

Regular Session, 2003

HOUSE BILL NO. 1788

BY REPRESENTATIVE MORRISH AND SENATOR DARDENNE

INSURANCE/PROPERTY: Creates the Louisiana Citizens Property Insurance Corporation to operate and manage the FAIR and Coastal plans

1 AN ACT

2 To enact Subpart B of Part XXX of Chapter 1 of Title 22 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 22:1430 through
4 1430.17, and to repeal R.S. 22:1406.1 through 1406.13 and 1431
5 through 1445, relative to residential and commercial property
6 insurance; to provide for the Louisiana Citizens Property Insurance
7 Corporation; to provide for the FAIR Plan; to provide for the Coastal
8 Plan; to provide for a board of directors; to provide for the Louisiana
9 Insurance Rating Commission; to provide for corporate powers; to
10 provide for certain immunity; to provide for a plan of operation; to
11 provide for assessments; to provide for charges and surcharges; to
12 provide for participating insurers; to provide for eligibility; to provide
13 for insurance; to provide for rates; to provide for contributions by the
14 state; to provide for plan deficits; and to provide for related matters.
15 Be it enacted by the Legislature of Louisiana:

1 Section 1. Subpart B of Part XXX of Chapter 1 of Title 22 of the
2 Louisiana Revised Statutes of 1950, comprised of R.S. 22:1430 through
3 1430.17, is hereby enacted to read as follows:

4 SUBPART B. LOUISIANA CITIZENS PROPERTY

5 INSURANCE CORPORATION

6 §1430. Louisiana Citizens Property Insurance Corporation; declaration
7 and purpose; construction

8 A. It is hereby declared by the Legislature of Louisiana that an
9 adequate market for fire with extended coverage and vandalism and
10 malicious mischief insurance and homeowners coverage is necessary
11 to the economic welfare of the state, including the coastal areas of the
12 state, and that without such insurance the orderly growth and
13 development of the state would be severely impeded; and that adequate
14 insurance upon property is necessary to enable owners of homes and
15 commercial owners to obtain financing for the purchase and
16 improvement of their property. It is further declared that the state has
17 an obligation to provide an equitable method whereby every licensed
18 insurer writing fire, extended coverage and vandalism and malicious
19 mischief and, if necessary, homeowners coverage on a direct basis in
20 Louisiana is required to meet its public responsibility instead of shifting
21 the burden to a few willing and public-spirited insurers. While
22 deserving praise, the financing mechanisms of the former plans were
23 insufficient to meet the needs of this area. It is the purpose of this
24 Subpart to accept this obligation and to provide a mandatory program
25 to assure an adequate market for fire, extended coverage and vandalism
26 and malicious mischief and, if necessary, homeowners insurance in the

1 coastal and other areas of Louisiana. The legislature intends by this
2 Subsection that property insurance be provided and that it continues, as
3 long as necessary, through an entity organized to achieve efficiencies
4 and economies, all toward the achievement of the foregoing public
5 purposes. Therefore, the Louisiana Citizens Property Insurance
6 Corporation, a nonprofit corporation, is hereinafter created, and said
7 corporation shall operate insurance plans which shall function
8 exclusively as residual market mechanisms to provide essential property
9 insurance for residential and commercial property, solely for applicants
10 who are in good faith entitled, but are unable, to procure insurance
11 through the voluntary market. Because it is essential for the
12 corporation to have the maximum financial resources to pay claims
13 following a catastrophic hurricane, it is the intent of the legislature that
14 the income of the corporation be exempt from federal income taxation
15 and that interest on the debt obligations issued by the corporation be
16 exempt from federal income taxation.

17 B. This Subpart shall be liberally construed to effect the purpose
18 under this Section, which shall constitute an aid and guide to
19 interpretation.

20 §1430.1. Definitions

21 As used in this Subpart, unless the context otherwise requires:

22 (1) "Assessable insureds" means insureds who procure a policy
23 of insurance for one or more subject lines of business in this state.

24 (2) "Assessable insurers" means insurers authorized to write one
25 or more subject lines of business in this state.

1 (3) "Coastal area" means all of that area of the state designated
2 in the plan of operation submitted by the governing board, approved by
3 the Louisiana Insurance Rating Commission and designated as Coastal
4 Plan (Louisiana Insurance Underwriting Plan) area.

5 (4) "Coastal Plan" means the successor to that program
6 established by Act 35 of the 1970 Regular Session to provide a residual
7 market for adequate insurance on property in the coastal areas of the
8 state, now available as a program of the Louisiana Citizens Property
9 Insurance Corporation.

10 (5) "Corporation" means the Louisiana Citizens Property
11 Insurance Corporation, and includes the residual market insurance
12 programs known as the "Coastal Plan" and the "FAIR Plan".

13 (6) "Essential property insurance" means any of the following
14 coverages against direct loss to property as defined by the plan of
15 operation approved by the Louisiana Insurance Rating Commission:

16 (a) Fire, with or without extended coverage and vandalism and
17 malicious mischief.

18 (b) Windstorm and hail without fire, but only with respect to
19 dwellings and commercial properties on a monoline basis.

20 (c) Homeowners.

21 (7) "FAIR Plan" means the successor to that program
22 established by Act 424 of the 1992 Regular Session, and designated as
23 the "Fair Access to Insurance Requirements Plan" to provide a residual
24 market for adequate insurance on property in the state, now available
25 as a program of the Louisiana Citizens Property Insurance Corporation.

1 (8) "Governing board" means that board of directors which is
2 established under R.S. 22:1430.3 and, where appropriate, any designee
3 of the governing board.

