



256744

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2009	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 1097 and 1098  
insert:

(c) The plan of operation of the corporation:

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



256744

12           a. Standard personal lines policy forms that are  
13 comprehensive multiperil policies providing full coverage of a  
14 residential property equivalent to the coverage provided in the  
15 private insurance market under an HO-3, HO-4, or HO-6 policy.

16           b. Basic personal lines policy forms that are policies  
17 similar to an HO-8 policy or a dwelling fire policy that provide  
18 coverage meeting the requirements of the secondary mortgage  
19 market, but which coverage is more limited than the coverage  
20 under a standard policy.

21           c. Commercial lines residential and nonresidential policy  
22 forms that are generally similar to the basic perils of full  
23 coverage obtainable for commercial residential structures and  
24 commercial nonresidential structures in the admitted voluntary  
25 market.

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

31           e. Commercial lines nonresidential property insurance forms  
32 that cover the peril of wind only. The forms are applicable only  
33 to nonresidential properties located in areas eligible for  
34 coverage under the high-risk account referred to in sub-  
35 subparagraph (b)2.a.

36           f. The corporation may adopt variations of the policy forms  
37 listed in sub-subparagraphs a.-e. that contain more restrictive  
38 coverage.

39           2.a. Must provide that the corporation adopt a program in  
40 which the corporation and authorized insurers enter into quota



256744

41 share primary insurance agreements for hurricane coverage, as  
42 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
43 property insurance forms for eligible risks which cover the  
44 peril of wind only. As used in this subsection, the term:

45 (I) "Quota share primary insurance" means an arrangement in  
46 which the primary hurricane coverage of an eligible risk is  
47 provided in specified percentages by the corporation and an  
48 authorized insurer. The corporation and authorized insurer are  
49 each solely responsible for a specified percentage of hurricane  
50 coverage of an eligible risk as set forth in a quota share  
51 primary insurance agreement between the corporation and an  
52 authorized insurer and the insurance contract. The  
53 responsibility of the corporation or authorized insurer to pay  
54 its specified percentage of hurricane losses of an eligible  
55 risk, as set forth in the quota share primary insurance  
56 agreement, may not be altered by the inability of the other  
57 party to the agreement to pay its specified percentage of  
58 hurricane losses. Eligible risks that are provided hurricane  
59 coverage through a quota share primary insurance arrangement  
60 must be provided policy forms that set forth the obligations of  
61 the corporation and authorized insurer under the arrangement,  
62 clearly specify the percentages of quota share primary insurance  
63 provided by the corporation and authorized insurer, and  
64 conspicuously and clearly state that neither the authorized  
65 insurer nor the corporation may be held responsible beyond its  
66 specified percentage of coverage of hurricane losses.

67 (II) "Eligible risks" means personal lines residential and  
68 commercial lines residential risks that meet the underwriting  
69 criteria of the corporation and are located in areas that were



256744

70 eligible for coverage by the Florida Windstorm Underwriting  
71 Association on January 1, 2002.

72 b. The corporation may enter into quota share primary  
73 insurance agreements with authorized insurers at corporation  
74 coverage levels of 90 percent and 50 percent.

75 c. If the corporation determines that additional coverage  
76 levels are necessary to maximize participation in quota share  
77 primary insurance agreements by authorized insurers, the  
78 corporation may establish additional coverage levels. However,  
79 the corporation's quota share primary insurance coverage level  
80 may not exceed 90 percent.

81 d. Any quota share primary insurance agreement entered into  
82 between an authorized insurer and the corporation must provide  
83 for a uniform specified percentage of coverage of hurricane  
84 losses, by county or territory as set forth by the corporation  
85 board, for all eligible risks of the authorized insurer covered  
86 under the quota share primary insurance agreement.

87 e. Any quota share primary insurance agreement entered into  
88 between an authorized insurer and the corporation is subject to  
89 review and approval by the office. However, such agreement shall  
90 be authorized only as to insurance contracts entered into  
91 between an authorized insurer and an insured who is already  
92 insured by the corporation for wind coverage.

93 f. For all eligible risks covered under quota share primary  
94 insurance agreements, the exposure and coverage levels for both  
95 the corporation and authorized insurers shall be reported by the  
96 corporation to the Florida Hurricane Catastrophe Fund. For all  
97 policies of eligible risks covered under quota share primary  
98 insurance agreements, the corporation and the authorized insurer



256744

99 shall maintain complete and accurate records for the purpose of  
100 exposure and loss reimbursement audits as required by Florida  
101 Hurricane Catastrophe Fund rules. The corporation and the  
102 authorized insurer shall each maintain duplicate copies of  
103 policy declaration pages and supporting claims documents.

