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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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04/24/2014 11:46 AM

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Senator Clemens moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (b) and (w) of subsection (6) of
section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject
lines of business in this state are subject to assessment by the
corporation and, for the purposes of this subsection, are



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12 referred to collectively as "assessable insurers." Insurers
13 writing one or more subject lines of business in this state
14 pursuant to part VIII of chapter 626 are not assessable
15 insurers, but insureds who procure one or more subject lines of
16 business in this state pursuant to part VIII of chapter 626 are
17 subject to assessment by the corporation and are referred to
18 collectively as "assessable insureds." An insurer's assessment
19 liability begins on the first day of the calendar year following
20 the year in which the insurer was issued a certificate of
21 authority to transact insurance for subject lines of business in
22 this state and terminates 1 year after the end of the first
23 calendar year during which the insurer no longer holds a
24 certificate of authority to transact insurance for subject lines
25 of business in this state.

26 2.a. All revenues, assets, liabilities, losses, and
27 expenses of the corporation shall be divided into three separate
28 accounts as follows:

29 (I) A personal lines account for personal residential
30 policies issued by the corporation, or issued by the Residential
31 Property and Casualty Joint Underwriting Association and renewed
32 by the corporation, which provides comprehensive, multiperil
33 coverage on risks that are not located in areas eligible for
34 coverage by the Florida Windstorm Underwriting Association as
35 those areas were defined on January 1, 2002, and for policies
36 that do not provide coverage for the peril of wind on risks that
37 are located in such areas;

38 (II) A commercial lines account for commercial residential
39 and commercial nonresidential policies issued by the
40 corporation, or issued by the Residential Property and Casualty



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41 Joint Underwriting Association and renewed by the corporation,
42 which provides coverage for basic property perils on risks that
43 are not located in areas eligible for coverage by the Florida
44 Windstorm Underwriting Association as those areas were defined
45 on January 1, 2002, and for policies that do not provide
46 coverage for the peril of wind on risks that are located in such
47 areas; and

48 (III) A coastal account for personal residential policies
49 and commercial residential and commercial nonresidential
50 property policies issued by the corporation, or transferred to
51 the corporation, which provides coverage for the peril of wind
52 on risks that are located in areas eligible for coverage by the
53 Florida Windstorm Underwriting Association as those areas were
54 defined on January 1, 2002. The corporation may offer policies
55 that provide multiperil coverage and the corporation shall
56 continue to offer policies that provide coverage only for the
57 peril of wind for risks located in areas eligible for coverage
58 in the coastal account. In issuing multiperil coverage, the
59 corporation may use its approved policy forms and rates for the
60 personal lines account. An applicant or insured who is eligible
61 to purchase a multiperil policy from the corporation may
62 purchase a multiperil policy from an authorized insurer without
63 prejudice to the applicant's or insured's eligibility to
64 prospectively purchase a policy that provides coverage only for
65 the peril of wind from the corporation. An applicant or insured
66 who is eligible for a corporation policy that provides coverage
67 only for the peril of wind may elect to purchase or retain such
68 policy and also purchase or retain coverage excluding wind from
69 an authorized insurer without prejudice to the applicant's or



70 insured's eligibility to prospectively purchase a policy that
71 provides multiperil coverage from the corporation. It is the
72 goal of the Legislature that there be an overall average savings
73 of 10 percent or more for a policyholder who currently has a
74 wind-only policy with the corporation, and an ex-wind policy
75 with a voluntary insurer or the corporation, and who obtains a
76 multiperil policy from the corporation. It is the intent of the
77 Legislature that the offer of multiperil coverage in the coastal
78 account be made and implemented in a manner that does not
79 adversely affect the tax-exempt status of the corporation or
80 creditworthiness of or security for currently outstanding
81 financing obligations or credit facilities of the coastal
82 account, the personal lines account, or the commercial lines
83 account. The coastal account must also include quota share
84 primary insurance under subparagraph (c)2. The area eligible for
85 coverage under the coastal account also includes the area within
86 Port Canaveral, which is bordered on the south by the City of
87 Cape Canaveral, bordered on the west by the Banana River, and
88 bordered on the north by Federal Government property.

