

By Senator Bennett

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1 A bill to be entitled
 2 An act relating to the Citizens Property Insurance
 3 Corporation; amending s. 627.351, F.S.; expanding plan
 4 of operation requirements for standard personal lines
 5 policy forms providing full coverage of residential
 6 property to include certain dwelling fire policies;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (c) of subsection (6) of section
 12 627.351, Florida Statutes, is amended to read:

13 627.351 Insurance risk apportionment plans.—

14 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

15 (c) The plan of operation of the corporation:

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

21 a. Standard personal lines policy forms that are
 22 comprehensive multiperil policies providing full coverage of a
 23 residential property equivalent to the coverage provided in the
 24 private insurance market under an HO-3, HO-4, or HO-6 policy,
 25 including dwelling fire policies with no limitation on
 26 replacement costs or coverage amount for owner-occupied
 27 dwelling, including builder's risk, for dwellings for which the
 28 named insured is a tenant, and for condominium unit owner risks.

29 b. Basic personal lines policy forms that are policies

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30 similar to an HO-8 policy ~~or a dwelling fire policy~~ that provide
31 coverage meeting the requirements of the secondary mortgage
32 market, but which coverage is more limited than the coverage
33 under a standard policy.

34 c. Commercial lines residential and nonresidential policy
35 forms that are generally similar to the basic perils of full
36 coverage obtainable for commercial residential structures and
37 commercial nonresidential structures in the admitted voluntary
38 market.

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

44 e. Commercial lines nonresidential property insurance forms
45 that cover the peril of wind only. The forms are applicable only
46 to nonresidential properties located in areas eligible for
47 coverage under the high-risk account referred to in sub-
48 subparagraph (b)2.a.

49 f. The corporation may adopt variations of the policy forms
50 listed in sub-subparagraphs a.-e. that contain more restrictive
51 coverage.

52 2.a. Must provide that the corporation adopt a program in
53 which the corporation and authorized insurers enter into quota
54 share primary insurance agreements for hurricane coverage, as
55 defined in s. 627.4025(2)(a), for eligible risks, and adopt
56 property insurance forms for eligible risks which cover the
57 peril of wind only. As used in this subsection, the term:

58 (I) "Quota share primary insurance" means an arrangement in

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59 which the primary hurricane coverage of an eligible risk is
60 provided in specified percentages by the corporation and an
61 authorized insurer. The corporation and authorized insurer are
62 each solely responsible for a specified percentage of hurricane
63 coverage of an eligible risk as set forth in a quota share
64 primary insurance agreement between the corporation and an
65 authorized insurer and the insurance contract. The
66 responsibility of the corporation or authorized insurer to pay
67 its specified percentage of hurricane losses of an eligible
68 risk, as set forth in the quota share primary insurance
69 agreement, may not be altered by the inability of the other
70 party to the agreement to pay its specified percentage of
71 hurricane losses. Eligible risks that are provided hurricane
72 coverage through a quota share primary insurance arrangement
73 must be provided policy forms that set forth the obligations of
74 the corporation and authorized insurer under the arrangement,
75 clearly specify the percentages of quota share primary insurance
76 provided by the corporation and authorized insurer, and
77 conspicuously and clearly state that neither the authorized
78 insurer nor the corporation may be held responsible beyond its
79 specified percentage of coverage of hurricane losses.

80 (II) "Eligible risks" means personal lines residential and
81 commercial lines residential risks that meet the underwriting
82 criteria of the corporation and are located in areas that were
83 eligible for coverage by the Florida Windstorm Underwriting
84 Association on January 1, 2002.

85 b. The corporation may enter into quota share primary
86 insurance agreements with authorized insurers at corporation
87 coverage levels of 90 percent and 50 percent.

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88 c. If the corporation determines that additional coverage
89 levels are necessary to maximize participation in quota share
90 primary insurance agreements by authorized insurers, the
91 corporation may establish additional coverage levels. However,
92 the corporation's quota share primary insurance coverage level
93 may not exceed 90 percent.

94 d. Any quota share primary insurance agreement entered into
95 between an authorized insurer and the corporation must provide
96 for a uniform specified percentage of coverage of hurricane
97 losses, by county or territory as set forth by the corporation
98 board, for all eligible risks of the authorized insurer covered
99 under the quota share primary insurance agreement.

100 e. Any quota share primary insurance agreement entered into
101 between an authorized insurer and the corporation is subject to
102 review and approval by the office. However, such agreement shall
103 be authorized only as to insurance contracts entered into
104 between an authorized insurer and an insured who is already
105 insured by the corporation for wind coverage.