104 g. The corporation board shall establish in its plan of  
105 operation standards for quota share agreements which ensure that  
106 there is no discriminatory application among insurers as to the  
107 terms of quota share agreements, pricing of quota share  
108 agreements, incentive provisions if any, and consideration paid  
109 for servicing policies or adjusting claims.

110 h. The quota share primary insurance agreement between the  
111 corporation and an authorized insurer must set forth the  
112 specific terms under which coverage is provided, including, but  
113 not limited to, the sale and servicing of policies issued under  
114 the agreement by the insurance agent of the authorized insurer  
115 producing the business, the reporting of information concerning  
116 eligible risks, the payment of premium to the corporation, and  
117 arrangements for the adjustment and payment of hurricane claims  
118 incurred on eligible risks by the claims adjuster and personnel  
119 of the authorized insurer. Entering into a quota sharing  
120 insurance agreement between the corporation and an authorized  
121 insurer shall be voluntary and at the discretion of the  
122 authorized insurer.

123 3. May provide that the corporation may employ or otherwise  
124 contract with individuals or other entities to provide  
125 administrative or professional services that may be appropriate  
126 to effectuate the plan. The corporation shall have the power to  
127 borrow funds, by issuing bonds or by incurring other



256744

128 indebtedness, and shall have other powers reasonably necessary  
129 to effectuate the requirements of this subsection, including,  
130 without limitation, the power to issue bonds and incur other  
131 indebtedness in order to refinance outstanding bonds or other  
132 indebtedness. The corporation may, but is not required to, seek  
133 judicial validation of its bonds or other indebtedness under  
134 chapter 75. The corporation may issue bonds or incur other  
135 indebtedness, or have bonds issued on its behalf by a unit of  
136 local government pursuant to subparagraph (p)2., in the absence  
137 of a hurricane or other weather-related event, upon a  
138 determination by the corporation, subject to approval by the  
139 office, that such action would enable it to efficiently meet the  
140 financial obligations of the corporation and that such  
141 financings are reasonably necessary to effectuate the  
142 requirements of this subsection. The corporation is authorized  
143 to take all actions needed to facilitate tax-free status for any  
144 such bonds or indebtedness, including formation of trusts or  
145 other affiliated entities. The corporation shall have the  
146 authority to pledge assessments, projected recoveries from the  
147 Florida Hurricane Catastrophe Fund, other reinsurance  
148 recoverables, market equalization and other surcharges, and  
149 other funds available to the corporation as security for bonds  
150 or other indebtedness. In recognition of s. 10, Art. I of the  
151 State Constitution, prohibiting the impairment of obligations of  
152 contracts, it is the intent of the Legislature that no action be  
153 taken whose purpose is to impair any bond indenture or financing  
154 agreement or any revenue source committed by contract to such  
155 bond or other indebtedness.

156 4.a. Must require that the corporation operate subject to



256744

157 the supervision and approval of a board of governors consisting  
158 of eight individuals who are residents of this state, from  
159 different geographical areas of this state. The Governor, the  
160 Chief Financial Officer, the President of the Senate, and the  
161 Speaker of the House of Representatives shall each appoint two  
162 members of the board. At least one of the two members appointed  
163 by each appointing officer must have demonstrated expertise in  
164 insurance. The Chief Financial Officer shall designate one of  
165 the appointees as chair. All board members serve at the pleasure  
166 of the appointing officer. All members of the board of governors  
167 are subject to removal at will by the officers who appointed  
168 them. All board members, including the chair, must be appointed  
169 to serve for 3-year terms beginning annually on a date  
170 designated by the plan. However, for the first term beginning on  
171 or after July 1, 2009, each appointing officer shall appoint one  
172 member of the board for a 2-year term and one member for a 3-  
173 year term. Any board vacancy shall be filled for the unexpired  
174 term by the appointing officer. The Chief Financial Officer  
175 shall appoint a technical advisory group to provide information  
176 and advice to the board of governors in connection with the  
177 board's duties under this subsection. The executive director and  
178 senior managers of the corporation shall be engaged by the board  
179 and serve at the pleasure of the board. Any executive director  
180 appointed on or after July 1, 2006, is subject to confirmation  
181 by the Senate. The executive director is responsible for  
182 employing other staff as the corporation may require, subject to  
183 review and concurrence by the board.