89 b. The three separate accounts must be maintained as long
90 as financing obligations entered into by the Florida Windstorm
91 Underwriting Association or Residential Property and Casualty
92 Joint Underwriting Association are outstanding, in accordance
93 with the terms of the corresponding financing documents. If the
94 financing obligations are no longer outstanding, the corporation
95 may use a single account for all revenues, assets, liabilities,
96 losses, and expenses of the corporation. Consistent with this
97 subparagraph and prudent investment policies that minimize the
98 cost of carrying debt, the board shall exercise its best efforts



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99 to retire existing debt or obtain the approval of necessary
100 parties to amend the terms of existing debt, so as to structure
101 the most efficient plan to consolidate the three separate
102 accounts into a single account.

103 c. Creditors of the Residential Property and Casualty Joint
104 Underwriting Association and the accounts specified in sub-sub-
105 subparagraphs a.(I) and (II) may have a claim against, and
106 recourse to, those accounts and no claim against, or recourse
107 to, the account referred to in sub-sub-subparagraph a.(III).
108 Creditors of the Florida Windstorm Underwriting Association have
109 a claim against, and recourse to, the account referred to in
110 sub-sub-subparagraph a.(III) and no claim against, or recourse
111 to, the accounts referred to in sub-sub-subparagraphs a.(I) and
112 (II).

113 d. Revenues, assets, liabilities, losses, and expenses not
114 attributable to particular accounts shall be prorated among the
115 accounts.

116 e. The Legislature finds that the revenues of the
117 corporation are revenues that are necessary to meet the
118 requirements set forth in documents authorizing the issuance of
119 bonds under this subsection.

120 f. The income of the corporation may not inure to the
121 benefit of any private person.

122 3. With respect to a deficit in an account:

123 a. ~~After accounting for the Citizens policyholder surcharge~~
124 ~~imposed under sub-subparagraph i.,~~ If the remaining projected
125 deficit incurred in the coastal account in a particular calendar
126 year:

127 (I) Is not greater than 2 percent of the aggregate



128 statewide direct written premium for the subject lines of
129 business for the prior calendar year, the entire deficit shall
130 be recovered through regular assessments of assessable insurers
131 under paragraph (q) and assessable insureds.

132 (II) Exceeds 2 percent of the aggregate statewide direct
133 written premium for the subject lines of business for the prior
134 calendar year, the corporation shall levy regular assessments on
135 assessable insurers under paragraph (q) and on assessable
136 insureds in an amount equal to the greater of 2 percent of the
137 projected deficit or 2 percent of the aggregate statewide direct
138 written premium for the subject lines of business for the prior
139 calendar year. Any remaining projected deficit shall be
140 recovered through emergency assessments under sub-subparagraph
141 d.

142 b. Each assessable insurer's share of the amount being
143 assessed under sub-subparagraph a. must be in the proportion
144 that the assessable insurer's direct written premium for the
145 subject lines of business for the year preceding the assessment
146 bears to the aggregate statewide direct written premium for the
147 subject lines of business for that year. The assessment
148 percentage applicable to each assessable insured is the ratio of
149 the amount being assessed under sub-subparagraph a. to the
150 aggregate statewide direct written premium for the subject lines
151 of business for the prior year. Assessments levied by the
152 corporation on assessable insurers under sub-subparagraph a.
153 must be paid as required by the corporation's plan of operation
154 and paragraph (q). Assessments levied by the corporation on
155 assessable insureds under sub-subparagraph a. shall be collected
156 by the surplus lines agent at the time the surplus lines agent



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157 collects the surplus lines tax required by s. 626.932, and paid
158 to the Florida Surplus Lines Service Office at the time the
159 surplus lines agent pays the surplus lines tax to that office.
160 Upon receipt of regular assessments from surplus lines agents,
161 the Florida Surplus Lines Service Office shall transfer the
162 assessments directly to the corporation as determined by the
163 corporation.

