

1 A bill to be entitled

2 An act relating to property insurance; amending s.
3 627.351, F.S.; requiring the Citizens Property
4 Insurance Corporation's board to contract with the
5 Division of Administrative Hearings to hear protests
6 of the corporation's decisions regarding the purchase
7 of commodities and contractual services and issue a
8 recommended order; requiring the board to take final
9 action in a public meeting; revising the date for
10 submitting the annual loss ratio report for
11 residential coverage; amending s. 627.3518, F.S.;
12 defining the term "surplus lines insurer"; authorizing
13 eligible surplus lines insurers to participate in the
14 corporation's clearinghouse program and providing
15 criteria for such eligibility; conforming cross-
16 references; providing that certain applicants who
17 accept an offer from a surplus lines insurer are
18 considered a renewal; repealing s. 627.3519, F.S.,
19 relating to an annual report requirement relating to
20 aggregate net probable maximum losses; amending s.
21 627.35191, F.S.; requiring the corporation to annually
22 provide certain estimates for the next 12-month period
23 to the Legislature and the Financial Services
24 Commission; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Paragraphs (e) and (hh) of subsection (6) of
29 section 627.351, Florida Statutes, are amended to read:
30 627.351 Insurance risk apportionment plans.—
31 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
32 (e) The corporation is subject to s. 287.057 for the
33 purchase of commodities and contractual services except as
34 otherwise provided in this paragraph. Services provided by
35 tradepersons or technical experts to assist a licensed adjuster
36 in the evaluation of individual claims are not subject to the
37 procurement requirements of this section. Additionally, the
38 procurement of financial services providers and underwriters
39 must be made pursuant to s. 627.3513. Contracts for goods or
40 services valued at or more than \$100,000 are subject to approval
41 by the board.

42 1. The corporation is an agency for purposes of s.
43 287.057, except that, for purposes of s. 287.057(22), the
44 corporation is an eligible user.

45 a. The authority of the Department of Management Services
46 and the Chief Financial Officer under s. 287.057 extends to the
47 corporation as if the corporation were an agency.

48 b. The executive director of the corporation is the agency
49 head under s. 287.057, except for resolution of bid protests for
50 which the board would serve as the agency head.

51 2. The corporation must provide notice of a decision or
52 intended decision concerning a solicitation, contract award, or

53 | exceptional purchase by electronic posting. Such notice must
54 | contain the following statement: "Failure to file a protest
55 | within the time prescribed in this section constitutes a waiver
56 | of proceedings."

57 | a. A person adversely affected by the corporation's
58 | decision or intended decision to award a contract pursuant to s.
59 | 287.057(1) or (3)(c) who elects to challenge the decision must
60 | file a written notice of protest with the executive director of
61 | the corporation within 72 hours after the corporation posts a
62 | notice of its decision or intended decision. For a protest of
63 | the terms, conditions, and specifications contained in a
64 | solicitation, including ~~any~~ provisions governing the methods for
65 | ranking bids, proposals, replies, awarding contracts, reserving
66 | rights of further negotiation, or modifying or amending any
67 | contract, the notice of protest must be filed in writing within
68 | 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,
69 | Sundays, and state holidays are excluded in the computation of
70 | the 72-hour time period.

71 | b. A formal written protest must be filed within 10 days
72 | after the date the notice of protest is filed. The formal
73 | written protest must state with particularity the facts and law
74 | upon which the protest is based. Upon receipt of a formal
75 | written protest that has been timely filed, the corporation must
76 | stop the solicitation or contract award process until the
77 | subject of the protest is resolved by final board action unless
78 | the executive director sets forth in writing particular facts

79 and circumstances that require the continuance of the
80 solicitation or contract award process without delay in order to
81 avoid an immediate and serious danger to the public health,
82 safety, or welfare.

83 (I) The corporation must provide an opportunity to resolve
84 the protest by mutual agreement between the parties within 7
85 business days after receipt of the formal written protest.