4 (9) "Insurable property" means real and tangible personal
5 property at a fixed location in Louisiana when such property is in an
6 insurable condition and basic property insurance is not obtainable in the
7 voluntary market and as further defined by the governing board.

8 (10) "Net direct premiums" means gross direct premiums,
9 excluding reinsurance assumed, written for subject lines of business,
10 less return premiums, dividends paid or credited to policyholders, or the
11 unused or unabsorbed portions of premium deposits. In no event shall
12 premiums on industrial fire insurance policies be considered as net
13 direct premiums.

14 (11) "Plan of operation" means the document setting the rules
15 of operation of the corporation, as promulgated by the governing board
16 and approved by the Louisiana Insurance Rating Commission pursuant
17 to the provisions of this Subpart.

18 (12) "Subject lines of business" means insurance written by
19 assessable insurers or procured by assessable insureds on real or
20 personal property, including insurance for fire, allied lines, farmowners
21 multiperil, homeowners multiperil, and the property insurance portion
22 of commercial multiperil policies.

23 §1430.2. Creation of the Louisiana Citizens Property Insurance
24 Corporation

25 A. There is created a private nonprofit corporation to be known
26 as the "Louisiana Citizens Property Insurance Corporation", which shall

1 operate residual market insurance programs, designated as the Coastal
2 Plan and the FAIR Plan, sometimes hereinafter referred to as "the
3 plans", as successors to the Louisiana Insurance Underwriting Plan
4 (Coastal Plan) and the Louisiana Joint Reinsurance Plan (FAIR Plan);
5 and whose domicile for purpose of suit shall be East Baton Rouge
6 Parish, Louisiana. All insurers authorized to write, and engaged in
7 writing, property insurance in the state of Louisiana shall participate in
8 the Coastal Plan and the FAIR Plan as a condition of their authority to
9 transact insurance in this state. The corporation shall perform its
10 functions under a plan of operation established and approved under
11 R.S. 22:1430.7 and shall exercise its powers through a board of
12 directors established under R.S. 22:1430.3.

13 B. Assets of the corporation shall not be considered part of the
14 general fund of the state. The state shall not budget for or provide
15 general fund appropriations to the corporation, and the debts, claims,
16 obligations, and liabilities of the corporation shall not be considered to
17 be a debt of the state or a pledge of its credit.

18 C. Neither the corporation nor the plans shall be required to
19 obtain a certificate of authority from the commissioner of insurance,
20 nor shall they participate in the Louisiana Insurance Guaranty
21 Association.

22 D.(1) Notwithstanding the provisions of Subsections A and B
23 of this Section, and except as provided by Paragraph (2) of this
24 Subsection, the corporation shall be subject to R.S. 42:4.1 through 13
25 and to R.S. 44:1 through 41, and may be considered as if it were a
26 public body for the purpose of those provisions.

1 (2) The corporation may hold an executive session pursuant to
2 R.S. 42:6 for discussion of one or more of the following, and R.S. 44:1
3 through 41 shall not apply to any documents as enumerated in R.S.
4 44:1(A)(2) which relate to one or more of the following:

5 (a) Underwriting files, except that a policyholder or an applicant
6 shall have access to his or her own underwriting files.

7 (b) Claims files, until termination of all litigation and settlement
8 of all claims arising out of the same incident, although portions of the
9 claims files may remain exempt, as otherwise provided by law.
10 Confidential and exempt claims file records may be released to other
11 governmental agencies upon written request and demonstration of need;
12 such records held by the receiving agency remain confidential and
13 exempt as provided for herein.

14 (c) Records obtained or generated by an internal auditor
15 pursuant to a routine audit, until the audit is completed, or if the audit
16 is conducted as part of an investigation, until the investigation is closed
17 or ceases to be active. An investigation is considered "active" while the
18 investigation is being conducted with a reasonable, good faith belief
19 that it could lead to the filing of administrative, civil, or criminal
20 proceedings.

21 (d) Matters reasonably encompassed in privileged attorney-
22 client communications.

23 (e) Proprietary information licensed to the corporation, or either
24 of the plans prior to enactment of this Subpart, under contract, where
25 the contract provides for the confidentiality of such proprietary
26 information.

1 (f) All information relating to the medical condition or medical
2 status of a corporation employee which is not relevant to the employee's
3 capacity to perform his or her duties, except as otherwise provided in
4 this Paragraph. Information which is exempt shall include but is not
5 limited to information relating to workers' compensation, insurance
6 benefits, and retirement or disability benefits.

7 (g) Upon an employee's entrance into an employee assistance
8 program, a program to assist any employee who has a behavioral or
9 medical disorder, substance abuse problem, or emotional difficulty
10 which affects the employee's job performance, all records relative to
11 that participation shall be confidential.

12 (h) Information relating to negotiations for financing,
13 reinsurance, depopulation, or contractual services, until the conclusion
14 of the negotiations.

15 (i) Minutes of closed meetings regarding underwriting files and
16 minutes of closed meetings regarding an open claims file until
17 termination of all litigation and settlement of all claims with regard to
18 that claim, except that information otherwise confidential or exempt by
19 law will be redacted.

20 (3) When an authorized insurer is considering underwriting a
21 risk insured by the corporation, relevant underwriting files and
22 confidential claims files may be released to the insurer provided the
23 insurer agrees in writing, notarized and under oath, to maintain the
24 confidentiality of such files. When a file is transferred to an insurer that
25 file is no longer a public record because it is not held by an agency
26 subject to the provisions of the public records law.