106 f. For all eligible risks covered under quota share primary
107 insurance agreements, the exposure and coverage levels for both
108 the corporation and authorized insurers shall be reported by the
109 corporation to the Florida Hurricane Catastrophe Fund. For all
110 policies of eligible risks covered under quota share primary
111 insurance agreements, the corporation and the authorized insurer
112 shall maintain complete and accurate records for the purpose of
113 exposure and loss reimbursement audits as required by Florida
114 Hurricane Catastrophe Fund rules. The corporation and the
115 authorized insurer shall each maintain duplicate copies of
116 policy declaration pages and supporting claims documents.

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117 g. The corporation board shall establish in its plan of
118 operation standards for quota share agreements which ensure that
119 there is no discriminatory application among insurers as to the
120 terms of quota share agreements, pricing of quota share
121 agreements, incentive provisions if any, and consideration paid
122 for servicing policies or adjusting claims.

123 h. The quota share primary insurance agreement between the
124 corporation and an authorized insurer must set forth the
125 specific terms under which coverage is provided, including, but
126 not limited to, the sale and servicing of policies issued under
127 the agreement by the insurance agent of the authorized insurer
128 producing the business, the reporting of information concerning
129 eligible risks, the payment of premium to the corporation, and
130 arrangements for the adjustment and payment of hurricane claims
131 incurred on eligible risks by the claims adjuster and personnel
132 of the authorized insurer. Entering into a quota sharing
133 insurance agreement between the corporation and an authorized
134 insurer shall be voluntary and at the discretion of the
135 authorized insurer.

136 3. May provide that the corporation may employ or otherwise
137 contract with individuals or other entities to provide
138 administrative or professional services that may be appropriate
139 to effectuate the plan. The corporation shall have the power to
140 borrow funds, by issuing bonds or by incurring other
141 indebtedness, and shall have other powers reasonably necessary
142 to effectuate the requirements of this subsection, including,
143 without limitation, the power to issue bonds and incur other
144 indebtedness in order to refinance outstanding bonds or other
145 indebtedness. The corporation may, but is not required to, seek

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146 judicial validation of its bonds or other indebtedness under
147 chapter 75. The corporation may issue bonds or incur other
148 indebtedness, or have bonds issued on its behalf by a unit of
149 local government pursuant to subparagraph (p)2., in the absence
150 of a hurricane or other weather-related event, upon a
151 determination by the corporation, subject to approval by the
152 office, that such action would enable it to efficiently meet the
153 financial obligations of the corporation and that such
154 financings are reasonably necessary to effectuate the
155 requirements of this subsection. The corporation is authorized
156 to take all actions needed to facilitate tax-free status for any
157 such bonds or indebtedness, including formation of trusts or
158 other affiliated entities. The corporation shall have the
159 authority to pledge assessments, projected recoveries from the
160 Florida Hurricane Catastrophe Fund, other reinsurance
161 recoverables, market equalization and other surcharges, and
162 other funds available to the corporation as security for bonds
163 or other indebtedness. In recognition of s. 10, Art. I of the
164 State Constitution, prohibiting the impairment of obligations of
165 contracts, it is the intent of the Legislature that no action be
166 taken whose purpose is to impair any bond indenture or financing
167 agreement or any revenue source committed by contract to such
168 bond or other indebtedness.

169 4.a. Must require that the corporation operate subject to
170 the supervision and approval of a board of governors consisting
171 of eight individuals who are residents of this state, from
172 different geographical areas of this state. The Governor, the
173 Chief Financial Officer, the President of the Senate, and the
174 Speaker of the House of Representatives shall each appoint two

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175 members of the board. At least one of the two members appointed
176 by each appointing officer must have demonstrated expertise in
177 insurance. The Chief Financial Officer shall designate one of
178 the appointees as chair. All board members serve at the pleasure
179 of the appointing officer. All members of the board of governors
180 are subject to removal at will by the officers who appointed
181 them. All board members, including the chair, must be appointed
182 to serve for 3-year terms beginning annually on a date
183 designated by the plan. Any board vacancy shall be filled for
184 the unexpired term by the appointing officer. The Chief
185 Financial Officer shall appoint a technical advisory group to
186 provide information and advice to the board of governors in
187 connection with the board's duties under this subsection. The
188 executive director and senior managers of the corporation shall
189 be engaged by the board and serve at the pleasure of the board.
190 Any executive director appointed on or after July 1, 2006, is
191 subject to confirmation by the Senate. The executive director is
192 responsible for employing other staff as the corporation may
193 require, subject to review and concurrence by the board.

