

By Senator Richter

37-00216A-12

2012578

1                                   A bill to be entitled  
2           An act relating to the depopulation programs of  
3           Citizens Property Insurance Corporation; amending s.  
4           627.351, F.S.; providing that eligible surplus lines  
5           insurers may participate, in the same manner and on  
6           the same terms as an authorized insurer, in  
7           depopulation, take-out, or keep-out programs relating  
8           to policies removed from Citizens Property Insurance  
9           Corporation; providing certain exceptions, conditions,  
10          and requirements relating to such participation by a  
11          surplus lines insurer in the corporation's  
12          depopulation, take-out, or keep-out programs;  
13          authorizing information from underwriting files and  
14          confidential files to be released by the corporation  
15          to specified entities that are considering writing or  
16          underwriting risks insured by the corporation under  
17          certain circumstances; specifying that only the  
18          corporation's transfer of a policy file to an insurer,  
19          as opposed to the transfer of any file, changes the  
20          file's public record status; providing an effective  
21          date.

22  
23   Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Paragraphs (q) and (x) of subsection (6) of  
26           section 627.351, Florida Statutes, are amended to read:

27           627.351 Insurance risk apportionment plans.—

28           (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

29           (q)1. The corporation shall certify to the office its needs

37-00216A-12

2012578

30 for annual assessments as to a particular calendar year, and for  
31 any interim assessments that it deems to be necessary to sustain  
32 operations as to a particular year pending the receipt of annual  
33 assessments. Upon verification, the office shall approve such  
34 certification, and the corporation shall levy such annual or  
35 interim assessments. Such assessments shall be prorated as  
36 provided in paragraph (b). The corporation shall take all  
37 reasonable and prudent steps necessary to collect the amount of  
38 assessment due from each assessable insurer, including, if  
39 prudent, filing suit to collect such assessment. If the  
40 corporation is unable to collect an assessment from any  
41 assessable insurer, the uncollected assessments shall be levied  
42 as an additional assessment against the assessable insurers and  
43 any assessable insurer required to pay an additional assessment  
44 as a result of such failure to pay shall have a cause of action  
45 against such nonpaying assessable insurer. Assessments shall be  
46 included as an appropriate factor in the making of rates. The  
47 failure of a surplus lines agent to collect and remit any  
48 regular or emergency assessment levied by the corporation is  
49 considered to be a violation of s. 626.936 and subjects the  
50 surplus lines agent to the penalties provided in that section.

51 2. The governing body of any unit of local government, any  
52 residents of which are insured by the corporation, may issue  
53 bonds as defined in s. 125.013 or s. 166.101 from time to time  
54 to fund an assistance program, in conjunction with the  
55 corporation, for the purpose of defraying deficits of the  
56 corporation. In order to avoid needless and indiscriminate  
57 proliferation, duplication, and fragmentation of such assistance  
58 programs, any unit of local government, any residents of which

37-00216A-12

2012578

59 are insured by the corporation, may provide for the payment of  
60 losses, regardless of whether or not the losses occurred within  
61 or outside of the territorial jurisdiction of the local  
62 government. Revenue bonds under this subparagraph may not be  
63 issued until validated pursuant to chapter 75, unless a state of  
64 emergency is declared by executive order or proclamation of the  
65 Governor pursuant to s. 252.36 making such findings as are  
66 necessary to determine that it is in the best interests of, and  
67 necessary for, the protection of the public health, safety, and  
68 general welfare of residents of this state and declaring it an  
69 essential public purpose to permit certain municipalities or  
70 counties to issue such bonds as will permit relief to claimants  
71 and policyholders of the corporation. Any such unit of local  
72 government may enter into such contracts with the corporation  
73 and with any other entity created pursuant to this subsection as  
74 are necessary to carry out this paragraph. Any bonds issued  
75 under this subparagraph shall be payable from and secured by  
76 moneys received by the corporation from emergency assessments  
77 under sub-subparagraph (b)3.c. ~~(b)3.d.~~, and assigned and pledged  
78 to or on behalf of the unit of local government for the benefit  
79 of the holders of such bonds. The funds, credit, property, and  
80 taxing power of the state or of the unit of local government  
81 shall not be pledged for the payment of such bonds.

