

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Corcoran offered the following:

2
3 **Amendment (with directory and title amendments)**

4 Between lines 1594 and 1595, insert:

5 (q)1. The corporation shall certify to the office its
6 needs for annual assessments as to a particular calendar year,
7 and for any interim assessments that it deems to be necessary to
8 sustain operations as to a particular year pending the receipt
9 of annual assessments. Upon verification, the office shall
10 approve such certification, and the corporation shall levy such
11 annual or interim assessments. Such assessments shall be
12 prorated as provided in paragraph (b). The corporation shall
13 take all reasonable and prudent steps necessary to collect the
14 amount of assessment due from each assessable insurer,
15 including, if prudent, filing suit to collect such assessment.
16 If the corporation is unable to collect an assessment from any
579617

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Amendment No.

17 assessable insurer, the uncollected assessments shall be levied
18 as an additional assessment against the assessable insurers and
19 any assessable insurer required to pay an additional assessment
20 as a result of such failure to pay shall have a cause of action
21 against such nonpaying assessable insurer. Assessments shall be
22 included as an appropriate factor in the making of rates. The
23 failure of a surplus lines agent to collect and remit any
24 regular or emergency assessment levied by the corporation is
25 considered to be a violation of s. 626.936 and subjects the
26 surplus lines agent to the penalties provided in that section.

27 2. The governing body of any unit of local government, any
28 residents of which are insured by the corporation, may issue
29 bonds as defined in s. 125.013 or s. 166.101 from time to time
30 to fund an assistance program, in conjunction with the
31 corporation, for the purpose of defraying deficits of the
32 corporation. In order to avoid needless and indiscriminate
33 proliferation, duplication, and fragmentation of such assistance
34 programs, any unit of local government, any residents of which
35 are insured by the corporation, may provide for the payment of
36 losses, regardless of whether or not the losses occurred within
37 or outside of the territorial jurisdiction of the local
38 government. Revenue bonds under this subparagraph may not be
39 issued until validated pursuant to chapter 75, unless a state of
40 emergency is declared by executive order or proclamation of the
41 Governor pursuant to s. 252.36 making such findings as are
42 necessary to determine that it is in the best interests of, and
43 necessary for, the protection of the public health, safety, and
44 general welfare of residents of this state and declaring it an
579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

45 essential public purpose to permit certain municipalities or
46 counties to issue such bonds as will permit relief to claimants
47 and policyholders of the corporation. Any such unit of local
48 government may enter into such contracts with the corporation
49 and with any other entity created pursuant to this subsection as
50 are necessary to carry out this paragraph. Any bonds issued
51 under this subparagraph shall be payable from and secured by
52 moneys received by the corporation from emergency assessments
53 under sub-subparagraph (b)3.d., and assigned and pledged to or
54 on behalf of the unit of local government for the benefit of the
55 holders of such bonds. The funds, credit, property, and taxing
56 power of the state or of the unit of local government shall not
57 be pledged for the payment of such bonds.

58 3.a. The corporation shall adopt one or more programs
59 subject to approval by the office for the reduction of both new
60 and renewal writings in the corporation. Beginning January 1,
61 2008, any program the corporation adopts for the payment of
62 bonuses to an insurer for each risk the insurer removes from the
63 corporation shall comply with s. 627.3511(2) and may not exceed
64 the amount referenced in s. 627.3511(2) for each risk removed.
65 The corporation may consider any prudent and not unfairly
66 discriminatory approach to reducing corporation writings, and
67 may adopt a credit against assessment liability or other
68 liability that provides an incentive for insurers to take risks
69 out of the corporation and to keep risks out of the corporation
70 by maintaining or increasing voluntary writings in counties or
71 areas in which corporation risks are highly concentrated and a
72 program to provide a formula under which an insurer voluntarily
579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

73 taking risks out of the corporation by maintaining or increasing
74 voluntary writings will be relieved wholly or partially from
75 assessments under sub-subparagraphs (b)3.a. and b. However, any
76 "take-out bonus" or payment to an insurer must be conditioned on
77 the property being insured for at least 5 years by the insurer,
78 unless canceled or nonrenewed by the policyholder. If the policy
79 is canceled or nonrenewed by the policyholder before the end of
80 the 5-year period, the amount of the take-out bonus must be
81 prorated for the time period the policy was insured. When the
82 corporation enters into a contractual agreement for a take-out
83 plan, the producing agent of record of the corporation policy is
84 entitled to retain any unearned commission on such policy, and
85 the insurer shall either:

86 (I) Pay to the producing agent of record of the policy,
87 for the first year, an amount which is the greater of the
88 insurer's usual and customary commission for the type of policy
89 written or a policy fee equal to the usual and customary
90 commission of the corporation; or

91 (II) Offer to allow the producing agent of record of the
92 policy to continue servicing the policy for a period of not less
93 than 1 year and offer to pay the agent the insurer's usual and
94 customary commission for the type of policy written. If the
95 producing agent is unwilling or unable to accept appointment by
96 the new insurer, the new insurer shall pay the agent in
97 accordance with sub-sub-subparagraph (I).