194 b. The board shall create a Market Accountability Advisory
195 Committee to assist the corporation in developing awareness of
196 its rates and its customer and agent service levels in
197 relationship to the voluntary market insurers writing similar
198 coverage. The members of the advisory committee shall consist of
199 the following 11 persons, one of whom must be elected chair by
200 the members of the committee: four representatives, one
201 appointed by the Florida Association of Insurance Agents, one by
202 the Florida Association of Insurance and Financial Advisors, one
203 by the Professional Insurance Agents of Florida, and one by the

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204 Latin American Association of Insurance Agencies; three
205 representatives appointed by the insurers with the three highest
206 voluntary market share of residential property insurance
207 business in the state; one representative from the Office of
208 Insurance Regulation; one consumer appointed by the board who is
209 insured by the corporation at the time of appointment to the
210 committee; one representative appointed by the Florida
211 Association of Realtors; and one representative appointed by the
212 Florida Bankers Association. All members must serve for 3-year
213 terms and may serve for consecutive terms. The committee shall
214 report to the corporation at each board meeting on insurance
215 market issues which may include rates and rate competition with
216 the voluntary market; service, including policy issuance, claims
217 processing, and general responsiveness to policyholders,
218 applicants, and agents; and matters relating to depopulation.

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

221 a. Subject to the provisions of s. 627.3517, with respect
222 to personal lines residential risks, if the risk is offered
223 coverage from an authorized insurer at the insurer's approved
224 rate under either a standard policy including wind coverage or,
225 if consistent with the insurer's underwriting rules as filed
226 with the office, a basic policy including wind coverage, for a
227 new application to the corporation for coverage, the risk is not
228 eligible for any policy issued by the corporation unless the
229 premium for coverage from the authorized insurer is more than 15
230 percent greater than the premium for comparable coverage from
231 the corporation. If the risk is not able to obtain any such
232 offer, the risk is eligible for either a standard policy

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233 including wind coverage or a basic policy including wind
234 coverage issued by the corporation; however, if the risk could
235 not be insured under a standard policy including wind coverage
236 regardless of market conditions, the risk shall be eligible for
237 a basic policy including wind coverage unless rejected under
238 subparagraph 8. However, with regard to a policyholder of the
239 corporation or a policyholder removed from the corporation
240 through an assumption agreement until the end of the assumption
241 period, the policyholder remains eligible for coverage from the
242 corporation regardless of any offer of coverage from an
243 authorized insurer or surplus lines insurer. The corporation
244 shall determine the type of policy to be provided on the basis
245 of objective standards specified in the underwriting manual and
246 based on generally accepted underwriting practices.

247 (I) If the risk accepts an offer of coverage through the
248 market assistance plan or an offer of coverage through a
249 mechanism established by the corporation before a policy is
250 issued to the risk by the corporation or during the first 30
251 days of coverage by the corporation, and the producing agent who
252 submitted the application to the plan or to the corporation is
253 not currently appointed by the insurer, the insurer shall:

254 (A) Pay to the producing agent of record of the policy, for
255 the first year, an amount that is the greater of the insurer's
256 usual and customary commission for the type of policy written or
257 a fee equal to the usual and customary commission of the
258 corporation; or

259 (B) Offer to allow the producing agent of record of the
260 policy to continue servicing the policy for a period of not less
261 than 1 year and offer to pay the agent the greater of the

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262 insurer's or the corporation's usual and customary commission
263 for the type of policy written.

264

265 If the producing agent is unwilling or unable to accept
266 appointment, the new insurer shall pay the agent in accordance
267 with sub-sub-sub-subparagraph (A).

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

272 (A) Pay to the producing agent of record of the corporation
273 policy, for the first year, an amount that is the greater of the
274 insurer's usual and customary commission for the type of policy
275 written or a fee equal to the usual and customary commission of
276 the corporation; or

277 (B) Offer to allow the producing agent of record of the
278 corporation policy to continue servicing the policy for a period
279 of not less than 1 year and offer to pay the agent the greater
280 of the insurer's or the corporation's usual and customary
281 commission for the type of policy written.

282

283 If the producing agent is unwilling or unable to accept
284 appointment, the new insurer shall pay the agent in accordance
285 with sub-sub-sub-subparagraph (A).