82 3.a. The corporation shall adopt one or more programs  
83 subject to approval by the office for the reduction of both new  
84 and renewal writings in the corporation. Beginning January 1,  
85 2008, any program the corporation adopts for the payment of  
86 bonuses to an insurer for each risk the insurer removes from the  
87 corporation shall comply with s. 627.3511(2) and may not exceed

37-00216A-12

2012578

88 the amount referenced in s. 627.3511(2) for each risk removed.  
89 The corporation may consider any prudent and not unfairly  
90 discriminatory approach to reducing corporation writings, and  
91 may adopt a credit against assessment liability or other  
92 liability that provides an incentive for insurers to take risks  
93 out of the corporation and to keep risks out of the corporation  
94 by maintaining or increasing voluntary writings in counties or  
95 areas in which corporation risks are highly concentrated and a  
96 program to provide a formula under which an insurer voluntarily  
97 taking risks out of the corporation by maintaining or increasing  
98 voluntary writings will be relieved wholly or partially from  
99 assessments under sub-subparagraph sub-subparagraphs (b)3.a. ~~and~~  
100 ~~b.~~ However, any "take-out bonus" or payment to an insurer must  
101 be conditioned on the property being insured for at least 5  
102 years by the insurer, unless canceled or nonrenewed by the  
103 policyholder. If the policy is canceled or nonrenewed by the  
104 policyholder before the end of the 5-year period, the amount of  
105 the take-out bonus must be prorated for the time period the  
106 policy was insured. When the corporation enters into a  
107 contractual agreement for a take-out plan, the producing agent  
108 of record of the corporation policy is entitled to retain any  
109 unearned commission on such policy, and the insurer shall  
110 either:

111 (I) Pay to the producing agent of record of the policy, for  
112 the first year, an amount which is the greater of the insurer's  
113 usual and customary commission for the type of policy written or  
114 a policy fee equal to the usual and customary commission of the  
115 corporation; or

116 (II) Offer to allow the producing agent of record of the

37-00216A-12

2012578\_\_

117 policy to continue servicing the policy for a period of not less  
118 than 1 year and offer to pay the agent the insurer's usual and  
119 customary commission for the type of policy written. If the  
120 producing agent is unwilling or unable to accept appointment by  
121 the new insurer, the new insurer shall pay the agent in  
122 accordance with sub-sub-subparagraph (I).

123 b. Any credit or exemption from regular assessments adopted  
124 under this subparagraph shall last no longer than the 3 years  
125 following the cancellation or expiration of the policy by the  
126 corporation. With the approval of the office, the board may  
127 extend such credits for an additional year if the insurer  
128 guarantees an additional year of renewability for all policies  
129 removed from the corporation, or for 2 additional years if the  
130 insurer guarantees 2 additional years of renewability for all  
131 policies so removed.

132 c. There shall be no credit, limitation, exemption, or  
133 deferment from emergency assessments to be collected from  
134 policyholders pursuant to sub-subparagraph (b)3.c. ~~(b)3.d.~~

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

143 (I) To qualify for participation, the surplus lines insurer  
144 must first obtain approval from the office for its depopulation,  
145 take-out, or keep-out plan and then comply with all of the

37-00216A-12

2012578

146 corporation's requirements for the plan applicable to admitted  
147 insurers and with all statutory provisions applicable to the  
148 removal of policies from the corporation.

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

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

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

156 (C) Maintains reserves, surplus, reinsurance, and  
157 reinsurance equivalents sufficient to cover the insurer's 100-  
158 year probable maximum hurricane loss at least twice in a single  
159 hurricane season, and submits such reinsurance to the office to  
160 review for purposes of the take-out;

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

167 (E) Provides similar policy coverage.

168  
169 This sub-sub-subparagraph does not subject any surplus lines  
170 insurer to requirements in addition to part VIII of chapter 626.  
171 Surplus lines brokers making an offer of coverage under this  
172 sub-subparagraph are not required to comply with s.  
173 626.916(1)(a), (b), (c), and (e).