184 b. The board shall create a Market Accountability Advisory  
185 Committee to assist the corporation in developing awareness of



256744

186 its rates and its customer and agent service levels in  
187 relationship to the voluntary market insurers writing similar  
188 coverage. The members of the advisory committee shall consist of  
189 the following 11 persons, one of whom must be elected chair by  
190 the members of the committee: four representatives, one  
191 appointed by the Florida Association of Insurance Agents, one by  
192 the Florida Association of Insurance and Financial Advisors, one  
193 by the Professional Insurance Agents of Florida, and one by the  
194 Latin American Association of Insurance Agencies; three  
195 representatives appointed by the insurers with the three highest  
196 voluntary market share of residential property insurance  
197 business in the state; one representative from the Office of  
198 Insurance Regulation; one consumer appointed by the board who is  
199 insured by the corporation at the time of appointment to the  
200 committee; one representative appointed by the Florida  
201 Association of Realtors; and one representative appointed by the  
202 Florida Bankers Association. All members must serve for 3-year  
203 terms and may serve for consecutive terms. The committee shall  
204 report to the corporation at each board meeting on insurance  
205 market issues which may include rates and rate competition with  
206 the voluntary market; service, including policy issuance, claims  
207 processing, and general responsiveness to policyholders,  
208 applicants, and agents; and matters relating to depopulation.

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

211 a. Subject to the provisions of s. 627.3517, with respect  
212 to personal lines residential risks, if the risk is offered  
213 coverage from an authorized insurer at the insurer's approved  
214 rate under either a standard policy including wind coverage or,





256744

215 if consistent with the insurer's underwriting rules as filed  
216 with the office, a basic policy including wind coverage, for a  
217 new application to the corporation for coverage, the risk is not  
218 eligible for any policy issued by the corporation unless the  
219 premium for coverage from the authorized insurer is more than 15  
220 percent greater than the premium for comparable coverage from  
221 the corporation. If the risk is not able to obtain any such  
222 offer, the risk is eligible for either a standard policy  
223 including wind coverage or a basic policy including wind  
224 coverage issued by the corporation; however, if the risk could  
225 not be insured under a standard policy including wind coverage  
226 regardless of market conditions, the risk shall be eligible for  
227 a basic policy including wind coverage unless rejected under  
228 subparagraph 8. However, with regard to a policyholder of the  
229 corporation or a policyholder removed from the corporation  
230 through an assumption agreement until the end of the assumption  
231 period, the policyholder remains eligible for coverage from the  
232 corporation regardless of any offer of coverage from an  
233 authorized insurer or surplus lines insurer. The corporation  
234 shall determine the type of policy to be provided on the basis  
235 of objective standards specified in the underwriting manual and  
236 based on generally accepted underwriting practices.

237 (I) If the risk accepts an offer of coverage through the  
238 market assistance plan or an offer of coverage through a  
239 mechanism established by the corporation before a policy is  
240 issued to the risk by the corporation or during the first 30  
241 days of coverage by the corporation, and the producing agent who  
242 submitted the application to the plan or to the corporation is  
243 not currently appointed by the insurer, the insurer shall:



256744

244 (A) Pay to the producing agent of record of the policy, for  
245 the first year, an amount that is the greater of the insurer's  
246 usual and customary commission for the type of policy written or  
247 a fee equal to the usual and customary commission of the  
248 corporation; or

249 (B) Offer to allow the producing agent of record of the  
250 policy to continue servicing the policy for a period of not less  
251 than 1 year and offer to pay the agent the greater of the  
252 insurer's or the corporation's usual and customary commission  
253 for the type of policy written.

254  
255 If the producing agent is unwilling or unable to accept  
256 appointment, the new insurer shall pay the agent in accordance  
257 with sub-sub-sub-subparagraph (A).

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

262 (A) Pay to the producing agent of record of the corporation  
263 policy, for the first year, an amount that is the greater of the  
264 insurer's usual and customary commission for the type of policy  
265 written or a fee equal to the usual and customary commission of  
266 the corporation; or

267 (B) Offer to allow the producing agent of record of the  
268 corporation policy to continue servicing the policy for a period  
269 of not less than 1 year and offer to pay the agent the greater  
270 of the insurer's or the corporation's usual and customary  
271 commission for the type of policy written.