286 b. With respect to commercial lines residential risks, for
287 a new application to the corporation for coverage, if the risk
288 is offered coverage under a policy including wind coverage from
289 an authorized insurer at its approved rate, the risk is not
290 eligible for any policy issued by the corporation unless the

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291 premium for coverage from the authorized insurer is more than 15
292 percent greater than the premium for comparable coverage from
293 the corporation. If the risk is not able to obtain any such
294 offer, the risk is eligible for a policy including wind coverage
295 issued by the corporation. However, with regard to a
296 policyholder of the corporation or a policyholder removed from
297 the corporation through an assumption agreement until the end of
298 the assumption period, the policyholder remains eligible for
299 coverage from the corporation regardless of any offer of
300 coverage from an authorized insurer or surplus lines insurer.

301 (I) If the risk accepts an offer of coverage through the
302 market assistance plan or an offer of coverage through a
303 mechanism established by the corporation before a policy is
304 issued to the risk by the corporation or during the first 30
305 days of coverage by the corporation, and the producing agent who
306 submitted the application to the plan or the corporation is not
307 currently appointed by the insurer, the insurer shall:

308 (A) Pay to the producing agent of record of the policy, for
309 the first year, an amount that is the greater of the insurer's
310 usual and customary commission for the type of policy written or
311 a fee equal to the usual and customary commission of the
312 corporation; or

313 (B) Offer to allow the producing agent of record of the
314 policy to continue servicing the policy for a period of not less
315 than 1 year and offer to pay the agent the greater of the
316 insurer's or the corporation's usual and customary commission
317 for the type of policy written.

318

319 If the producing agent is unwilling or unable to accept

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320 appointment, the new insurer shall pay the agent in accordance
321 with sub-sub-sub-subparagraph (A).

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

326 (A) Pay to the producing agent of record of the corporation
327 policy, for the first year, an amount that is the greater of the
328 insurer's usual and customary commission for the type of policy
329 written or a fee equal to the usual and customary commission of
330 the corporation; or

331 (B) Offer to allow the producing agent of record of the
332 corporation policy to continue servicing the policy for a period
333 of not less than 1 year and offer to pay the agent the greater
334 of the insurer's or the corporation's usual and customary
335 commission for the type of policy written.

336
337 If the producing agent is unwilling or unable to accept
338 appointment, the new insurer shall pay the agent in accordance
339 with sub-sub-sub-subparagraph (A).

340 c. For purposes of determining comparable coverage under
341 sub-subparagraphs a. and b., the comparison shall be based on
342 those forms and coverages that are reasonably comparable. The
343 corporation may rely on a determination of comparable coverage
344 and premium made by the producing agent who submits the
345 application to the corporation, made in the agent's capacity as
346 the corporation's agent. A comparison may be made solely of the
347 premium with respect to the main building or structure only on
348 the following basis: the same coverage A or other building

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349 limits; the same percentage hurricane deductible that applies on
350 an annual basis or that applies to each hurricane for commercial
351 residential property; the same percentage of ordinance and law
352 coverage, if the same limit is offered by both the corporation
353 and the authorized insurer; the same mitigation credits, to the
354 extent the same types of credits are offered both by the
355 corporation and the authorized insurer; the same method for loss
356 payment, such as replacement cost or actual cash value, if the
357 same method is offered both by the corporation and the
358 authorized insurer in accordance with underwriting rules; and
359 any other form or coverage that is reasonably comparable as
360 determined by the board. If an application is submitted to the
361 corporation for wind-only coverage in the high-risk account, the
362 premium for the corporation's wind-only policy plus the premium
363 for the ex-wind policy that is offered by an authorized insurer
364 to the applicant shall be compared to the premium for multiperil
365 coverage offered by an authorized insurer, subject to the
366 standards for comparison specified in this subparagraph. If the
367 corporation or the applicant requests from the authorized
368 insurer a breakdown of the premium of the offer by types of
369 coverage so that a comparison may be made by the corporation or
370 its agent and the authorized insurer refuses or is unable to
371 provide such information, the corporation may treat the offer as
372 not being an offer of coverage from an authorized insurer at the
373 insurer's approved rate.

374 6. Must include rules for classifications of risks and
375 rates therefor.

376 7. Must provide that if premium and investment income for
377 an account attributable to a particular calendar year are in

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378 excess of projected losses and expenses for the account
379 attributable to that year, such excess shall be held in surplus
380 in the account. Such surplus shall be available to defray
381 deficits in that account as to future years and shall be used
382 for that purpose prior to assessing assessable insurers and
383 assessable insureds as to any calendar year.