174 (III) Within 10 days after the date of assumption, the

37-00216A-12

2012578

175 surplus lines insurer assuming policies from the corporation  
176 must remit a special deposit equal to the unearned premium net  
177 of unearned commissions on the assumed block of business to the  
178 Department of Financial Services, Bureau of Collateral  
179 Securities. The surplus lines insurer must submit to the office  
180 with the initial deposit an accounting of the policies assumed  
181 and the amount of unearned premium for such policies along with  
182 a sworn affidavit attesting to its accuracy by an officer of the  
183 surplus lines insurer. Thereafter, the surplus lines insurer  
184 must make a filing within 10 days after each calendar quarter,  
185 attesting to the unearned premium in force for the previous  
186 quarter on policies assumed from the corporation, and must  
187 submit additional funds if the special deposit is insufficient  
188 to cover the unearned premium on assumed policies, or must  
189 receive a return of funds within 60 days if the special deposit  
190 exceeds the amount of unearned premium required for assumed  
191 policies. The special deposit is an asset of the surplus lines  
192 insurer which is held by the department for the benefit of state  
193 policyholders of the surplus lines insurer in the event of the  
194 insolvency of the surplus lines insurer. If an order of  
195 liquidation is entered in any state against the surplus lines  
196 insurer, the department may use the special deposit for payment  
197 of unearned premium or policy claims, return all or part of the  
198 deposit to the domiciliary receiver, or use the funds in  
199 accordance with any action authorized under part I of chapter  
200 631 or in compliance with any order of a court with jurisdiction  
201 over the insolvency.

202 (IV) Surplus lines brokers representing a surplus lines  
203 insurer on a take-out program must obtain confirmation, in

37-00216A-12

2012578

204 written or e-mail form, from each producing agent in advance  
205 stating that the agent is willing to participate in the take-out  
206 program with the surplus lines insurer engaging in the take-out  
207 program. The take-out program is also subject to s. 627.3517. If  
208 a policyholder is selected for removal from the corporation by a  
209 surplus lines insurer and an admitted carrier, the offer of  
210 coverage from the admitted carrier shall be given priority by  
211 the corporation.

212 4. The plan shall provide for the deferment, in whole or in  
213 part, of the assessment of an assessable insurer, other than an  
214 emergency assessment collected from policyholders pursuant to  
215 sub-subparagraph (b)3.c. ~~(b)3.d.~~, if the office finds that  
216 payment of the assessment would endanger or impair the solvency  
217 of the insurer. In the event an assessment against an assessable  
218 insurer is deferred in whole or in part, the amount by which  
219 such assessment is deferred may be assessed against the other  
220 assessable insurers in a manner consistent with the basis for  
221 assessments set forth in paragraph (b).

222 5. Effective July 1, 2007, in order to evaluate the costs  
223 and benefits of approved take-out plans, if the corporation pays  
224 a bonus or other payment to an insurer for an approved take-out  
225 plan, it shall maintain a record of the address or such other  
226 identifying information on the property or risk removed in order  
227 to track if and when the property or risk is later insured by  
228 the corporation.

229 6. Any policy taken out, assumed, or removed from the  
230 corporation is, as of the effective date of the take-out,  
231 assumption, or removal, direct insurance issued by the insurer  
232 and not by the corporation, even if the corporation continues to



37-00216A-12

2012578

233 service the policies. This subparagraph applies to policies of  
234 the corporation and not policies taken out, assumed, or removed  
235 from any other entity.

236 (x)1. The following records of the corporation are  
237 confidential and exempt from the provisions of s. 119.07(1) and  
238 s. 24(a), Art. I of the State Constitution:

239 a. Underwriting files, except that a policyholder or an  
240 applicant shall have access to his or her own underwriting  
241 files. Confidential and exempt underwriting file records may  
242 also be released to other governmental agencies upon written  
243 request and demonstration of need; such records held by the  
244 receiving agency remain confidential and exempt as provided  
245 herein.

246 b. Claims files, until termination of all litigation and  
247 settlement of all claims arising out of the same incident,  
248 although portions of the claims files may remain exempt, as  
249 otherwise provided by law. Confidential and exempt claims file  
250 records may be released to other governmental agencies upon  
251 written request and demonstration of need; such records held by  
252 the receiving agency remain confidential and exempt as provided  
253 herein.

254 c. Records obtained or generated by an internal auditor  
255 pursuant to a routine audit, until the audit is completed, or if  
256 the audit is conducted as part of an investigation, until the  
257 investigation is closed or ceases to be active. An investigation  
258 is considered "active" while the investigation is being  
259 conducted with a reasonable, good faith belief that it could  
260 lead to the filing of administrative, civil, or criminal  
261 proceedings.

37-00216A-12

2012578

262 d. Matters reasonably encompassed in privileged attorney-  
263 client communications.

264 e. Proprietary information licensed to the corporation  
265 under contract and the contract provides for the confidentiality  
266 of such proprietary information.

