coverage in the Florida
123 | Windstorm Underwriting Association as those areas were defined on
124 | January 1, 2002. Subject to the approval of a business plan by
125 | the Financial Services Commission and Legislative Budget
126 | Commission as provided in this sub-sub-subparagraph, but no
127 | earlier than March 31, 2007, the corporation may offer policies
128 | that provide multiperil coverage and the corporation shall
129 | continue to offer policies that provide coverage only for the
130 | peril of wind for risks located in areas eligible for coverage in
131 | the high-risk account. In issuing multiperil coverage, the
132 | corporation may use its approved policy forms and rates for the
133 | personal lines account. An applicant or insured who is eligible
134 | to purchase a multiperil policy from the corporation may purchase
135 | a multiperil policy from an authorized insurer without prejudice
136 | to the applicant's or insured's eligibility to prospectively
137 | purchase a policy that provides coverage only for the peril of
138 | wind from the corporation. An applicant or insured who is
139 | eligible for a corporation policy that provides coverage only for
140 | the peril of wind may elect to purchase or retain such policy and
141 | also purchase or retain coverage excluding wind from an
142 | authorized insurer without prejudice to the applicant's or
143 | insured's eligibility to prospectively purchase a policy that
144 | provides multiperil coverage from the corporation. It is the goal
145 | of the Legislature that there would be an overall average savings

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146 of 10 percent or more for a policyholder who currently has a
147 wind-only policy with the corporation, and an ex-wind policy with
148 a voluntary insurer or the corporation, and who then obtains a
149 multiperil policy from the corporation. It is the intent of the
150 Legislature that the offer of multiperil coverage in the high-
151 risk account be made and implemented in a manner that does not
152 adversely 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 policyholders,
168 the impact of such multiperil coverage on the corporation's
169 ability to deliver customer service at the high level required by
170 this subsection, the ability of the corporation to process
171 claims, the ability of the corporation to quote and issue
172 policies, the impact of such multiperil coverage on the
173 corporation's agents, the impact of such multiperil coverage on
174 the corporation's existing policyholders, and the impact of such

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175 multiperil coverage on rates and premium. The high-risk account
176 must also include quota share primary insurance under
177 subparagraph (c)2. The area eligible for coverage under the high-
178 risk account also includes the area within Port Canaveral, which
179 is bordered on the south by the City of Cape Canaveral, bordered
180 on the west by the Banana River, and bordered on the north by
181 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 the
187 financing obligations are no longer outstanding, in accordance
188 with the terms of the corresponding financing documents, the
189 corporation may use a single account for all revenues, assets,
190 liabilities, losses, and expenses of the corporation. Consistent
191 with the requirement of this subparagraph and prudent investment
192 policies that minimize the cost of carrying debt, the board shall
193 exercise its best efforts to retire existing debt or to obtain
194 approval of necessary parties to amend the terms of existing
195 debt, so as to structure the most efficient plan to consolidate
196 the three separate accounts into a single account. By February 1,
197 2007, the board shall submit a report to the Financial Services
198 Commission, the President of the Senate, and the Speaker of the
199 House of Representatives which includes an analysis of
200 consolidating the accounts, the actions the board has taken to
201 minimize the cost of carrying debt, and its recommendations for
202 executing the most efficient plan.

203 c. Creditors of the Residential Property and Casualty Joint

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

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

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

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

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

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

230 b. When the deficit incurred in a particular calendar year
231 exceeds 10 percent of the aggregate statewide direct written
232 premium for the subject lines of business for the prior calendar

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

240 | c. Each assessable insurer's share of the amount being
241 | assessed under sub-subparagraph a. or sub-subparagraph b. shall
242 | be in the proportion that the assessable insurer's direct written
243 | premium for the subject lines of business for the year preceding
244 | the assessment bears to the aggregate statewide direct written
245 | premium for the subject lines of business for that year. The
246 | assessment percentage applicable to each assessable insured is
247 | the ratio of the amount being assessed under sub-subparagraph a.
248 | or sub-subparagraph b. to the aggregate statewide direct written
249 | premium for the subject lines of business for the prior year.
250 | Assessments levied by the corporation on assessable insurers
251 | under sub-subparagraphs a. and b. shall be paid as required by
252 | the corporation's plan of operation and paragraph (p).
253 | Notwithstanding any other provision of this subsection, the
254 | aggregate amount of a regular assessment for a deficit incurred
255 | in a particular calendar year shall be reduced by the estimated
256 | amount to be received by the corporation from the Citizens
257 | policyholder surcharge under subparagraph (c)10. and the amount
258 | collected or estimated to be collected from the assessment on
259 | Citizens policyholders pursuant to sub-subparagraph i.
260 | Assessments levied by the corporation on assessable insureds
261 | under sub-subparagraphs a. and b. shall be collected by the

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262 surplus lines agent at the time the surplus lines agent collects
263 the surplus lines tax required by s. 626.932 and shall be paid to
264 the Florida Surplus Lines Service Office at the time the surplus
265 lines agent pays the surplus lines tax to the Florida Surplus
266 Lines Service Office. Upon receipt of regular assessments from
267 surplus lines agents, the Florida Surplus Lines Service Office
268 shall transfer the assessments directly to the corporation as
269 determined by the corporation.