1 (4) The corporation may make the following information
2 obtained from underwriting files and confidential claims files available
3 to licensed general lines insurance producers: name, address, and
4 telephone number of the residential property owner or insured; location
5 of the risk; rating information; loss history; and policy type. The
6 receiving licensed general lines insurance producer must retain the
7 confidentiality of the information received.

8 §1430.3. Board of directors of corporation

9 A. The governing body of the corporation shall be a board of
10 directors which shall consist of the following members:

11 (1) The commissioner of the Department of Insurance, or an
12 employee of the Department of Insurance as his designee.

13 (2) The state treasurer, or an employee of the Department of the
14 Treasury as his designee.

15 (3) The chairman of the House Committee on Insurance, or a
16 member of that committee designated by the chairman.

17 (4) The chairman of the Senate Committee on Insurance, or a
18 member of that committee designated by the chairman.

19 (5) One representative appointed by the governor.

20 (6) One representative appointed by the commissioner.

21 (7) One member appointed by the commissioner from a list of
22 three nominees from the Professional Insurance Agents of Louisiana,
23 or its successor.

24 (8) One member appointed by the commissioner from a list of
25 three nominees from the Independent Insurance Agents of Louisiana,
26 or its successor.

1 (9) Two members appointed by the governor from a list of four
2 nominees from the National Association of Independent Insurers, or its
3 successor.

4 (10) Two members appointed by the governor from a list of four
5 nominees from the American Insurance Association, or its successor.

6 (11) Two members appointed by the governor from a list of four
7 nominees from the Alliance of American Insurers, or its successor.

8 (12) One member appointed by the governor from a list of two
9 nominees from the insurer writing the largest volume in the state of the
10 subject lines of business.

11 B. The quorum necessary for transaction of business is hereby
12 established as seven members of the board in attendance.

13 C. The members of the board shall elect the chairman.

14 D. Members of the board may be reimbursed from the assets of
15 the corporation for expenses incurred by them as members of the board
16 of directors.

17 §1430.4. Coastal Plan and FAIR Plan; re-created and continued

18 A. There is hereby re-created and continued the Louisiana
19 Insurance Underwriting Plan (Coastal Plan), which beginning January
20 1, 2004, shall be available as an insurance program of the Louisiana
21 Citizens Property Insurance Corporation. All assessable insurers shall
22 participate in assessments levied by the Coastal Plan, so long as the
23 Coastal Plan is in existence, as a condition of continuing authority to
24 transact the business of insurance in this state.

25 B. There is hereby re-created and continued the Louisiana Joint
26 Reinsurance Plan (FAIR Plan), which beginning January 1, 2004, shall

1 be available as an insurance program of the Louisiana Citizens Property
2 Insurance Corporation. All assessable insurers shall participate in
3 assessments levied by the FAIR Plan, so long as the FAIR Plan is in
4 existence, as a condition of continuing authority to transact the business
5 of insurance in this state.

6 §1430.5. Immunity from liability

7 A. There shall be no liability on the part of and no cause of
8 action of any nature shall arise against the Louisiana Insurance Rating
9 Commission or any of its staff, or against the governing board of the
10 Louisiana Citizens Property Insurance Corporation or anyone acting on
11 behalf of the corporation or the plans, or against any servicing carrier
12 or carriers, or against any assessable insurer, or against any
13 participating insurance producer, or against the Department of
14 Insurance or its representatives, for any action taken by them in the
15 performance of their duties or responsibilities under this Subpart.

16 B. Such immunity from liability does not apply to:

17 (1) Any of the persons or entities listed in Subsection A hereof
18 for any willful tort or criminal act.

19 (2) The corporation, or insurance producers placing business
20 with one of the plans, for breach of any contract or agreement
21 pertaining to insurance coverage.

22 (3) The corporation with respect to issuance or payment of debt.

23 (4) Any assessable insurer with respect to any action to enforce
24 such insurer's obligations to the corporation under this Subpart.

1 §1430.6. Powers and duties of Louisiana Citizens Property Insurance
2 Corporation

3 A. The Louisiana Citizens Property Insurance Corporation shall
4 operate insurance plans which shall function exclusively as residual
5 market mechanisms to provide essential property insurance for
6 residential and commercial property for applicants who are in good
7 faith entitled, but are unable, to procure insurance through the voluntary
8 market. The corporation shall operate according to a plan of operation
9 pursuant to R.S. 22:1430.7.

10 B. The governing board of the corporation shall, pursuant to the
11 provisions of this Subpart and the plan of operation and with respect to
12 essential property insurance on insurable property, have the power:

13 (1) To cause to be issued policies of insurance to eligible
14 applicants; and

15 (2) To employ or retain such persons as are necessary to
16 perform the duties of the corporation.

17 C. The corporation may:

18 (1) Purchase reinsurance on risks insured by the corporation and
19 the plans.

20 (2) Borrow funds necessary to effect the purposes of this
21 Subpart. In connection therewith, the corporation may agree to such
22 terms and conditions as it deems necessary and proper and the
23 corporation may assign to the state or any agency or authority thereof,
24 or to any private entity, the right to the receipt of assessments levied by
25 the corporation on behalf of one or more of the plans, to the extent
26 necessary to provide for the payment of bonds issued by the state or

1 such agency or authority, or such private agency, for the purpose of
2 providing for the repayment of such borrowings.

3 (3) Sue or be sued. The power to sue includes the power and
4 right to intervene as a party before any court in this state in any matter
5 involving the plans or the corporation's powers and duties.

6 (4) Negotiate and become a party to such contracts as are
7 necessary to carry out the purpose of this Subpart.

8 D. The corporation shall:

9 (1) Maintain separate accounts and records for the Coastal Plan
10 and the FAIR Plan for all policies, revenues, assets, liabilities, losses,
11 and expenses.

