

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                     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       §1430.1. Definitions

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

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

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

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

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

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

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

12                  (a) Fire, with or without extended coverage and vandalism and  
13                  malicious mischief.

14                  (b) Windstorm and hail without fire, but only with respect to  
15                  dwelling and commercial properties on a monoline basis.

16                  (c) Homeowners.

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

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

25                  (9) "Insurable property" means real and tangible personal  
26                  property at a fixed location in Louisiana when such property is in an

1        insurable condition and basic property insurance is not obtainable in the  
2        voluntary market and as further defined by the governing board.

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

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

13               (12) "Subject lines of business" means the following lines of  
14       business: fire, allied lines, farmowners multiperil, homeowners  
15       multiperil, and the property insurance portion of commercial multiperil  
16       policies.

17       §1430.2. Creation of the Louisiana Citizens Property Insurance  
18       Corporation

19               A. There is created a private nonprofit corporation to be known  
20       as the "Louisiana Citizens Property Insurance Corporation", which shall  
21       operate residual market insurance programs, designated as the Coastal  
22       Plan and the FAIR Plan, sometimes hereinafter referred to as "the  
23       plans", as successors to the Louisiana Insurance Underwriting Plan  
24       (Coastal Plan) and the Louisiana Joint Reinsurance Plan (FAIR Plan);  
25       and whose domicile for purpose of suit shall be East Baton Rouge  
26       Parish, Louisiana. All insurers authorized to write, and engaged in

1        writing, property insurance in the state of Louisiana shall participate in  
2        the Coastal Plan and the FAIR Plan as a condition of their authority to  
3        transact insurance in this state. The corporation shall perform its  
4        functions under a plan of operation established and approved under  
5        R.S. 22:1430.7 and shall exercise its powers through a board of  
6        directors established under R.S. 22:1430.3.

7                B. Assets of the corporation shall not be considered part of the  
8        general fund of the state. The state shall not budget for or provide  
9        general fund appropriations to the corporation, and the debts, claims,  
10       obligations, and liabilities of the corporation shall not be considered to  
11       be a debt of the state or a pledge of its credit.

12               C. Neither the corporation nor the plans shall be required to  
13       obtain a certificate of authority from the commissioner of insurance,  
14       nor shall they participate in the Louisiana Insurance Guaranty  
15       Association.

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

21               (2) The corporation may hold an executive session pursuant to  
22       R.S. 42:6 for discussion of one or more of the following, and R.S. 44:1  
23       through 41 shall not apply to any documents as enumerated in R.S.  
24       44:1(A)(2) which relate to one or more of the following:

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

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

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

15           **(d) Matters reasonably encompassed in privileged attorney-**  
16           **client communications.**

17           **(e) Proprietary information licensed to the corporation, or either**  
18           **of the plans prior to enactment of this Subpart, under contract, where**  
19           **the contract provides for the confidentiality of such proprietary**  
20           **information.**

21           **(f) All information relating to the medical condition or medical**  
22           **status of a corporation employee which is not relevant to the employee's**  
23           **capacity to perform his or her duties, except as otherwise provided in**  
24           **this Paragraph. Information which is exempt shall include but is not**  
25           **limited to information relating to workers' compensation, insurance**  
26           **benefits, and retirement or disability benefits.**

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

6           (h) Information relating to negotiations for financing,  
7           reinsurance, depopulation, or contractual services, until the conclusion  
8           of the negotiations.

9           (i) Minutes of closed meetings regarding underwriting files and  
10          minutes of closed meetings regarding an open claims file until  
11          termination of all litigation and settlement of all claims with regard to  
12          that claim, except that information otherwise confidential or exempt by  
13          law will be redacted.

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

21          (4) The corporation may make the following information  
22          obtained from underwriting files and confidential claims files available  
23          to licensed general lines insurance producers: name, address, and  
24          telephone number of the residential property owner or insured; location  
25          of the risk; rating information; loss history; and policy type. The



1        receiving licensed general lines insurance producer must retain the  
2        confidentiality of the information received.

3        §1430.3. Board of directors of corporation

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

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

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

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

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

14               (5) One representative appointed by the governor.

15               (6) One representative appointed by the commissioner.

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

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

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

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

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

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

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

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

9                   D. The members of the board shall receive no salary, but each  
10                  member shall be reimbursed for necessary travel and other expenses  
11                  actually incurred while in attendance at the meetings of the board or on  
12                  business for the board.

13                  §1430.4. Coastal Plan and FAIR Plan; re-created and continued

14                  A. There is hereby re-created and continued the Louisiana  
15                  Insurance Underwriting Plan (Coastal Plan), which beginning January  
16                  1, 2004, shall be available as an insurance program of the Louisiana  
17                  Citizens Property Insurance Corporation. All assessable insurers shall  
18                  participate in assessments levied by the Coastal Plan, so long as the  
19                  Coastal Plan is in existence, as a condition of continuing authority to  
20                  transact the business of insurance in this state.

