

By the Committee on Budget Subcommittee on General Government  
Appropriations; and Senator Richter

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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

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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

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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

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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

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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

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

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

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

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

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183 case of statements originally made in the currencies of other  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

186 (E) A complete certified copy of the latest official  
187 financial statement required by the insurer's domiciliary state,  
188 if different from sub-sub-sub-paragraph (D); and

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

191  
192 This sub-sub-subparagraph does not subject any surplus lines  
193 insurer to requirements in addition to part VIII of chapter 626.  
194 Surplus lines brokers making an offer of coverage under this  
195 sub-subparagraph are not required to comply with s.  
196 626.916(1)(a), (b), (c), and (e).

197 (IV) Within 10 days after the date of assumption, the  
198 surplus lines insurer assuming policies from the corporation  
199 must remit a special deposit equal to the unearned premium net  
200 of unearned commissions on the assumed block of business to the  
201 Bureau of Collateral Securities within the Department of  
202 Financial Services. The surplus lines insurer must submit to the  
203 office, along with the initial deposit, an accounting of the

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

225 (V) Surplus lines brokers representing a surplus lines  
226 insurer on a take-out program must obtain confirmation, in  
227 written or e-mail form, from each producing agent in advance  
228 stating that the agent is willing to participate in the take-out  
229 program with the surplus lines insurer engaging in the take-out  
230 program. The take-out program is also subject to s. 627.3517. If  
231 a policyholder is selected for removal from the corporation by a  
232 surplus lines insurer and an authorized insurer, the offer of



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233 coverage from the authorized insurer shall be given priority by  
234 the corporation.

235 4. The plan shall provide for the deferment, in whole or in  
236 part, of the assessment of an assessable insurer, other than an  
237 emergency assessment collected from policyholders pursuant to  
238 sub-subparagraph (b)3.c. ~~(b)3.d.~~, if the office finds that  
239 payment of the assessment would endanger or impair the solvency  
240 of the insurer. In the event an assessment against an assessable  
241 insurer is deferred in whole or in part, the amount by which  
242 such assessment is deferred may be assessed against the other  
243 assessable insurers in a manner consistent with the basis for  
244 assessments set forth in paragraph (b).

245 5. Effective July 1, 2007, in order to evaluate the costs  
246 and benefits of approved take-out plans, if the corporation pays  
247 a bonus or other payment to an insurer for an approved take-out  
248 plan, it shall maintain a record of the address or such other  
249 identifying information on the property or risk removed in order  
250 to track if and when the property or risk is later insured by  
251 the corporation.

252 6. Any policy taken out, assumed, or removed from the  
253 corporation is, as of the effective date of the take-out,  
254 assumption, or removal, direct insurance issued by the insurer  
255 and not by the corporation, even if the corporation continues to  
256 service the policies. This subparagraph applies to policies of  
257 the corporation and not policies taken out, assumed, or removed  
258 from any other entity.

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

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262           a. Underwriting files, except that a policyholder or an  
263 applicant shall have access to his or her own underwriting  
264 files. Confidential and exempt underwriting file records may  
265 also be released to other governmental agencies upon written  
266 request and demonstration of need; such records held by the  
267 receiving agency remain confidential and exempt as provided  
268 herein.

269           b. Claims files, until termination of all litigation and  
270 settlement of all claims arising out of the same incident,  
271 although portions of the claims files may remain exempt, as  
272 otherwise provided by law. Confidential and exempt claims file  
273 records may be released to other governmental agencies upon  
274 written request and demonstration of need; such records held by  
275 the receiving agency remain confidential and exempt as provided  
276 herein.

277           c. Records obtained or generated by an internal auditor  
278 pursuant to a routine audit, until the audit is completed, or if  
279 the audit is conducted as part of an investigation, until the  
280 investigation is closed or ceases to be active. An investigation  
281 is considered "active" while the investigation is being  
282 conducted with a reasonable, good faith belief that it could  
283 lead to the filing of administrative, civil, or criminal  
284 proceedings.

285           d. Matters reasonably encompassed in privileged attorney-  
286 client communications.

287           e. Proprietary information licensed to the corporation  
288 under contract and the contract provides for the confidentiality  
289 of such proprietary information.

290           f. All information relating to the medical condition or

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291 medical status of a corporation employee which is not relevant  
292 to the employee's capacity to perform his or her duties, except  
293 as otherwise provided in this paragraph. Information that is  
294 exempt shall include, but is not limited to, information  
295 relating to workers' compensation, insurance benefits, and  
296 retirement or disability benefits.