12 (2) Retain any profits or excess reserves generated, to be used
13 to offset deficits incurred by the plans. Such retained funds shall be
14 invested pursuant to the limitations set forth in this Title for insurers.

15 (3) Develop and annually reassess a reasonable and prudent
16 reinsurance program, for the benefit of the policyholders of the plans,
17 to enhance the capability of the corporation to timely and efficiently
18 handle claims from a hurricane or other natural disaster.

19 (4) Take all actions necessary to facilitate and maintain tax-free
20 status for the income and operations of the corporation and the plans,
21 and to facilitate tax-free status for bonds or other indebtedness issued
22 by or on behalf of the corporation or the plans.

23 (5) Perform such other acts as are necessary or proper to
24 effectuate the purpose of this Subpart.

1 §1430.7. Plan of operation of Louisiana Citizens Property Insurance
2 Corporation

3 A.(1) A plan of operation adopted by the governing board of the
4 Louisiana Citizens Property Insurance Corporation shall be filed with
5 and approved by the Louisiana Insurance Rating Commission, and filed
6 with the office of property and casualty of the Department of Insurance.
7 The plan of operation shall include the establishment of necessary
8 facilities and operating procedures; management of the corporation;
9 procedures for assessment of assessable insurers and assessable
10 insureds to defray deficits in one or more of the plans; underwriting
11 standards; procedures for the purchase and cession of reinsurance;
12 procedures for determining the amounts of insurance to be provided to
13 specific risks; procedures for processing applicants for insurance; and
14 such other provisions as may be deemed necessary to carry out the
15 purposes of this Subpart.

16 (2) The Louisiana Insurance Rating Commission and the office
17 of property and casualty may, in their discretion, consult with the
18 governing board of the corporation and may seek any further
19 information deemed necessary.

20 B. The governing board of the corporation may, subject to the
21 approval of the Louisiana Insurance Rating Commission, amend the
22 plan of operation at any time. The Louisiana Insurance Rating
23 Commission and the office of property and casualty may review the
24 plan of operation at any time deemed prudent, but not less than once in
25 each calendar year. After review of the plan of operation, the Louisiana
26 Insurance Rating Commission may amend it after consultation with the

1 governing board of the corporation, and upon certification to the
2 governing board of such amendment.

3 C. The Louisiana Insurance Rating Commission may, by order,
4 withdraw all or part of a plan of operation if it determines that
5 conditions have changed since approval was granted, or that the public
6 purpose of the corporation and the plans require changes in the plan of
7 operation.

8 §1430.8. Functions of assessable insurers participating in the Coastal
9 Plan

10 A. All assessable insurers shall participate in assessments of the
11 Coastal Plan in the proportion that the net direct premium of such
12 participant written in this state during the preceding calendar year bears
13 to the aggregate net direct premiums written in this state by all
14 assessable insurers during the preceding calendar year as certified to the
15 governing board of the Louisiana Citizens Property Insurance
16 Corporation by the Louisiana Insurance Rating Commission after
17 review of annual statements, other reports and other statistics the
18 Louisiana Insurance Rating Commission shall deem necessary to
19 provide the information herein required and which the Louisiana
20 Insurance Rating Commission is hereby authorized and empowered to
21 obtain from all assessable insurers. Assessable insurers shall not
22 participate in the gains or losses of the Coastal Plan.

23 B. The governing board of the corporation may adopt, in
24 accordance with the plan of operation approved by the Louisiana
25 Insurance Rating Commission, a credit schedule for essential property
26 insurance voluntarily written in the coastal areas, and participation by

1 assessable insurers in the writings in the Coastal Plan may be reduced
2 in accordance with the provisions of such credit schedule. The
3 governing board shall define the term "essential property insurance" for
4 the purposes of this Section.

5 C. Any insurer who becomes authorized to engage in writing
6 property insurance within Louisiana and who engages in writing
7 property insurance within Louisiana shall become an assessable insurer
8 in the Coastal Plan on January first, immediately following such
9 authorization, and shall cease to be an assessable insurer one year after
10 the end of the first calendar year during which the insurer no longer
11 holds a certificate of authority to transact insurance for subject lines of
12 business in this state.

13 §1430.9. Functions of insurers participating in the FAIR Plan

14 A. All assessable insurers shall participate in assessments of the
15 FAIR Plan in the proportion that the net direct premium of such
16 participant written in this state during the preceding calendar years
17 bears to the aggregate net direct premiums written in this state by all
18 assessable insurers during the preceding calendar year as certified to the
19 governing board of the corporation after review of annual statements,
20 other reports, and other statistics necessary to provide the information
21 herein required and which the Louisiana Insurance Rating Commission
22 is hereby authorized and empowered to obtain from all assessable
23 insurers. Assessable insurers shall not participate in the gains or losses
24 of the FAIR Plan.

25 B. The governing board of the corporation may adopt, in
26 accordance with the plan of operation approved by the Louisiana

1 Insurance Rating Commission, a credit schedule for essential property
2 insurance voluntarily written, and participation by assessable insurers
3 in the writings in the FAIR Plan may be reduced in accordance with the
4 provisions of such credit schedule. The governing board shall define
5 the term "essential property insurance" for the purposes of this Section.

6 C. Any insurer who becomes authorized to engage in writing
7 property insurance within Louisiana and who engages in writing
8 property insurance within Louisiana shall become an assessable insurer
9 in the FAIR Plan on January first immediately following such
10 authorization, and shall cease to be an assessable insurer one year after
11 the end of the first calendar year during which the insurer no longer
12 holds a certificate of authority to transact insurance for subject lines of
13 business in this state.