21                  B. There is hereby re-created and continued the Louisiana Joint  
22                  Reinsurance Plan (FAIR Plan), which beginning January 1, 2004, shall  
23                  be available as an insurance program of the Louisiana Citizens Property  
24                  Insurance Corporation. All assessable insurers shall participate in  
25                  assessments levied by the FAIR Plan, so long as the FAIR Plan is in

1 existence, as a condition of continuing authority to transact the business  
2 of insurance in this state.

3 §1430.5. Immunity from liability

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

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

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

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

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

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

22 §1430.6. Powers and duties of Louisiana Citizens Property Insurance  
23 Corporation

24 A. The Louisiana Citizens Property Insurance Corporation shall  
25 operate insurance plans which shall function exclusively as residual  
26 market mechanisms to provide essential property insurance for

1        residential and commercial property for applicants who are in good  
2        faith entitled, but are unable, to procure insurance through the voluntary  
3        market. The corporation shall operate according to a plan of operation  
4        pursuant to R.S. 22:1430.7.

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

8                (1) To cause to be issued policies of insurance to eligible  
9        applicants; and

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

12               C. The corporation may:

13               (1) Purchase reinsurance on risks insured by the corporation and  
14        the plans.

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

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

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

3                   D. The corporation shall:

4                   (1) Maintain separate accounts and records for the Coastal Plan  
5                   and the FAIR Plan for all policies, revenues, assets, liabilities, losses,  
6                   and expenses.

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

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

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

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

20                  §1430.7. Plan of operation of Louisiana Citizens Property Insurance  
21                  Corporation

22                  A.(1) A plan of operation adopted by the governing board of the  
23                  Louisiana Citizens Property Insurance Corporation shall be filed with  
24                  and approved by the Louisiana Insurance Rating Commission, and filed  
25                  with the office of property and casualty of the Department of Insurance.  
26                  The plan of operation shall include the establishment of necessary

1 facilities and operating procedures; management of the corporation;  
2 procedures for assessment of assessable insurers and assessable  
3 insureds to defray deficits in one or more of the plans; underwriting  
4 standards; procedures for the purchase and cession of reinsurance;  
5 procedures for determining the amounts of insurance to be provided to  
6 specific risks; procedures for processing applicants for insurance; and  
7 such other provisions as may be deemed necessary to carry out the  
8 purposes of this Subpart.

9 (2) The Louisiana Insurance Rating Commission and the office  
10 of property and casualty may, in their discretion, consult with the  
11 governing board of the corporation and may seek any further  
12 information deemed necessary.

13 B. The governing board of the corporation may, subject to the  
14 approval of the Louisiana Insurance Rating Commission, amend the  
15 plan of operation at any time. The Louisiana Insurance Rating  
16 Commission and the office of property and casualty may review the  
17 plan of operation at any time deemed prudent, but not less than once in  
18 each calendar year. After review of the plan of operation, the Louisiana  
19 Insurance Rating Commission may amend it after consultation with the  
20 governing board of the corporation, and upon certification to the  
21 governing board of such amendment.

22 C. The Louisiana Insurance Rating Commission may, by order,  
23 withdraw all or part of a plan of operation if it determines that  
24 conditions have changed since approval was granted, or that the public  
25 purpose of the corporation and the plans require changes in the plan of  
26 operation.

1        §1430.8. Functions of assessable insurers participating in the Coastal  
2                    Plan

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

16                  B. The governing board of the corporation may adopt, in  
17                  accordance with the plan of operation approved by the Louisiana  
18                  Insurance Rating Commission, a credit schedule for essential property  
19                  insurance voluntarily written in the coastal areas, and participation by  
20                  assessable insurers in the writings in the Coastal Plan may be reduced  
21                  in accordance with the provisions of such credit schedule. The  
22                  governing board shall define the term "essential property insurance" for  
23                  the purposes of this Section.

24                  C. Any insurer who becomes authorized to engage in writing  
25                  property insurance within Louisiana and who engages in writing  
26                  property insurance within Louisiana shall become an assessable insurer

1        in the Coastal Plan on January first, immediately following such  
2        authorization, and shall cease to be an assessable insurer one year after  
3        the end of the first calendar year during which the insurer no longer  
4        holds a certificate of authority to transact insurance for subject lines of  
5        business in this state.