267 f. All information relating to the medical condition or  
268 medical status of a corporation employee which is not relevant  
269 to the employee's capacity to perform his or her duties, except  
270 as otherwise provided in this paragraph. Information that is  
271 exempt shall include, but is not limited to, information  
272 relating to workers' compensation, insurance benefits, and  
273 retirement or disability benefits.

274 g. Upon an employee's entrance into the employee assistance  
275 program, a program to assist any employee who has a behavioral  
276 or medical disorder, substance abuse problem, or emotional  
277 difficulty which affects the employee's job performance, all  
278 records relative to that participation shall be confidential and  
279 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
280 of the State Constitution, except as otherwise provided in s.  
281 112.0455(11).

282 h. Information relating to negotiations for financing,  
283 reinsurance, depopulation, or contractual services, until the  
284 conclusion of the negotiations.

285 i. Minutes of closed meetings regarding underwriting files,  
286 and minutes of closed meetings regarding an open claims file  
287 until termination of all litigation and settlement of all claims  
288 with regard to that claim, except that information otherwise  
289 confidential or exempt by law shall be redacted.

290 2. If an authorized insurer, reinsurance intermediary,

37-00216A-12

2012578

291 eligible surplus lines insurer, or entity that has been created  
292 to seek authority to write property insurance in this state is  
293 considering writing or assisting in the underwriting of a risk  
294 insured by the corporation, relevant information from both the  
295 underwriting files and confidential claims files may be released  
296 to the insurer, reinsurance intermediary, eligible surplus lines  
297 insurer, or entity that has been created to seek authority to  
298 write property insurance in this state provided the recipient  
299 ~~insurer~~ agrees in writing, notarized and under oath, to maintain  
300 the confidentiality of such files. If a policy file is  
301 transferred to an insurer, that policy file is no longer a  
302 public record because it is not held by an agency subject to the  
303 provisions of the public records law. Underwriting files and  
304 confidential claims files may also be released to staff and the  
305 board of governors of the market assistance plan established  
306 pursuant to s. 627.3515, who must retain the confidentiality of  
307 such files, except such files may be released to authorized  
308 insurers that are considering assuming the risks to which the  
309 files apply, provided the insurer agrees in writing, notarized  
310 and under oath, to maintain the confidentiality of such files.  
311 Finally, the corporation or the board or staff of the market  
312 assistance plan may make the following information obtained from  
313 underwriting files and confidential claims files available to  
314 licensed general lines insurance agents: name, address, and  
315 telephone number of the residential property owner or insured;  
316 location of the risk; rating information; loss history; and  
317 policy type. The receiving licensed general lines insurance  
318 agent must retain the confidentiality of the information  
319 received.

37-00216A-12

2012578

320           3. A policyholder who has filed suit against the  
321 corporation has the right to discover the contents of his or her  
322 own claims file to the same extent that discovery of such  
323 contents would be available from a private insurer in litigation  
324 as provided by the Florida Rules of Civil Procedure, the Florida  
325 Evidence Code, and other applicable law. Pursuant to subpoena, a  
326 third party has the right to discover the contents of an  
327 insured's or applicant's underwriting or claims file to the same  
328 extent that discovery of such contents would be available from a  
329 private insurer by subpoena as provided by the Florida Rules of  
330 Civil Procedure, the Florida Evidence Code, and other applicable  
331 law, and subject to any confidentiality protections requested by  
332 the corporation and agreed to by the seeking party or ordered by  
333 the court. The corporation may release confidential underwriting  
334 and claims file contents and information as it deems necessary  
335 and appropriate to underwrite or service insurance policies and  
336 claims, subject to any confidentiality protections deemed  
337 necessary and appropriate by the corporation.

338           4. Portions of meetings of the corporation are exempt from  
339 the provisions of s. 286.011 and s. 24(b), Art. I of the State  
340 Constitution wherein confidential underwriting files or  
341 confidential open claims files are discussed. All portions of  
342 corporation meetings which are closed to the public shall be  
343 recorded by a court reporter. The court reporter shall record  
344 the times of commencement and termination of the meeting, all  
345 discussion and proceedings, the names of all persons present at  
346 any time, and the names of all persons speaking. No portion of  
347 any closed meeting shall be off the record. Subject to the  
348 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's

37-00216A-12

2012578\_\_

349 notes of any closed meeting shall be retained by the corporation  
350 for a minimum of 5 years. A copy of the transcript, less any  
351 exempt matters, of any closed meeting wherein claims are  
352 discussed shall become public as to individual claims after  
353 settlement of the claim.

354 Section 2. This act shall take effect July 1, 2012.