14 §1430.10. Assessable insureds

15 A. All persons who procure one or more subject lines of
16 business from an assessable insurer are subject to emergency
17 assessment by the corporation, and are referred to collectively as
18 "assessable insureds".

19 B. When an emergency assessment is levied by the corporation,
20 the assessment percentage applicable to each assessable insured is the
21 ratio of the total amount being assessed by the corporation to the
22 aggregate statewide direct written premium for the subject lines of
23 business for the prior year.

24 C. Emergency assessments levied by the corporation on
25 assessable insureds shall be collected by all assessable insurers at the
26 time an assessable insured procures a policy of insurance for a subject

1 line of business. Assessable insurers shall remit the collected
2 emergency assessments to the corporation in accordance with
3 guidelines included in the corporation's plan of operation. Emergency
4 assessments shall not be considered premium.

5 D. Assessable insurers shall be permitted to recoup all regular
6 assessments from their voluntary policyholders by applying a surcharge
7 to all policies issued for subject lines of business. The surcharge shall
8 be a uniform percentage of premium, but shall not be considered
9 premium. Assessable insurers shall cease to collect the recoupment
10 surcharge once the full amount of the regular assessment has been
11 collected. If an assessable insurer recoups more than its fair share of
12 a regular assessment, all funds collected in excess of the insurer's share
13 of the regular assessment shall be remitted to the corporation for use in
14 defraying future deficits. Assessable insurers shall notify the
15 department at least thirty days in advance of the commencement of such
16 a surcharge.

17 §1430.11. Eligibility; application

18 A. Any person having an insurable interest in insurable property
19 is entitled to apply to the corporation, directly or through a
20 representative, for such coverage through the Coastal Plan or the FAIR
21 Plan, and for an inspection of the property. Every such application
22 shall be submitted on forms prescribed by the governing board of the
23 corporation and on file with the office of property and casualty of the
24 Department of Insurance.

25 B. The term "insurable interest" as used in this Section shall be
26 deemed to include any lawful and substantial economic interest in the

1 safety and preservation of property from loss, destruction, or pecuniary
2 damage.

3 C. If the corporation determines that the property is insurable,
4 the corporation, upon receipt of the premium or such portion thereof as
5 is prescribed for either the Coastal Plan or the FAIR Plan, shall cause
6 to be issued the appropriate policy of essential property insurance for
7 a term not exceeding one year. Any policy issued pursuant to the
8 provisions of this Section shall be renewed annually, upon payment of
9 premium due, so long as the property meets the definition of "insurable
10 property".

11 D. If the corporation for any reason denies an application and
12 refuses to cause to be issued an insurance policy on insurable property
13 to any applicant, or takes no action on an application within the time
14 prescribed in the plan of operation, such applicant may appeal to the
15 Louisiana Insurance Rating Commission and the said commission or a
16 member of the commission's staff designated by it, after reviewing the
17 facts, may direct the corporation to issue, or cause to be issued, an
18 appropriate insurance policy to the applicant. In carrying out its duties
19 pursuant to this Section, the Louisiana Insurance Rating Commission
20 may request and the corporation shall provide any information which
21 the Louisiana Insurance Rating Commission deems necessary to a
22 determination concerning the reason for the denial or delay of the
23 application.

24 §1430.12. Rates, rating plans, and rate rules applicable

25 A. As residual markets, the plans made available by the
26 Louisiana Citizens Property Insurance Corporation are not intended to

1 offer rates competitive with the voluntary market. Rates for policies
2 issued under the Coastal Plan and the FAIR Plan shall be set by the
3 governing board of the Louisiana Citizens Property Insurance
4 Corporation, adjusted annually, shall be actuarially justified, and for
5 each parish, the average rates of the plans for each line of business for
6 personal lines residential policies, excluding rates for wind-only
7 policies, shall exceed by at least ten percent the average rates charged
8 by the insurer that had the highest average rate in that parish among the
9 ten insurers with the greatest total direct written premium in the state
10 for that line of business in the preceding year; except that, with respect
11 to mobile home coverages, the average rates of the plans shall exceed
12 by at least ten percent the average rates charged by the insurer that had
13 the highest average rate in that parish among the five insurers with the
14 greatest total written premium for mobile homeowners' policies in the
15 state in the preceding year. Such rates shall include an appropriate
16 catastrophe loading factor, and may include rules for classification of
17 risks insured hereunder and rate modifications hereof.

18 B. In addition to the rates otherwise determined pursuant to this
19 Section, including the premium tax provided for in R.S. 22:1065, the
20 corporation shall impose and collect an additional amount equal to the
21 premium tax provided for in R.S. 22:1065 to augment the financial
22 resources of the corporation. Said additional amount equal to the
23 premium tax shall be designated as a charge accruing to the state of
24 Louisiana, but shall be retained by the corporation as a state
25 contribution to the corporation for the public purpose as set forth in
26 R.S. 22:1430.

1 C. The corporation shall make a rate filing at least once a year
2 for the plans, and nothing in this Section shall require or permit the
3 corporation to adopt a rate that is inadequate under R.S. 22:1401 et seq.

4 §1430.13. Reports of inspection

5 All reports of inspection performed by the corporation shall be
6 made available to the assessable insurers participating in the Coastal
7 Plan and the FAIR Plan, and the Louisiana Insurance Rating
8 Commission. An applicant or his representative shall be entitled to a
9 copy of any inspection report on property in which the applicant has an
10 insurable interest.