272



256744

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

276       b. With respect to commercial lines residential risks, for  
277 a new application to the corporation for coverage, if the risk  
278 is offered coverage under a policy including wind coverage from  
279 an authorized insurer at its approved rate, the risk is not  
280 eligible for any policy issued by the corporation unless the  
281 premium for coverage from the authorized insurer is more than 15  
282 percent greater than the premium for comparable coverage from  
283 the corporation. If the risk is not able to obtain any such  
284 offer, the risk is eligible for a policy including wind coverage  
285 issued by the corporation. However, with regard to a  
286 policyholder of the corporation or a policyholder removed from  
287 the corporation through an assumption agreement until the end of  
288 the assumption period, the policyholder remains eligible for  
289 coverage from the corporation regardless of any offer of  
290 coverage from an authorized insurer or surplus lines insurer.

291       (I) If the risk accepts an offer of coverage through the  
292 market assistance plan or an offer of coverage through a  
293 mechanism established by the corporation before a policy is  
294 issued to the risk by the corporation or during the first 30  
295 days of coverage by the corporation, and the producing agent who  
296 submitted the application to the plan or the corporation is not  
297 currently appointed by the insurer, the insurer shall:

298       (A) Pay to the producing agent of record of the policy, for  
299 the first year, an amount that is the greater of the insurer's  
300 usual and customary commission for the type of policy written or  
301 a fee equal to the usual and customary commission of the



256744

302 corporation; or

303 (B) Offer to allow the producing agent of record of the  
304 policy to continue servicing the policy for a period of not less  
305 than 1 year and offer to pay the agent the greater of the  
306 insurer's or the corporation's usual and customary commission  
307 for the type of policy written.

308

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

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

316 (A) Pay to the producing agent of record of the corporation  
317 policy, for the first year, an amount that is the greater of the  
318 insurer's usual and customary commission for the type of policy  
319 written or a fee equal to the usual and customary commission of  
320 the corporation; or

321 (B) Offer to allow the producing agent of record of the  
322 corporation policy to continue servicing the policy for a period  
323 of not less than 1 year and offer to pay the agent the greater  
324 of the insurer's or the corporation's usual and customary  
325 commission for the type of policy written.

326

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

330 c. For purposes of determining comparable coverage under



256744

331 sub-subparagraphs a. and b., the comparison shall be based on  
332 those forms and coverages that are reasonably comparable. The  
333 corporation may rely on a determination of comparable coverage  
334 and premium made by the producing agent who submits the  
335 application to the corporation, made in the agent's capacity as  
336 the corporation's agent. A comparison may be made solely of the  
337 premium with respect to the main building or structure only on  
338 the following basis: the same coverage A or other building  
339 limits; the same percentage hurricane deductible that applies on  
340 an annual basis or that applies to each hurricane for commercial  
341 residential property; the same percentage of ordinance and law  
342 coverage, if the same limit is offered by both the corporation  
343 and the authorized insurer; the same mitigation credits, to the  
344 extent the same types of credits are offered both by the  
345 corporation and the authorized insurer; the same method for loss  
346 payment, such as replacement cost or actual cash value, if the  
347 same method is offered both by the corporation and the  
348 authorized insurer in accordance with underwriting rules; and  
349 any other form or coverage that is reasonably comparable as  
350 determined by the board. If an application is submitted to the  
351 corporation for wind-only coverage in the high-risk account, the  
352 premium for the corporation's wind-only policy plus the premium  
353 for the ex-wind policy that is offered by an authorized insurer  
354 to the applicant shall be compared to the premium for multiperil  
355 coverage offered by an authorized insurer, subject to the  
356 standards for comparison specified in this subparagraph. If the  
357 corporation or the applicant requests from the authorized  
358 insurer a breakdown of the premium of the offer by types of  
359 coverage so that a comparison may be made by the corporation or



256744

360 its agent and the authorized insurer refuses or is unable to  
361 provide such information, the corporation may treat the offer as  
362 not being an offer of coverage from an authorized insurer at the  
363 insurer's approved rate.

364 6. Must include rules for classifications of risks and  
365 rates therefor.

366 7. Must provide that if premium and investment income for  
367 an account attributable to a particular calendar year are in  
368 excess of projected losses and expenses for the account  
369 attributable to that year, such excess shall be held in surplus  
370 in the account. Such surplus shall be available to defray  
371 deficits in that account as to future years and shall be used  
372 for that purpose prior to assessing assessable insurers and  
373 assessable insureds as to any calendar year.