98 b. Any credit or exemption from regular assessments
99 adopted under this subparagraph shall last no longer than the 3
100 years following the cancellation or expiration of the policy by
579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

101 the corporation. With the approval of the office, the board may
102 extend such credits for an additional year if the insurer
103 guarantees an additional year of renewability for all policies
104 removed from the corporation, or for 2 additional years if the
105 insurer guarantees 2 additional years of renewability for all
106 policies so removed.

107 c. There shall be no credit, limitation, exemption, or
108 deferment from emergency assessments to be collected from
109 policyholders pursuant to sub-subparagraph (b)3.d.

110 4. The plan shall provide for the deferment, in whole or
111 in part, of the assessment of an assessable insurer, other than
112 an emergency assessment collected from policyholders pursuant to
113 sub-subparagraph (b)3.d., if the office finds that payment of
114 the assessment would endanger or impair the solvency of the
115 insurer. In the event an assessment against an assessable
116 insurer is deferred in whole or in part, the amount by which
117 such assessment is deferred may be assessed against the other
118 assessable insurers in a manner consistent with the basis for
119 assessments set forth in paragraph (b).

120 5. Effective July 1, 2007, in order to evaluate the costs
121 and benefits of approved take-out plans, if the corporation pays
122 a bonus or other payment to an insurer for an approved take-out
123 plan, it shall maintain a record of the address or such other
124 identifying information on the property or risk removed in order
125 to track if and when the property or risk is later insured by
126 the corporation.

127 6. Any policy taken out, assumed, or removed from the
128 corporation is, as of the effective date of the take-out,
579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

129 assumption, or removal, direct insurance issued by the insurer
130 and not by the corporation, even if the corporation continues to
131 service the policies. This subparagraph applies to policies of
132 the corporation and not policies taken out, assumed, or removed
133 from any other entity.

134 d. Notwithstanding any other provision of law, for
135 purposes of a depopulation, take-out, or keep-out program
136 adopted by the corporation, including an initial or renewal
137 offer of coverage made to a policyholder removed from the
138 corporation pursuant to such program, an eligible surplus lines
139 insurer may participate in the program in the same manner and on
140 the same terms as an authorized insurer, except as provided
141 under this sub-subparagraph.

142 (I) To qualify for participation, the surplus lines
143 insurer must first obtain approval from the office for its
144 depopulation, take-out, or keep-out plan and then comply with
145 all of the corporation's requirements for the plan applicable to
146 admitted insurers and with all statutory provisions applicable
147 to the removal of policies from the corporation.

148 (II) In considering a surplus lines insurer's request for
149 approval for its plan, the office must determine that the
150 surplus lines insurer meets the following requirements:

151 (A) Maintains surplus of \$50 million on a company or
152 pooled basis;

153 (B) Maintains an A.M. Best Financial Strength Rating of A-
154 or better;

155 (C) Maintains reserves, surplus, reinsurance, and
156 reinsurance equivalents sufficient to cover the insurer's 100-
579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

157 year probable maximum hurricane loss at least twice in a single
158 hurricane season, and submits such reinsurance to the office to
159 review for purposes of the take-out;

160 (D) Provides prominent notice to the policyholder before
161 the assumption of the policy that surplus lines policies are not
162 provided coverage by the Florida Insurance Guaranty Association,
163 an outline of any substantial differences in coverage between
164 the existing policy and the policy being offered to the insured,
165 and any additional notifications required by the office; and

166 (E) Provides similar policy coverage.

167
168 This sub-sub-subparagraph does not subject any surplus lines
169 insurer to requirements in addition to part VIII of chapter 626.
170 Surplus lines brokers making an offer of coverage under this
171 sub-subparagraph are not required to comply with s.
172 626.916(1) (a), (b), (c), and (e).

173 (III) In order to obtain approval for a plan, the surplus
174 lines insurer must file the following with the office:

175 (A) Information requested by the office to demonstrate
176 compliance with s. 624.404(3), including biographical
177 affidavits, fingerprints processed pursuant to s. 624.34, and
178 the results of a criminal history records checks for officers
179 and directors of the insurer and its parent or holding company;

180 (B) A service-of-process consent and agreement form
181 executed by the insurer;

182 (C) Proof that the insurer has been an eligible or
183 authorized insurer for not less than 3 years;

579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

184 (D) A duly authenticated copy of the insurer's current
185 audited financial statement, in English, with all monetary
186 values therein expressed in United States dollars, at an
187 exchange rate then current and shown in the statement, in the
188 case of statements originally made in the currencies of other
189 countries, and with any additional information relative to the
190 insurer as the office may request;

191 (E) A complete certified copy of the latest official
192 financial statement required by the insurer's domiciliary state,
193 if different from sub-sub-sub-subparagraph (D); and

194 (F) A copy of the United States trust account agreement,
195 if applicable.