11 §1430.14. Annual and quarterly reports

12 A. The corporation shall file in the office of the Louisiana
13 Insurance Rating Commission, and in the office of property and
14 casualty of the Department of Insurance, annual statements which shall
15 summarize the transactions, conditions, operations, and affairs of the
16 Coastal Plan during the preceding fiscal year ending June thirtieth, and
17 the transactions, conditions, operations, and affairs of the FAIR Plan
18 during the preceding fiscal year ending September thirtieth.

19 B. The corporation shall report quarterly to the Louisiana
20 Insurance Rating Commission and the office of property and casualty
21 on the types, premium, exposure, and distribution by parish of its
22 policies in force, and submit such other reports as may be required by
23 the Louisiana Insurance Rating Commission to fulfill its oversight
24 responsibilities.

1 §1430.15. Examination of corporation

2 The commissioner of insurance shall make examinations of the
3 Louisiana Citizens Property Insurance Corporation and the plans in the
4 manner as provided by R.S. 22:1301 for examination of insurers. The
5 expense of such examinations shall be borne and paid by the
6 corporation.

7 §1430.16. Plan deficits; financing

8 A. In the event that the governing board of the Louisiana
9 Citizens Property Insurance Corporation determines that a deficit exists
10 in either the Coastal Plan or the FAIR Plan, the corporation may levy
11 regular and emergency assessments for each effected plan in order to
12 remedy such deficit. An assessment shall not be levied on assessable
13 insurers and assessable insureds unless and until all profits and excess
14 reserves over and above reasonably anticipated recurring operating
15 costs have been exhausted and the governing board has projected a
16 deficit in the plan for which an assessment is to be levied.

17 B. When the deficit incurred in a particular calendar year is not
18 greater than ten percent of the aggregate statewide direct written
19 premium for the subject lines of business for the prior calendar year, the
20 entire deficit shall be recovered through regular assessments of
21 assessable insurers.

22 C. When the deficit incurred in a particular calendar year
23 exceeds ten percent of the aggregate statewide direct written premium
24 for the subject lines of business for the prior calendar year, the
25 corporation shall levy regular assessments on assessable insurers in an
26 amount equal to the greater of ten percent of the deficit or ten percent

1 of the aggregate statewide direct written premium for the subject lines
2 of business for the prior calendar year. Any remaining deficit shall be
3 recovered through emergency assessments.

4 D. Each assessable insurer's share of any regular assessment
5 under Subsection B or C of this Section shall be calculated in
6 accordance with R.S. 22:1430.8 and 1430.9. Assessments levied by the
7 corporation on assessable insurers under Subsection B or C of this
8 Section shall be paid as required by the corporation's plan of operation.

9 E. Upon a determination by the governing board that a deficit
10 in a plan exceeds the amount that will be recovered through regular
11 assessments under Subsection B or C of this Section, the governing
12 board shall levy, after verification by the department, emergency
13 assessments, for as many years as necessary to cover the deficits, to be
14 collected by assessable insurers and the corporation and collected from
15 all assessable insureds upon issuance or renewal of policies for subject
16 lines of business, excluding National Flood Insurance policies. The
17 amount of the emergency assessment collected in a particular year shall
18 be a uniform percentage of that year's direct written premium for
19 subject lines of business and all plan accounts of the corporation,
20 excluding National Flood Insurance Program policy premiums, as
21 annually determined by the governing board and verified by the
22 department. The department shall verify the arithmetic calculations
23 involved in the governing board's determination within thirty days after
24 receipt of the information on which the determination was based.
25 Notwithstanding any other provision of law, the corporation and each
26 assessable insurer that writes subject lines of business shall collect

1 emergency assessments from its policyholders without such obligation
2 being affected by any credit, limitation, exemption, or deferment.
3 Emergency assessments levied by the corporation on assessable
4 insureds shall be collected by assessable insurers in accordance with
5 guidelines included in the corporation's plan of operation. The
6 emergency assessments so collected shall be held by the corporation
7 solely in the applicable plan account. The aggregate amount of
8 emergency assessments levied for a plan under this Subsection in any
9 calendar year may not exceed the greater of ten percent of the amount
10 needed to cover the original deficit, plus interest, fees, commissions,
11 required reserves, and other costs associated with financing of the
12 original deficit, or ten percent of the aggregate statewide direct written
13 premium for subject lines of business and for all plan accounts of the
14 corporation for the prior year, plus interest, fees, commissions, required
15 reserves, and other costs associated with financing the original deficit.
16 Emergency assessments shall be shown separately on the declarations
17 page of policies issued for subject lines of business, and shall not be
18 considered premium, nor subject to any premium taxes or other
19 charges.

20 F. Policies issued by the corporation shall be subject to
21 emergency assessments, as specified in Subsection E hereof.
22 Furthermore, when a regular assessment is levied, all policies shall be
23 subject to a market equalization charge. The market equalization
24 charge shall be a uniform percentage of premium. The market
25 equalization charge percentage shall be the ratio of the total regular
26 assessment levied by the corporation to the aggregate statewide direct

1 written premium for subject lines of business for the prior year. The
2 market equalization charge shall not be considered premium.
3 Assessable insurers shall notify the Louisiana Insurance Rating
4 Commission at least thirty days in advance of the commencement of
5 such a charge.