374 8. Must provide objective criteria and procedures to be  
375 uniformly applied for all applicants in determining whether an  
376 individual risk is so hazardous as to be uninsurable. In making  
377 this determination and in establishing the criteria and  
378 procedures, the following shall be considered:

379 a. Whether the likelihood of a loss for the individual risk  
380 is substantially higher than for other risks of the same class;  
381 and

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

384  
385 The acceptance or rejection of a risk by the corporation shall  
386 be construed as the private placement of insurance, and the  
387 provisions of chapter 120 shall not apply.

388 9. Must provide that the corporation shall make its best



256744

389 efforts to procure catastrophe reinsurance at reasonable rates,  
390 to cover its projected 100-year probable maximum loss as  
391 determined by the board of governors.

392 10. The policies issued by the corporation must provide  
393 that, if the corporation or the market assistance plan obtains  
394 an offer from an authorized insurer to cover the risk at its  
395 approved rates, the risk is no longer eligible for renewal  
396 through the corporation, except as otherwise provided in this  
397 subsection.

398 11. Corporation policies and applications must include a  
399 notice that the corporation policy could, under this section, be  
400 replaced with a policy issued by an authorized insurer that does  
401 not provide coverage identical to the coverage provided by the  
402 corporation. The notice shall also specify that acceptance of  
403 corporation coverage creates a conclusive presumption that the  
404 applicant or policyholder is aware of this potential.

405 12. May establish, subject to approval by the office,  
406 different eligibility requirements and operational procedures  
407 for any line or type of coverage for any specified county or  
408 area if the board determines that such changes to the  
409 eligibility requirements and operational procedures are  
410 justified due to the voluntary market being sufficiently stable  
411 and competitive in such area or for such line or type of  
412 coverage and that consumers who, in good faith, are unable to  
413 obtain insurance through the voluntary market through ordinary  
414 methods would continue to have access to coverage from the  
415 corporation. When coverage is sought in connection with a real  
416 property transfer, such requirements and procedures shall not  
417 provide for an effective date of coverage later than the date of



256744

418 the closing of the transfer as established by the transferor,  
419 the transferee, and, if applicable, the lender.

420 13. Must provide that, with respect to the high-risk  
421 account, any assessable insurer with a surplus as to  
422 policyholders of \$25 million or less writing 25 percent or more  
423 of its total countrywide property insurance premiums in this  
424 state may petition the office, within the first 90 days of each  
425 calendar year, to qualify as a limited apportionment company. A  
426 regular assessment levied by the corporation on a limited  
427 apportionment company for a deficit incurred by the corporation  
428 for the high-risk account in 2006 or thereafter may be paid to  
429 the corporation on a monthly basis as the assessments are  
430 collected by the limited apportionment company from its insureds  
431 pursuant to s. 627.3512, but the regular assessment must be paid  
432 in full within 12 months after being levied by the corporation.  
433 A limited apportionment company shall collect from its  
434 policyholders any emergency assessment imposed under sub-  
435 subparagraph (b)3.d. The plan shall provide that, if the office  
436 determines that any regular assessment will result in an  
437 impairment of the surplus of a limited apportionment company,  
438 the office may direct that all or part of such assessment be  
439 deferred as provided in subparagraph (p)4. However, there shall  
440 be no limitation or deferment of an emergency assessment to be  
441 collected from policyholders under sub-subparagraph (b)3.d.

442 14. Must provide that the corporation appoint as its  
443 licensed agents only those agents who also hold an appointment  
444 as defined in s. 626.015(3) with an insurer who at the time of  
445 the agent's initial appointment by the corporation is authorized  
446 to write and is actually writing personal lines residential





256744

447 property coverage, commercial residential property coverage, or  
448 commercial nonresidential property coverage within the state.

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

453 16. Must limit coverage on mobile homes or manufactured  
454 homes built prior to 1994 to actual cash value of the dwelling  
455 rather than replacement costs of the dwelling.

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

458 18. May require commercial property to meet specified  
459 hurricane mitigation construction features as a condition of  
460 eligibility for coverage.

461  
462 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

463 And the directory clause is amended as follows:

464 Delete lines 978 - 979

465 and insert:

466  
467 Section 6. Paragraphs (a), (c), (m), and (x) of subsection  
468 (6) of section 627.351, Florida Statutes, are amended to read:

469  
470 ===== T I T L E A M E N D M E N T =====

471 And the title is amended as follows:

472 Delete line 59

473 and insert:

474  
475 purchaser of the property; providing for members of the board of



256744

476 | governors of Citizens Property Insurance Corporation to serve  
477 | staggered terms; requiring Citizens