86 (II) If the subject of a protest is not resolved by mutual
87 agreement within 7 business days, the corporation's board must
88 transmit the protest to the Division of Administrative Hearings
89 and contract with the division to conduct a hearing to determine
90 the merits of the protest and to issue a recommended order ~~place~~
91 ~~the protest on the agenda and resolve it at its next regularly~~
92 ~~scheduled meeting.~~ The contract must provide for the corporation
93 to reimburse the division for any costs incurred by the division
94 for court reporters, transcript preparation, travel, facility
95 rental, and other customary hearing costs in the manner set
96 forth in s. 120.65(9). The division has jurisdiction to
97 determine the facts and law concerning the protest and to issue
98 a recommended order. The division's rules and procedures apply
99 to these proceedings; the division's applicable bond
100 requirements do not apply. The protest must be heard by the
101 division ~~board~~ at a publicly noticed meeting in accordance with
102 procedures established by the division ~~board~~.

103 c. In a protest of an invitation-to-bid or request-for-
104 proposals procurement, submissions made after the bid or

105 proposal opening which amend or supplement the bid or proposal
106 may not be considered. In protesting an invitation-to-negotiate
107 procurement, submissions made after the corporation announces
108 its intent to award a contract, reject all replies, or withdraw
109 the solicitation that amends or supplements the reply may not be
110 considered. Unless otherwise provided by law, the burden of
111 proof rests with the party protesting the corporation's action.
112 In a competitive-procurement protest, other than a rejection of
113 all bids, proposals, or replies, the corporation's board must
114 conduct a de novo proceeding to determine whether the
115 corporation's proposed action is contrary to the corporation's
116 governing statutes, the corporation's rules or policies, or the
117 solicitation specifications. The standard of proof for the
118 proceeding is whether the corporation's action was clearly
119 erroneous, contrary to competition, arbitrary, or capricious. In
120 any bid-protest proceeding contesting an intended corporation
121 action to reject all bids, proposals, or replies, the standard
122 of review by the board is whether the corporation's intended
123 action is illegal, arbitrary, dishonest, or fraudulent.

124 d. Failure to file a notice of protest or failure to file
125 a formal written protest constitutes a waiver of proceedings.

126 3. The board, acting as agency head, shall consider the
127 recommended order of an administrative law judge in a public
128 meeting and take final action on the protest. ~~Contract actions~~
129 ~~and decisions by the board under this paragraph are final.~~ Any
130 further legal remedy lies with the First District Court of

131 Appeal ~~must be made in the Circuit Court of Leon County.~~

132 (hh) The corporation shall ~~must~~ prepare a report for each
 133 calendar year outlining both the statewide average and county-
 134 specific details of the loss ratio attributable to losses that
 135 are not catastrophic losses for residential coverage provided by
 136 the corporation, which information must be presented to the
 137 office and available for public inspection on the Internet
 138 website of the corporation by March 1 ~~January 15th~~ of the
 139 following calendar year.

140 Section 2. Subsections (5) through (10) of section
 141 627.3518, Florida Statutes, are renumbered as subsections (6)
 142 through (11), respectively, present subsection (11) is
 143 renumbered as subsection (13), subsection (2), paragraph (e) of
 144 subsection (4), and present subsections (5) through (7) are
 145 amended, paragraph (e) is added to subsection (1), and new
 146 subsections (5) and (12) are added to that section, to read:

147 627.3518 Citizens Property Insurance Corporation
 148 policyholder eligibility clearinghouse program.—The purpose of
 149 this section is to provide a framework for the corporation to
 150 implement a clearinghouse program by January 1, 2014.

151 (1) As used in this section, the term:

152 (e) "Surplus lines insurer" means an unauthorized insurer
 153 that is made eligible by the office to issue coverage under the
 154 Surplus Lines Law.

155 (2) In order to confirm eligibility with the corporation
 156 and to enhance the access of new applicants for coverage and

157 existing policyholders of the corporation to offers of coverage
158 from authorized insurers and surplus lines insurers, the
159 corporation shall establish a program for personal residential
160 risks in order to facilitate the diversion of ineligible
161 applicants and existing policyholders ~~from the corporation~~ into
162 the voluntary insurance market. The corporation shall also
163 develop appropriate procedures for facilitating the diversion of
164 ineligible applicants and existing policyholders for commercial
165 residential coverage into the private insurance market and shall
166 report such procedures to the President of the Senate and the
167 Speaker of the House of Representatives by January 1, 2014.

168 (4) Any authorized insurer may participate in the program;
169 however, participation is not mandatory for any insurer.
170 Insurers making offers of coverage to new applicants or renewal
171 policyholders through the program:

172 (e) May participate through their single-designated
173 managing general agent or broker; however, the provisions of
174 paragraph (7) (a) ~~(6) (a)~~ regarding ownership, control, and use of
175 the expirations continue to apply.