270 d. Upon a determination by the board of governors that a
271 deficit in an account exceeds the amount that will be recovered
272 through regular assessments under sub-subparagraph a. or sub-
273 subparagraph b., the board shall levy, after verification by the
274 office, emergency assessments, for as many years as necessary to
275 cover the deficits, to be collected by assessable insurers and
276 the corporation and collected from assessable insureds upon
277 issuance or renewal of policies for subject lines of business,
278 excluding National Flood Insurance policies. The amount of the
279 emergency assessment collected in a particular year shall be a
280 uniform percentage of that year's direct written premium for
281 subject lines of business and all accounts of the corporation,
282 excluding National Flood Insurance Program policy premiums, as
283 annually determined by the board and verified by the office. The
284 office shall verify the arithmetic calculations involved in the
285 board's determination within 30 days after receipt of the
286 information on which the determination was based. Notwithstanding
287 any other provision of law, the corporation and each assessable
288 insurer that writes subject lines of business shall collect
289 emergency assessments from its policyholders without such
290 obligation being affected by any credit, limitation, exemption,

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291 or deferment. Emergency assessments levied by the corporation on
292 assessable insureds shall be collected by the surplus lines agent
293 at the time the surplus lines agent collects the surplus lines
294 tax required by s. 626.932 and shall be paid to the Florida
295 Surplus Lines Service Office at the time the surplus lines agent
296 pays the surplus lines tax to the Florida Surplus Lines Service
297 Office. The emergency assessments so collected shall be
298 transferred directly to the corporation on a periodic basis as
299 determined by the corporation and shall be held by the
300 corporation solely in the applicable account. The aggregate
301 amount of emergency assessments levied for an account under this
302 sub-subparagraph in any calendar year may not exceed the greater
303 of 10 percent of the amount needed to cover the original deficit,
304 plus interest, fees, commissions, required reserves, and other
305 costs associated with financing of the original deficit, or 10
306 percent of the aggregate statewide direct written premium for
307 subject lines of business and for all accounts of the corporation
308 for the prior year, plus interest, fees, commissions, required
309 reserves, and other costs associated with financing the original
310 deficit.

311 e. The corporation may pledge the proceeds of assessments,
312 projected recoveries from the Florida Hurricane Catastrophe Fund,
313 other insurance and reinsurance recoverables, policyholder
314 surcharges and other surcharges, and other funds available to the
315 corporation as the source of revenue for and to secure bonds
316 issued under paragraph (p), bonds or other indebtedness issued
317 under subparagraph (c)3., or lines of credit or other financing
318 mechanisms issued or created under this subsection, or to retire
319 any other debt incurred as a result of deficits or events giving

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

338 f. As used in this subsection for purposes of any deficit
339 incurred on or after January 25, 2007, the term "subject lines of
340 business" means insurance written by assessable insurers or
341 procured by assessable insureds for all property and casualty
342 lines of business in this state, but not including workers'
343 compensation, ~~or~~ medical malpractice, or nonassessable commercial
344 property insurance as defined in s. 627.041(11). As used in the
345 sub-subparagraph, the term "property and casualty lines of
346 business" includes all lines of business identified on Form 2,
347 Exhibit of Premiums and Losses, in the annual statement required
348 of authorized insurers by s. 624.424 and any rule adopted under

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349 | this section, except for those lines identified as accident and
350 | health insurance and except for policies written under the
351 | National Flood Insurance Program or the Federal Crop Insurance
352 | Program. For purposes of this sub-subparagraph, the term
353 | "workers' compensation" includes both workers' compensation
354 | insurance and excess workers' compensation insurance. Insurers
355 | issuing nonassessable commercial property insurance policies are
356 | not assessable for the portion of the assessment from which the
357 | nonassessable commercial property insurance policy is exempt.

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

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

372 | i. If a deficit is incurred in any account in 2008 or
373 | thereafter, the board of governors shall levy an immediate
374 | assessment against the premium of each nonhomestead property
375 | policyholder in all accounts of the corporation, as a uniform
376 | percentage of the premium of the policy of up to 10 percent of
377 | such premium, which funds shall be used to offset the deficit. If

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378 | this assessment is insufficient to eliminate the deficit, the
379 | board of governors shall levy an additional assessment against
380 | all policyholders of the corporation, which shall be collected at
381 | the time of issuance or renewal of a policy, as a uniform
382 | percentage of the premium for the policy of up to 10 percent of
383 | such premium, which funds shall be used to further offset the
384 | deficit.

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

391 | Section 4. Section 627.7031, Florida Statutes, is created
392 | to read:

393 | 627.7031 Commercial property insurance.--

394 | (1) Insurers offering assessable commercial property
395 | insurance policies as defined in s. 627.041(10) may offer
396 | nonassessable commercial property insurance policies as defined
397 | in s. 627.041(11).

398 | (2) An owner of commercial property may purchase a
399 | nonassessable commercial property insurance policy if such a
400 | policy is offered by the insurer.

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

404 |
405 | THIS APPLICATION IS FOR A COMMERCIAL PROPERTY POLICY THAT IS
406 | SUBJECT TO LIMITED RATE REGULATION REQUIREMENTS OF FLORIDA LAW

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407 AND IS NOT SUBJECT TO DEFICIT ASSESSMENTS BY CITIZENS PROPERTY
408 INSURANCE CORPORATION. A COMMERCIAL PROPERTY POLICY THAT IS
409 SUBJECT TO RATE REGULATION REQUIREMENTS AND DEFICIT ASSESSMENT BY
410 CITIZENS PROPERTY INSURANCE CORPORATION IS AVAILABLE. PLEASE
411 DISCUSS YOUR POLICY OPTIONS WITH YOUR INSURANCE AGENT.

412

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

416

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

424

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