384 8. Must provide objective criteria and procedures to be
385 uniformly applied for all applicants in determining whether an
386 individual risk is so hazardous as to be uninsurable. In making
387 this determination and in establishing the criteria and
388 procedures, the following shall be considered:

389 a. Whether the likelihood of a loss for the individual risk
390 is substantially higher than for other risks of the same class;
391 and

392 b. Whether the uncertainty associated with the individual
393 risk is such that an appropriate premium cannot be determined.

394
395 The acceptance or rejection of a risk by the corporation shall
396 be construed as the private placement of insurance, and the
397 provisions of chapter 120 shall not apply.

398 9. Must provide that the corporation shall make its best
399 efforts to procure catastrophe reinsurance at reasonable rates,
400 to cover its projected 100-year probable maximum loss as
401 determined by the board of governors.

402 10. The policies issued by the corporation must provide
403 that, if the corporation or the market assistance plan obtains
404 an offer from an authorized insurer to cover the risk at its
405 approved rates, the risk is no longer eligible for renewal
406 through the corporation, except as otherwise provided in this

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407 subsection.

408 11. Corporation policies and applications must include a
409 notice that the corporation policy could, under this section, be
410 replaced with a policy issued by an authorized insurer that does
411 not provide coverage identical to the coverage provided by the
412 corporation. The notice shall also specify that acceptance of
413 corporation coverage creates a conclusive presumption that the
414 applicant or policyholder is aware of this potential.

415 12. May establish, subject to approval by the office,
416 different eligibility requirements and operational procedures
417 for any line or type of coverage for any specified county or
418 area if the board determines that such changes to the
419 eligibility requirements and operational procedures are
420 justified due to the voluntary market being sufficiently stable
421 and competitive in such area or for such line or type of
422 coverage and that consumers who, in good faith, are unable to
423 obtain insurance through the voluntary market through ordinary
424 methods would continue to have access to coverage from the
425 corporation. When coverage is sought in connection with a real
426 property transfer, such requirements and procedures shall not
427 provide for an effective date of coverage later than the date of
428 the closing of the transfer as established by the transferor,
429 the transferee, and, if applicable, the lender.

430 13. Must provide that, with respect to the high-risk
431 account, any assessable insurer with a surplus as to
432 policyholders of \$25 million or less writing 25 percent or more
433 of its total countrywide property insurance premiums in this
434 state may petition the office, within the first 90 days of each
435 calendar year, to qualify as a limited apportionment company. A

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436 regular assessment levied by the corporation on a limited
437 apportionment company for a deficit incurred by the corporation
438 for the high-risk account in 2006 or thereafter may be paid to
439 the corporation on a monthly basis as the assessments are
440 collected by the limited apportionment company from its insureds
441 pursuant to s. 627.3512, but the regular assessment must be paid
442 in full within 12 months after being levied by the corporation.
443 A limited apportionment company shall collect from its
444 policyholders any emergency assessment imposed under sub-
445 subparagraph (b)3.d. The plan shall provide that, if the office
446 determines that any regular assessment will result in an
447 impairment of the surplus of a limited apportionment company,
448 the office may direct that all or part of such assessment be
449 deferred as provided in subparagraph (p)4. However, there shall
450 be no limitation or deferment of an emergency assessment to be
451 collected from policyholders under sub-subparagraph (b)3.d.

452 14. Must provide that the corporation appoint as its
453 licensed agents only those agents who also hold an appointment
454 as defined in s. 626.015(3) with an insurer who at the time of
455 the agent's initial appointment by the corporation is authorized
456 to write and is actually writing personal lines residential
457 property coverage, commercial residential property coverage, or
458 commercial nonresidential property coverage within the state.

459 15. Must provide, by July 1, 2007, a premium payment plan
460 option to its policyholders which allows at a minimum for
461 quarterly and semiannual payment of premiums. A monthly payment
462 plan may, but is not required to, be offered.

463 16. Must limit coverage on mobile homes or manufactured
464 homes built prior to 1994 to actual cash value of the dwelling

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465 rather than replacement costs of the dwelling.

466 17. May provide such limits of coverage as the board
467 determines, consistent with the requirements of this subsection.

468 18. May require commercial property to meet specified
469 hurricane mitigation construction features as a condition of
470 eligibility for coverage.

471 Section 2. This act shall take effect July 1, 2009.