6        §1430.9. Functions of insurers participating in the FAIR Plan

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

18           B. The governing board of the corporation may adopt, in  
19        accordance with the plan of operation approved by the Louisiana  
20        Insurance Rating Commission, a credit schedule for essential property  
21        insurance voluntarily written, and participation by assessable insurers  
22        in the writings in the FAIR Plan may be reduced in accordance with the  
23        provisions of such credit schedule. The governing board shall define  
24        the term "essential property insurance" for the purposes of this Section.

25           C. Any insurer who becomes authorized to engage in writing  
26        property insurance within Louisiana and who engages in writing



1 property insurance within Louisiana shall become an assessable insurer  
2 in the FAIR Plan on January first immediately following such  
3 authorization, and shall cease to be an assessable insurer one year after  
4 the end of the first calendar year during which the insurer no longer  
5 holds a certificate of authority to transact insurance for subject lines of  
6 business in this state.

7 §1430.10. Assessable insureds

8 A. All persons who procure one or more subject lines of  
9 business from an assessable insurer are subject to emergency  
10 assessment by the corporation, and are referred to collectively as  
11 "assessable insureds".

12 B. When an emergency assessment is levied by the corporation,  
13 the assessment percentage applicable to each assessable insured is the  
14 ratio of the total amount being assessed by the corporation to the  
15 aggregate statewide direct written premium for the subject lines of  
16 business for the prior year.

17 C. Emergency assessments levied by the corporation on  
18 assessable insureds shall be collected by all assessable insurers at the  
19 time an assessable insured procures a policy of insurance for a subject  
20 line of business. Assessable insurers shall remit the collected  
21 emergency assessments to the corporation in accordance with  
22 guidelines included in the corporation's plan of operation. Emergency  
23 assessments shall not be considered premium.

24 D. Assessable insurers shall be permitted to recoup all regular  
25 assessments from their voluntary policyholders by applying a surcharge  
26 to all policies issued for subject lines of business. The surcharge shall

1        be a uniform percentage of premium, but shall not be considered  
2        premium. Assessable insurers shall cease to collect the recoupment  
3        surcharge once the full amount of the regular assessment has been  
4        collected. If an assessable insurer recoups more than its fair share of  
5        a regular assessment, all funds collected in excess of the insurer's share  
6        of the regular assessment shall be remitted to the corporation for use in  
7        defraying future deficits. Assessable insurers shall notify the  
8        department at least thirty days in advance of the commencement of such  
9        a surcharge.

10        §1430.11. Eligibility; application

11                A. Any person having an insurable interest in insurable property  
12        is entitled to apply to the corporation, directly or through a  
13        representative, for such coverage through the Coastal Plan or the FAIR  
14        Plan, and for an inspection of the property. Every such application  
15        shall be submitted on forms prescribed by the governing board of the  
16        corporation and on file with the office of property and casualty of the  
17        Department of Insurance.

18                B. The term "insurable interest" as used in this Section shall be  
19        deemed to include any lawful and substantial economic interest in the  
20        safety and preservation of property from loss, destruction, or pecuniary  
21        damage.

22                C. If the corporation determines that the property is insurable,  
23        the corporation, upon receipt of the premium or such portion thereof as  
24        is prescribed for either the Coastal Plan or the FAIR Plan, shall cause  
25        to be issued the appropriate policy of essential property insurance for  
26        a term not exceeding one year. Any policy issued pursuant to the

1        provisions of this Section shall be renewed annually, upon payment of  
2        premium due, so long as the property meets the definition of "insurable  
3        property".

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

17       §1430.12. Rates, rating plans, and rate rules applicable

18            A. As residual markets, the plans made available by the  
19        Louisiana Citizens Property Insurance Corporation are not intended to  
20        offer rates competitive with the voluntary market. Rates for policies  
21        issued under the Coastal Plan and the FAIR Plan shall be set by the  
22        governing board of the Louisiana Citizens Property Insurance  
23        Corporation, adjusted annually, shall be actuarially justified, and for  
24        each parish, the average rates of the plans for each line of business for  
25        personal lines residential policies, excluding rates for wind-only  
26        policies, shall exceed by at least ten percent the average rates charged

1        by the insurer that had the highest average rate in that parish among the  
2        ten insurers with the greatest total direct written premium in the state  
3        for that line of business in the preceding year; except that, with respect  
4        to mobile home coverages, the average rates of the plans shall exceed  
5        by at least ten percent the average rates charged by the insurer that had  
6        the highest average rate in that parish among the five insurers with the  
7        greatest total written premium for mobile homeowners' policies in the  
8        state in the preceding year. Such rates shall include an appropriate  
9        catastrophe loading factor, and may include rules for classification of  
10       risks insured hereunder and rate modifications hereof.