176 (5) Effective January 1, 2015, an eligible surplus lines
177 insurer may make an offer of similar coverage on a risk
178 submitted through the clearinghouse program if offers of coverage
179 are not submitted by authorized insurers participating in the
180 program and the office determines that the eligible surplus
181 lines insurer:

182 (a) Maintains a surplus of \$50 million on a company or

183 pooled basis.

184 (b) Is rated as having a superior, excellent, exceptional,
185 or equally comparable financial strength by a rating agency
186 acceptable to the office.

187 (c) Maintains reserves, surplus, reinsurance, and
188 reinsurance equivalents to cover the eligible surplus lines
189 insurer's 100-year probable maximum hurricane loss at least
190 twice in a single hurricane season, and submits such reinsurance
191 to the office for review for purposes of participation in the
192 program.

193 (d) Provides prominent notice to the policyholder:

194 1. That the policyholder is not required to accept an
195 offer of coverage from a surplus lines insurer.

196 2. That an offer of coverage from a surplus lines insurer
197 does not affect whether the policyholder is eligible for
198 coverage from the corporation.

199 3. That a policyholder who accepts an offer of coverage
200 from a surplus lines insurer may, at any time, submit a new
201 application for coverage to the corporation.

202 4. That surplus lines policies are not covered by the
203 Florida Insurance Guaranty Association.

204 5. That rates for surplus lines insurance are not subject
205 to review by the office.

206 6. Of any additional information required by the office.

207

208 Such notice must be signed by the policyholder and kept on file

209 with the surplus lines insurer for as long as the policyholder
 210 remains insured by the surplus lines insurer.

211 (6)~~(5)~~ Notwithstanding s. 627.3517, an ~~any~~ applicant for
 212 new coverage from the corporation is not eligible for coverage
 213 from the corporation if provided an offer of coverage from an
 214 authorized insurer through the program at a premium that is at
 215 or below the eligibility threshold established in s.
 216 627.351(6)(c)5.a. Whenever an offer of coverage for a personal
 217 lines risk is received for a policyholder of the corporation at
 218 renewal from an authorized insurer through the program, if the
 219 offer is equal to or less than the corporation's renewal premium
 220 for comparable coverage, the risk is not eligible for coverage
 221 with the corporation. If ~~In the event~~ an offer of coverage for a
 222 new applicant is received from an authorized insurer through the
 223 program, and the premium offered exceeds the eligibility
 224 threshold contained in s. 627.351(6)(c)5.a., the applicant or
 225 insured may elect to accept such coverage, or may elect to
 226 accept or continue coverage with the corporation. If ~~In the~~
 227 ~~event~~ an offer of coverage for a personal lines risk is received
 228 from an authorized insurer at renewal through the program, and
 229 if the premium offered is more than the corporation's renewal
 230 premium for comparable coverage, the insured may elect to accept
 231 such coverage, or may elect to accept or continue coverage with
 232 the corporation. Section 627.351(6)(c)5.a.(I) does not apply to
 233 an offer of coverage from an authorized insurer obtained through
 234 the program. An applicant for personal lines residential

235 coverage from the corporation who was declared ineligible for
 236 coverage at renewal by the corporation in the previous 36 months
 237 due to an offer of coverage pursuant to this subsection is ~~shall~~
 238 ~~be~~ considered a renewal under this section if the corporation
 239 determines that the authorized insurer making the offer of
 240 coverage pursuant to this subsection continues to insure the
 241 applicant and increased the rate on the policy in excess of the
 242 increase allowed for the corporation under s. 627.351(6)(n)6.

243 (7) ~~(6)~~ Independent insurance agents submitting new
 244 applications for coverage or that are the agent of record on a
 245 renewal policy submitted to the program:

246 (a) Are granted and must maintain ownership and the
 247 exclusive use of expirations, records, or other written or
 248 electronic information directly related to such applications or
 249 renewals written through the corporation or through an insurer
 250 participating in the program, notwithstanding s.
 251 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted
 252 for as long as the insured remains with the agency or until sold
 253 or surrendered in writing by the agent. Contracts with the
 254 corporation or required by the corporation must not amend,
 255 modify, interfere with, or limit such rights of ownership. Such
 256 expirations, records, or other written or electronic information
 257 may be used to review an application, issue a policy, or for any
 258 other purpose necessary for placing such business through the
 259 program.