6 G. The corporation may pledge the proceeds of assessments,
7 insurance and reinsurance recoverables, surcharges, and other funds
8 available to the corporation as the source of revenue for and to secure
9 bonds or other indebtedness, or lines of credit or other financing
10 mechanisms issued or created under this Subsection, or to retire any
11 other debt incurred as a result of deficits or events giving rise to
12 deficits, or in any other way that the governing board determines will
13 efficiently recover such deficits. The purpose of the lines of credit or
14 other financing mechanisms is to provide additional resources to assist
15 the corporation in covering claims and expenses attributable to a
16 catastrophe. As used in this Subsection, the term "assessments"
17 includes regular assessments under Subsection B or C of this Section,
18 and emergency assessments under Subsection E of this Section.
19 Emergency assessments collected under Subsection E of this Section
20 are not part of an insurer's rates, are not premium, and are not subject
21 to premium tax, fees, or commissions. However, failure to pay the
22 emergency assessment shall be treated as failure to pay premium. The
23 emergency assessments under Subsection E of this Section shall
24 continue as long as any bonds issued or other indebtedness incurred
25 with respect to a deficit for which the assessment was imposed remain
26 outstanding, unless adequate provision has been made for the payment

1 of such bonds or other indebtedness pursuant to the documents
2 governing such bonds or other indebtedness.

3 H. The office of property and casualty shall determine annually
4 the aggregate statewide written premium in subject lines of business
5 and shall report that information to the corporation in a form and at a
6 time the corporation specifies to ensure that the corporation can meet
7 the requirements of this Section and the corporation's financing
8 obligations.

9 §1430.17. Louisiana Citizens Property Insurance Corporation not
10 taxable

11 The corporation shall be considered a political instrumentality
12 of the state, and shall be exempt from any corporate income tax.
13 However, the corporation is not and shall not be deemed a department,
14 unit, or agency of the state. All debts, claims, obligations, and
15 liabilities of the corporation, whenever and however incurred, shall be
16 the debts, claims, obligations, and liabilities of the corporation only,
17 and not of the state, its agencies, officers, or employees. Corporation
18 funds shall not be considered part of the general fund of the state, and
19 the state shall not appropriate corporation funds. The state's
20 contribution to the corporation is limited to those funds collected by the
21 corporation pursuant to the authority granted under R.S. 22:1430.12(B)
22 of this Subpart, and the state shall not budget for or provide general
23 fund appropriations to the corporation. The premiums, assessments,
24 investment income, and other revenue of the corporation are funds
25 received for providing property insurance coverage as required by this
26 Section, paying claims for Louisiana citizens insured by the

1 corporation's plans, securing and repaying debt obligations issued by
2 the corporation, and conducting all other activities of the corporation,
3 and shall not be considered taxes, fees, licenses, or charges for services
4 imposed by the legislature on individuals, businesses, or agencies
5 outside state government. It is the intent of the legislature that the tax
6 exemptions provided in this Section will augment the financial
7 resources of the corporation to better enable fulfillment of the public
8 purpose. Any bonds issued by or on behalf of the corporation and the
9 plans, their transfer, and the income therefrom, including any profit
10 made on the sale thereof, shall at all times be free from taxation of
11 every kind by the state and any political subdivision or local unit or
12 other instrumentality thereof.

13 Section 2. R.S. 22:1406.1 through 1406.13 and 1431 through 1445 are
14 hereby repealed in their entirety.

15 Section 3. The Louisiana State Law Institute is hereby authorized and
16 requested to redesignate R.S. 22:1401 through 1424 as Subpart A of Part XXX
17 of Chapter 1 of Title 22 and entitled as "Subpart A. Rate Making Procedures
18 and Organizations"; and to redesignate R.S. 22:1446 and 1447 as Subpart C
19 of Part XXX of Chapter 1 of Title 22 and entitled as "Subpart C. Rules,
20 Enforcement, and Miscellaneous Provisions".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Morrish, Sen. Dardenne

HB No. 1788

Abstract: Creates the Louisiana Citizens Property Insurance Corporation to operate and manage the FAIR and Coastal plans. The corporation is subject to oversight by the Louisiana Insurance Rating Commission and

the commissioner of insurance. The insurers are required to participate and are subject to assessments by the corporation.

Proposed law creates the Louisiana Citizens Property Insurance Corporation, a nonprofit entity, to operate and manage the FAIR and Coastal plans for the purpose of providing access to adequate property insurance for designated areas of the state, including the coastal areas.

Proposed law provides that the assets of the Louisiana Citizens Property Insurance Corporation may not be considered as part of the general fund of the state and the state may not provide general funds to the corporation.

Proposed law exempts the corporation from the necessity of a certificate of authority from the commissioner of insurance.

Proposed law provides that the corporation and the plans are subject to the statutory provisions on open meetings (R.S. 42:4.1 through 13) and public records (R.S. 44:1 through 4) as if it were a public body, except the following:

- (1) Underwriting files.
- (2) Claims files until termination of litigation.
- (3) Audit records until the audit is complete.
- (4) Matters subject to attorney-client privilege.
- (5) Proprietary information licensed to the corporation.
- (6) Medical records of employees.
- (7) Employee records of participation in behavior disorder assistance program.
- (8) Information on financial negotiations.
- (9) Minutes of closed meetings on underwriting files.

Proposed law provides for a 15-member board of directors comprised as follows:

- (1) Commissioner of insurance, or an employee of the department as his designee.
- (2) The state treasurer, or his employee designee.
- (3) The chair of the House Committee on Insurance or a designated member.
- (4) The chair of the Senate Committee on Insurance, or a designated member.