196
197 This sub-sub-subparagraph does not subject any surplus lines
198 insurer to requirements in addition to part VIII of chapter 626.
199 Surplus lines brokers making an offer of coverage under this
200 sub-subparagraph are not required to comply with s.

201 626.916(1)(a), (b), (c), and (e).

202 (IV) Within 10 days after the date of assumption, the
203 surplus lines insurer assuming policies from the corporation
204 must remit a special deposit equal to the unearned premium net
205 of unearned commissions on the assumed block of business to the
206 Department of Financial Services, Bureau of Collateral
207 Management. The surplus lines insurer must submit to the office
208 with the initial deposit an accounting of the policies assumed
209 and the amount of unearned premium for such policies along with
210 a sworn affidavit attesting to its accuracy by an officer of the
211 surplus lines insurer. Thereafter, the surplus lines insurer

579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

212 must make a filing within 10 days after each calendar quarter,
213 attesting to the unearned premium in force for the previous
214 quarter on policies assumed from the corporation, and must
215 submit additional funds with that filing if the special deposit
216 is insufficient to cover the unearned premium on assumed
217 policies, or must receive a return of funds within 60 days if
218 the special deposit exceeds the amount of unearned premium
219 required for assumed policies. The special deposit is an asset
220 of the surplus lines insurer which is held by the department for
221 the benefit of state policyholders of the surplus lines insurer
222 in the event of the insolvency of the surplus lines insurer. If
223 an order of liquidation is entered in any state against the
224 surplus lines insurer, the department may use the special
225 deposit for payment of unearned premium or policy claims, return
226 all or part of the deposit to the domiciliary receiver, or use
227 the funds in accordance with any action authorized under part I
228 of chapter 631 or in compliance with any order of a court with
229 jurisdiction over the insolvency.

230 (V) Surplus lines brokers representing a surplus lines
231 insurer on a take-out program must obtain confirmation, in
232 written or e-mail form, from each producing agent in advance
233 stating that the agent is willing to participate in the take-out
234 program with the surplus lines insurer engaging in the take-out
235 program. The take-out program is also subject to s. 627.3517. If
236 a policyholder is selected for removal from the corporation by a
237 surplus lines insurer and an authorized insurer, the offer of
238 coverage from the authorized insurer shall be given priority by
239 the corporation.

579617

Approved For Filing: 2/27/2012 1:51:32 PM

Amendment No.

240 (VI) The rate for risks at the first renewal date for
 241 risks removed from the corporation under this sub-subparagraph
 242 may not exceed the then-current approved rate charged by the
 243 corporation, minus 1 percent. For purposes of this sub-sub-
 244 subparagraph, the term "first renewal date" means the date on
 245 which the policy is initially issued on the surplus lines
 246 insurer's policy form after the date of assumption. This sub-
 247 sub-subparagraph does not restrict the rate charged on any
 248 subsequent renewal date.

249 (VII) Notwithstanding any other provision of law, for
 250 risks insured for sinkhole loss by the corporation that are
 251 removed from the corporation under this sub-subparagraph and
 252 subsequently return to the corporation, the corporation shall
 253 offer sinkhole loss coverage on the risk without requiring an
 254 inspection of the property.

256 -----
 257 **D I R E C T O R Y A M E N D M E N T**

258 Remove lines 548-549 and insert:

259 Section 9. Paragraph (b) of subsection (2) and paragraphs
 260 (c) and (q) of subsection (6) of section 627.351, Florida
 261 Statutes, are

263 -----
 264 **T I T L E A M E N D M E N T**

265 Remove line 39 and insert:

266 company; providing that eligible surplus lines
 267 insurers may participate, in the same manner and on

579617

Amendment No.

268 the same terms as an authorized insurer, in
269 depopulation, take-out, or keep-out programs relating
270 to policies removed from Citizens Property Insurance
271 Corporation; providing certain exceptions, conditions,
272 and requirements relating to such participation by a
273 surplus lines insurer in the corporation's
274 depopulation, take-out, or keep-out programs;
275 authorizing information from underwriting files and
276 confidential files to be released by the corporation
277 to specified entities that are considering writing or
278 underwriting risks insured by the corporation under
279 certain circumstances; requiring the Citizens Property
280 Insurance