297 g. Upon an employee's entrance into the employee assistance  
298 program, a program to assist any employee who has a behavioral  
299 or medical disorder, substance abuse problem, or emotional  
300 difficulty which affects the employee's job performance, all  
301 records relative to that participation shall be confidential and  
302 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
303 of the State Constitution, except as otherwise provided in s.  
304 112.0455(11).

305 h. Information relating to negotiations for financing,  
306 reinsurance, depopulation, or contractual services, until the  
307 conclusion of the negotiations.

308 i. Minutes of closed meetings regarding underwriting files,  
309 and minutes of closed meetings regarding an open claims file  
310 until termination of all litigation and settlement of all claims  
311 with regard to that claim, except that information otherwise  
312 confidential or exempt by law shall be redacted.

313 2. If an authorized insurer, reinsurance intermediary,  
314 eligible surplus lines insurer, or entity that has filed an  
315 application with the office for licensure as a property and  
316 casualty insurer in this state is considering writing or  
317 assisting in the underwriting of a risk insured by the  
318 corporation, relevant information from both the underwriting  
319 files and confidential claims files may be released to the

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320 insurer, reinsurance intermediary, eligible surplus lines  
321 insurer, or entity that has been created to seek authority to  
322 write property insurance in this state provided the recipient  
323 ~~insurer~~ agrees in writing, notarized and under oath, to maintain  
324 the confidentiality of such files. If a policy file is  
325 transferred to an insurer, that policy file is no longer a  
326 public record because it is not held by an agency subject to the  
327 provisions of the public records law. Underwriting files and  
328 confidential claims files may also be released to staff and the  
329 board of governors of the market assistance plan established  
330 pursuant to s. 627.3515, who must retain the confidentiality of  
331 such files, except such files may be released to authorized  
332 insurers that are considering assuming the risks to which the  
333 files apply, provided the insurer agrees in writing, notarized  
334 and under oath, to maintain the confidentiality of such files.  
335 Finally, the corporation or the board or staff of the market  
336 assistance plan may make the following information obtained from  
337 underwriting files and confidential claims files available to  
338 licensed general lines insurance agents: name, address, and  
339 telephone number of the residential property owner or insured;  
340 location of the risk; rating information; loss history; and  
341 policy type. The receiving licensed general lines insurance  
342 agent must retain the confidentiality of the information  
343 received.

344 3. A policyholder who has filed suit against the  
345 corporation has the right to discover the contents of his or her  
346 own claims file to the same extent that discovery of such  
347 contents would be available from a private insurer in litigation  
348 as provided by the Florida Rules of Civil Procedure, the Florida

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349 Evidence Code, and other applicable law. Pursuant to subpoena, a  
350 third party has the right to discover the contents of an  
351 insured's or applicant's underwriting or claims file to the same  
352 extent that discovery of such contents would be available from a  
353 private insurer by subpoena as provided by the Florida Rules of  
354 Civil Procedure, the Florida Evidence Code, and other applicable  
355 law, and subject to any confidentiality protections requested by  
356 the corporation and agreed to by the seeking party or ordered by  
357 the court. The corporation may release confidential underwriting  
358 and claims file contents and information as it deems necessary  
359 and appropriate to underwrite or service insurance policies and  
360 claims, subject to any confidentiality protections deemed  
361 necessary and appropriate by the corporation.

362 4. Portions of meetings of the corporation are exempt from  
363 the provisions of s. 286.011 and s. 24(b), Art. I of the State  
364 Constitution wherein confidential underwriting files or  
365 confidential open claims files are discussed. All portions of  
366 corporation meetings which are closed to the public shall be  
367 recorded by a court reporter. The court reporter shall record  
368 the times of commencement and termination of the meeting, all  
369 discussion and proceedings, the names of all persons present at  
370 any time, and the names of all persons speaking. No portion of  
371 any closed meeting shall be off the record. Subject to the  
372 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's  
373 notes of any closed meeting shall be retained by the corporation  
374 for a minimum of 5 years. A copy of the transcript, less any  
375 exempt matters, of any closed meeting wherein claims are  
376 discussed shall become public as to individual claims after  
377 settlement of the claim.

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Section 2. This act shall take effect upon becoming a law.