164 ~~c. After accounting for the Citizens policyholder surcharge~~
165 ~~imposed under sub-subparagraph i.,~~ The remaining projected
166 deficits in the personal lines account and in the commercial
167 lines account in a particular calendar year shall be recovered
168 through emergency assessments under sub-subparagraph d.

169 d. Upon a determination by the board of governors that a
170 projected deficit in an account exceeds the amount that is
171 expected to be recovered through regular assessments under sub-
172 subparagraph a., ~~plus the amount that is expected to be~~
173 ~~recovered through surcharges under sub-subparagraph i.,~~ the
174 board, after verification by the office, shall levy emergency
175 assessments for as many years as necessary to cover the
176 deficits, to be collected by assessable insurers and the
177 corporation and collected from assessable insureds upon issuance
178 or renewal of policies for subject lines of business, excluding
179 National Flood Insurance policies. The amount collected in a
180 particular year must be a uniform percentage of that year's
181 direct written premium for subject lines of business and all
182 accounts of the corporation, excluding National Flood Insurance
183 Program policy premiums, as annually determined by the board and
184 verified by the office. The office shall verify the arithmetic
185 calculations involved in the board's determination within 30



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186 days after receipt of the information on which the determination
187 was based. The office shall notify assessable insurers and the
188 Florida Surplus Lines Service Office of the date on which
189 assessable insurers shall begin to collect and assessable
190 insureds shall begin to pay such assessment. The date may be not
191 less than 90 days after the date the corporation levies
192 emergency assessments pursuant to this sub-subparagraph.
193 Notwithstanding any other provision of law, the corporation and
194 each assessable insurer that writes subject lines of business
195 shall collect emergency assessments from its policyholders
196 without such obligation being affected by any credit,
197 limitation, exemption, or deferment. Emergency assessments
198 levied by the corporation on assessable insureds shall be
199 collected by the surplus lines agent at the time the surplus
200 lines agent collects the surplus lines tax required by s.
201 626.932 and paid to the Florida Surplus Lines Service Office at
202 the time the surplus lines agent pays the surplus lines tax to
203 that office. The emergency assessments collected shall be
204 transferred directly to the corporation on a periodic basis as
205 determined by the corporation and held by the corporation solely
206 in the applicable account. The aggregate amount of emergency
207 assessments levied for an account under this sub-subparagraph in
208 any calendar year may be less than but not exceed the greater of
209 10 percent of the amount needed to cover the deficit, plus
210 interest, fees, commissions, required reserves, and other costs
211 associated with financing the original deficit, or 10 percent of
212 the aggregate statewide direct written premium for subject lines
213 of business and all accounts of the corporation for the prior
214 year, plus interest, fees, commissions, required reserves, and



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215 other costs associated with financing the deficit.

216 e. The corporation may pledge the proceeds of assessments,
217 projected recoveries from the Florida Hurricane Catastrophe
218 Fund, other insurance and reinsurance recoverables, ~~policyholder~~
219 ~~surcharges and other~~ surcharges, and other funds available to
220 the corporation as the source of revenue for and to secure bonds
221 issued under paragraph (q), bonds or other indebtedness issued
222 under subparagraph (c)3., or lines of credit or other financing
223 mechanisms issued or created under this subsection, or to retire
224 any other debt incurred as a result of deficits or events giving
225 rise to deficits, or in any other way that the board determines
226 will efficiently recover such deficits. The purpose of the lines
227 of credit or other financing mechanisms is to provide additional
228 resources to assist the corporation in covering claims and
229 expenses attributable to a catastrophe. As used in this
230 subsection, the term "assessments" includes regular assessments
231 under sub-subparagraph a. or subparagraph (q)1. and emergency
232 assessments under sub-subparagraph d. Emergency assessments
233 collected under sub-subparagraph d. are not part of an insurer's
234 rates, are not premium, and are not subject to premium tax,
235 fees, or commissions; however, failure to pay the emergency
236 assessment shall be treated as failure to pay premium. The
237 emergency assessments under sub-subparagraph d. shall continue
238 as long as any bonds issued or other indebtedness incurred with
239 respect to a deficit for which the assessment was imposed remain
240 outstanding, unless adequate provision has been made for the
241 payment of such bonds or other indebtedness pursuant to the
242 documents governing such bonds or indebtedness.