- (5) One representative, appointed by the governor.
- (6) One representative, appointed by the commissioner.
- (7) One member appointed by the commissioner from a list of three nominees from the Professional Insurance Agents of Louisiana, or its successor.
- (8) One member appointed by the commissioner from a list of three nominees from the Independent Insurance Agents of Louisiana, or its successor.
- (9) Two members appointed by the governor from a list of four nominees from the National Association of Independent Insurers, or its successor.
- (10) Two members appointed by the governor from a list of four nominees from the American Insurance Association, or its successor.
- (11) Two members appointed by the governor from a list of four nominees from the Alliance of American Insurers, or its successor.
- (12) One member appointed by the governor from a list of two nominees submitted by the insurer writing the largest volume of business in the state.

Proposed law re-creates and continues the FAIR and Coastal Plans as of January 1, 2004, to be operated and managed by the Louisiana Citizens Property Insurance Corporation.

Proposed law requires all insurers authorized to write property insurance on a direct basis to participate in the Coastal and FAIR plans so long as the plans exist.

Proposed law provides that the corporation and its governing board and staff shall not be liable for any inspections made, statements made in reports, or communication concerning risk that are made in good faith in connection with the provision of proposed law.

Proposed law provides for the powers and duties of the corporation including the power to:

- (1) Cause insurance policies to be issued.
- (2) Assume reinsurance from participants.
- (3) Purchase reinsurance on risks.
- (4) Borrow funds.
- (5) Sue or be sued.
- (6) Negotiate and become a party to contracts.

Proposed law requires the corporation to:

- (1) Maintain separate accounts for the FAIR and Coastal plans.
- (2) Retain profits or excess revenues.
- (3) Develop a reinsurance plan.
- (4) Take actions to maintain a tax-free status.

Proposed law provides that the plan of operation and any amendments are subject to approval by the rating commission. The plan of operation may include the assessment procedure, management of the corporation, procedures for assessment for the FAIR and Coastal plans, procedures for determining amounts of insurance for risks, and procedure for processing applicants.

Proposed law requires assessable insurance companies to participate in assessments of the Coastal Plan in proportion to the net direct premium of the participant written during the preceding calendar year as it bears to the total aggregate premiums written by all assessable insurers, as certified by the governing board of the corporation.

Proposed law provides that the governing board adopt a credit schedule for essential property insurance voluntarily written in the coastal areas. Participation by assessable insurers may be reduced in accordance with the credit schedule.

Proposed law requires assessable insurance companies to participate in assessments of the FAIR Plan in proportion to the net direct premium of the participant written during the preceding calendar year as it bears to the total aggregate premiums written by all assessable insurers, as certified by governing board of the corporation.

Proposed law provides that governing board adopt a credit schedule for essential property insurance voluntarily written in the designated areas under the FAIR plan. Participation by assessable insurers may be reduced in accordance with the credit schedule.

Proposed law provides for emergency assessments levied on assessable insurers. Provides for the remittance of the assessments. They are not considered to be premiums.

Proposed law provides for procedures for recoupment by assessable insurers of regular assessments by applying a surcharge on all policies issued for subject lines of business.

Proposed law provides that persons having an insurable interest in insurable property may apply to the corporation for coverage under the FAIR and Coastal plans. Any policy issued may have a term up to one year.

Proposed law allows an applicant who has been refused insurance by the corporation to appeal that decision to the Louisiana Insurance Rating Commission.

Proposed law provides that rates for policies under the FAIR and Coastal plans are not intended to be competitive and the rates are set by the corporation, adjusted annually, and shall be actuarially justified. The rates must be at least 10% above the average rates charged by the insurer with the highest average rate.

Proposed law provides that an additional amount equal to the premium tax is collected and retained by the corporation as the contribution by the state for the public purpose set out by proposed law.

Proposed law provides that reports of inspections by the corporation are available to the insurers participating in the FAIR and Coastal plans and to the applicant.

Proposed law requires annual and quarterly reports by the corporation to the Louisiana Insurance Rating Commission.

Proposed law authorizes the commissioner of insurance to examine the corporation and the FAIR and Coastal plans.

Proposed law authorizes the corporation to assess insurers participating in the FAIR and Coastal plans to remedy any deficit in the plans. When the deficit is 10% or less, the deficit is to be recovered through the regular assessment.

Proposed law provides that when the deficit is greater than 10%, the first 10% of the deficit is recoverable through regular assessments over two years. The excess deficit over 10% is to be recovered through an emergency assessment.

Proposed law provides that emergency assessments to cover excess deficits may be over as many years as is necessary as determined by the corporation. It is to be collected by the assessable insured upon the issuance or renewal their policies except National Flood Insurance policies.

Proposed law provides that the aggregate amount of the emergency assessment may not exceed the greater of 10% of the original deficit or 10% of the aggregate statewide direct premium.

Proposed law provides that policies subject to emergency assessments are also subject to a market equalization charge which is a uniform percentage of premium. It is not considered to be a premium. The insurance company must notify the commission at least 30 days in advance of the commencement of the charge.

Proposed law authorizes the corporation to pledge the assessments, insurance recoverables, surcharges, and other funds as a source of revenue to secure bonds and other indebtedness or lines of credit.

Proposed law provides that the purpose of the financing mechanisms is to provide additional resources for the corporation to cover claims and expenses attributable to a catastrophe.

Proposed law requires the office of property and casualty to determine annually the aggregate statewide written premium and to report that to the corporation.

Proposed law provides that the revenue received by the corporation is not considered to be taxes, fees, licenses, or charges by the legislature. and that any bonds issued by the corporation and the income therefrom is tax free.

Proposed law authorizes the Louisiana Insurance Rating Commission to adopt rules to carry out proposed law.

Proposed law authorizes the Louisiana State Law Institute to redesignate certain provisions of the present law.

(Adds R.S. 22:1430-1430.17; Repeals R.S. 22:1406.1-1406.13 and 1431-1445)