260 (b) May not be required to be appointed by any insurer

261 participating in the program for policies written solely through
 262 the program, notwithstanding ~~the provisions of~~ s. 626.112.

263 (c) May accept an appointment from an ~~any~~ insurer
 264 participating in the program.

265 (d) May enter into ~~either~~ a standard or limited agency
 266 agreement with the insurer, at the insurer's option.

267

268 Applicants ineligible for coverage in accordance with subsection
 269 (6) ~~(5)~~ remain ineligible if their independent agent is
 270 unwilling or unable to enter into a standard or limited agency
 271 agreement with an insurer participating in the program.

272 (8) ~~(7)~~ Exclusive agents submitting new applications for
 273 coverage or that are the agent of record on a renewal policy
 274 submitted to the program:

275 (a) Must maintain ownership and the exclusive use of
 276 expirations, records, or other written or electronic information
 277 directly related to such applications or renewals written
 278 through the corporation or through an insurer participating in
 279 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 280 (II)(B). Contracts with the corporation or required by the
 281 corporation must not amend, modify, interfere with, or limit
 282 such rights of ownership. Such expirations, records, or other
 283 written or electronic information may be used to review an
 284 application, issue a policy, or for any other purpose necessary
 285 for placing such business through the program.

286 (b) May not be required to be appointed by any insurer

287 participating in the program for policies written solely through
 288 the program, notwithstanding ~~the provisions of~~ s. 626.112.

289 (c) Must only facilitate the placement of an offer of
 290 coverage from an insurer whose limited servicing agreement is
 291 approved by that exclusive agent's exclusive insurer.

292 (d) May enter into a limited servicing agreement with the
 293 insurer making an offer of coverage, and only after the
 294 exclusive agent's insurer has approved the limited servicing
 295 agreement terms. The exclusive agent's insurer must approve a
 296 limited service agreement for the program for an ~~any~~ insurer for
 297 which it has approved a service agreement for other purposes.

298
 299 Applicants ineligible for coverage in accordance with subsection
 300 (6) ~~(5)~~ remain ineligible if their exclusive agent is unwilling
 301 or unable to enter into a standard or limited agency agreement
 302 with an insurer making an offer of coverage to that applicant.

303 (12) An applicant for coverage from the corporation who
 304 was a policyholder of the corporation within the previous 36
 305 months and who subsequently accepts an offer of coverage from a
 306 surplus lines insurer is considered a renewal under this
 307 section.

308 Section 3. Section 627.3519, Florida Statutes, is
 309 repealed.

310 Section 4. Section 627.35191, Florida Statutes, is amended
 311 to read:

312 627.35191 Required reports ~~Annual report of aggregate net~~

313 ~~probable maximum losses, financing options, and potential~~
314 ~~assessments.~~—

315 (1) By ~~No later than~~ February 1 of each year, the Florida
316 Hurricane Catastrophe Fund and Citizens Property Insurance
317 Corporation shall each submit a report to the Legislature and
318 the Financial Services Commission identifying their respective
319 aggregate net probable maximum losses, financing options, and
320 potential assessments. The report issued by the fund and the
321 corporation must include their respective 50-year, 100-year, and
322 250-year probable maximum losses; analysis of all reasonable
323 financing strategies for each such probable maximum loss,
324 including the amount and term of debt instruments; specification
325 of the percentage assessments that would be needed to support
326 each of the financing strategies; and calculations of the
327 aggregate assessment burden on Florida property and casualty
328 policyholders for each of the probable maximum losses.

329 (2) In May of each year, Citizens Property Insurance
330 Corporation shall also provide to the Legislature and the
331 Financial Services Commission a statement of the estimated
332 borrowing capacity of the corporation for the next 12-month
333 period, the estimated claims-paying capacity of the corporation,
334 and the corporation's estimated balance as of December 31 of the
335 current calendar year. Such estimates must take into account
336 that the corporation, the Florida Hurricane Catastrophe Fund,
337 and the Florida Insurance Guaranty Association may all be
338 concurrently issuing debt instruments following a catastrophic

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339 | event.

340 | Section 5. This act shall take effect July 1, 2014.