243 f. As used in this subsection for purposes of any deficit



244 incurred on or after January 25, 2007, the term "subject lines
245 of business" means insurance written by assessable insurers or
246 procured by assessable insureds for all property and casualty
247 lines of business in this state, but not including workers'
248 compensation or medical malpractice. As used in this sub-
249 subparagraph, the term "property and casualty lines of business"
250 includes all lines of business identified on Form 2, Exhibit of
251 Premiums and Losses, in the annual statement required of
252 authorized insurers under s. 624.424 and any rule adopted under
253 this section, except for those lines identified as accident and
254 health insurance and except for policies written under the
255 National Flood Insurance Program or the Federal Crop Insurance
256 Program. For purposes of this sub-subparagraph, the term
257 "workers' compensation" includes both workers' compensation
258 insurance and excess workers' compensation insurance.

259 g. The Florida Surplus Lines Service Office shall determine
260 annually the aggregate statewide written premium in subject
261 lines of business procured by assessable insureds and report
262 that information to the corporation in a form and at a time the
263 corporation specifies to ensure that the corporation can meet
264 the requirements of this subsection and the corporation's
265 financing obligations.

266 h. The Florida Surplus Lines Service Office shall verify
267 the proper application by surplus lines agents of assessment
268 percentages for regular assessments and emergency assessments
269 levied under this subparagraph on assessable insureds and assist
270 the corporation in ensuring the accurate, timely collection and
271 payment of assessments by surplus lines agents as required by
272 the corporation.



273 ~~i. In 2008 or thereafter, upon a determination by the board~~
274 ~~of governors that an account has a projected deficit, the board~~
275 ~~shall levy a Citizens policyholder surcharge against all~~
276 ~~policyholders of the corporation.~~

277 ~~(I) The surcharge shall be levied as a uniform percentage~~
278 ~~of the premium for the policy of up to 15 percent of such~~
279 ~~premium, which funds shall be used to offset the deficit.~~

280 ~~(II) The surcharge is payable upon cancellation or~~
281 ~~termination of the policy, upon renewal of the policy, or upon~~
282 ~~issuance of a new policy by the corporation within the first 12~~
283 ~~months after the date of the levy or the period of time~~
284 ~~necessary to fully collect the surcharge amount.~~

285 ~~(III) The corporation may not levy any regular assessments~~
286 ~~under paragraph (q) pursuant to sub-subparagraph a. or sub-~~
287 ~~subparagraph b. with respect to a particular year's deficit~~
288 ~~until the corporation has first levied the full amount of the~~
289 ~~surcharge authorized by this sub-subparagraph.~~

290 ~~(IV) The surcharge is not considered premium and is not~~
291 ~~subject to commissions, fees, or premium taxes. However, failure~~
292 ~~to pay the surcharge shall be treated as failure to pay premium.~~

293 i.j. If the amount of any assessments or surcharges
294 collected from corporation policyholders, assessable insurers or
295 their policyholders, or assessable insureds exceeds the amount
296 of the deficits, such excess amounts shall be remitted to and
297 retained by the corporation in a reserve to be used by the
298 corporation, as determined by the board of governors and
299 approved by the office, to pay claims or reduce any past,
300 present, or future plan-year deficits or to reduce outstanding
301 debt.



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302 (w) Notwithstanding any other provision of law:

303 1. The pledge or sale of, the lien upon, and the security
304 interest in any rights, revenues, or other assets of the
305 corporation created or purported to be created pursuant to any
306 financing documents to secure any bonds or other indebtedness of
307 the corporation shall be and remain valid and enforceable,
308 notwithstanding the commencement of and during the continuation
309 of, and after, any rehabilitation, insolvency, liquidation,
310 bankruptcy, receivership, conservatorship, reorganization, or
311 similar proceeding against the corporation under the laws of
312 this state.

313 2. The proceeding does not relieve the corporation of its
314 obligation, or otherwise affect its ability to perform its
315 obligation, to continue to collect, or levy and collect,
316 assessments, ~~policyholder surcharges or other surcharges under~~
317 ~~sub-subparagraph (b)3.i.~~, or any other rights, revenues, or
318 other assets of the corporation pledged pursuant to any
319 financing documents.

320 3. Each such pledge or sale of, lien upon, and security
321 interest in, including the priority of such pledge, lien, or
322 security interest, any such assessments, ~~policyholder surcharges~~
323 ~~or other~~ surcharges, or other rights, revenues, or other assets
324 which are collected, or levied and collected, after the
325 commencement of and during the pendency of, or after, any such
326 proceeding shall continue unaffected by such proceeding. As used
327 in this subsection, the term "financing documents" means any
328 agreement or agreements, instrument or instruments, or other
329 document or documents now existing or hereafter created
330 evidencing any bonds or other indebtedness of the corporation or



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331 pursuant to which any such bonds or other indebtedness has been
332 or may be issued and pursuant to which any rights, revenues, or
333 other assets of the corporation are pledged or sold to secure
334 the repayment of such bonds or indebtedness, together with the
335 payment of interest on such bonds or such indebtedness, or the
336 payment of any other obligation or financial product, as defined
337 in the plan of operation of the corporation related to such
338 bonds or indebtedness.

339 4. Any such pledge or sale of assessments, revenues,
340 contract rights, or other rights or assets of the corporation
341 shall constitute a lien and security interest, or sale, as the
342 case may be, that is immediately effective and attaches to such
343 assessments, revenues, or contract rights or other rights or
344 assets, whether or not imposed or collected at the time the
345 pledge or sale is made. Any such pledge or sale is effective,
346 valid, binding, and enforceable against the corporation or other
347 entity making such pledge or sale, and valid and binding against
348 and superior to any competing claims or obligations owed to any
349 other person or entity, including policyholders in this state,
350 asserting rights in any such assessments, revenues, or contract
351 rights or other rights or assets to the extent set forth in and
352 in accordance with the terms of the pledge or sale contained in
353 the applicable financing documents, whether or not any such
354 person or entity has notice of such pledge or sale and without
355 the need for any physical delivery, recordation, filing, or
356 other action.

357 5. As long as the corporation has any bonds outstanding,
358 the corporation may not file a voluntary petition under chapter
359 9 of the federal Bankruptcy Code or such corresponding chapter



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360 or sections as may be in effect, from time to time, and a public
361 officer or any organization, entity, or other person may not
362 authorize the corporation to be or become a debtor under chapter
363 9 of the federal Bankruptcy Code or such corresponding chapter
364 or sections as may be in effect, from time to time, during any
365 such period.

366 6. If ordered by a court of competent jurisdiction, the
367 corporation may assume policies or otherwise provide coverage
368 for policyholders of an insurer placed in liquidation under
369 chapter 631, under such forms, rates, terms, and conditions as
370 the corporation deems appropriate, subject to approval by the
371 office.

372
373 ===== T I T L E A M E N D M E N T =====

374 And the title is amended as follows:

375 Delete everything before the enacting clause
376 and insert:

377 A bill to be entitled
378 An act relating to Citizens Property Insurance
379 Corporation; amending s. 627.351, F.S.; deleting the
380 authority of the board of governors of the corporation
381 to levy a surcharge against policyholders to cover a
382 deficit; providing an effective date.