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

20            C. The corporation shall make a rate filing at least once a year  
21        for the plans, and nothing in this Section shall require or permit the  
22        corporation to adopt a rate that is inadequate under R.S. 22:1401 et seq.  
23        §1430.13. Reports of inspection

24            All reports of inspection performed by the corporation shall be  
25        made available to the assessable insurers participating in the Coastal  
26        Plan and the FAIR Plan, and the Louisiana Insurance Rating

1        Commission. An applicant or his representative shall be entitled to a  
2        copy of any inspection report on property in which the applicant has an  
3        insurable interest.

4        §1430.14. Annual and quarterly reports

5            A. The corporation shall file in the office of the Louisiana  
6        Insurance Rating Commission, and in the office of property and  
7        casualty of the Department of Insurance, annual audited statements  
8        which shall summarize the transactions, conditions, operations, and  
9        affairs of the Coastal Plan during the preceding fiscal year ending June  
10       thirtieth, and the transactions, conditions, operations, and affairs of the  
11       FAIR Plan during the preceding fiscal year ending September thirtieth.

12           B. The corporation shall report quarterly to the Louisiana  
13       Insurance Rating Commission and the office of property and casualty  
14       on the types, premium, exposure, and distribution by parish of its  
15       policies in force, and submit such other reports as may be required by  
16       the Louisiana Insurance Rating Commission to fulfill its oversight  
17       responsibilities.

18       §1430.15. Examination of corporation

19           The commissioner of insurance shall make examinations of the  
20       Louisiana Citizens Property Insurance Corporation and the plans in the  
21       manner as provided by R.S. 22:1301 for examination of insurers. The  
22       expense of such examinations shall be borne and paid by the  
23       corporation. The corporation and the plans shall be subject to  
24       examination by the legislative auditor.

1           §1430.16. Plan deficits; financing

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

11                  B. When the deficit incurred in a particular calendar year is not  
12                  greater than ten percent of the aggregate statewide direct written  
13                  premium for the subject lines of business for the prior calendar year, the  
14                  entire deficit shall be recovered through regular assessments of  
15                  assessable insurers.

16                  C. When the deficit incurred in a particular calendar year  
17                  exceeds ten percent of the aggregate statewide direct written premium  
18                  for the subject lines of business for the prior calendar year, the  
19                  corporation shall levy regular assessments on assessable insurers in an  
20                  amount equal to the greater of ten percent of the deficit or ten percent  
21                  of the aggregate statewide direct written premium for the subject lines  
22                  of business for the prior calendar year. Any remaining deficit shall be  
23                  recovered through emergency assessments.

24                  D. Each assessable insurer's share of any regular assessment  
25                  under Subsection B or C of this Section shall be calculated in  
26                  accordance with R.S. 22:1430.8 and 1430.9. Assessments levied by the

1           ~~corporation on assessable insurers under Subsection B or C of this~~  
2           ~~Section shall be paid as required by the corporation's plan of operation.~~

3           E. Upon a determination by the governing board that a deficit  
4           in a plan exceeds the amount that will be recovered through regular  
5           assessments under Subsection B or C of this Section, the governing  
6           board shall levy, after verification by the department, emergency  
7           assessments, for as many years as necessary to cover the deficits, to be  
8           collected by assessable insurers and the corporation and collected from  
9           all assessable insureds upon issuance or renewal of policies for subject  
10          lines of business, excluding National Flood Insurance policies. The  
11          amount of the emergency assessment collected in a particular year shall  
12          be a uniform percentage of that year's direct written premium for  
13          subject lines of business and all plan accounts of the corporation,  
14          excluding National Flood Insurance Program policy premiums, as  
15          annually determined by the governing board and verified by the  
16          department. The department shall verify the arithmetic calculations  
17          involved in the governing board's determination within thirty days after  
18          receipt of the information on which the determination was based.  
19          Notwithstanding any other provision of law, the corporation and each  
20          assessable insurer that writes subject lines of business shall collect  
21          emergency assessments from its policyholders without such obligation  
22          being affected by any credit, limitation, exemption, or deferment.  
23          Emergency assessments levied by the corporation on assessable  
24          insureds shall be collected by assessable insurers in accordance with  
25          guidelines included in the corporation's plan of operation. The  
26          emergency assessments so collected shall be held by the corporation

1        solely in the applicable plan account. The aggregate amount of  
2        emergency assessments levied for a plan under this Subsection in any  
3        calendar year may not exceed the greater of ten percent of the amount  
4        needed to cover the original deficit, plus interest, fees, commissions,  
5        required reserves, and other costs associated with financing of the  
6        original deficit, or ten percent of the aggregate statewide direct written  
7        premium for subject lines of business and for all plan accounts of the  
8        corporation for the prior year, plus interest, fees, commissions, required  
9        reserves, and other costs associated with financing the original deficit.  
10       Emergency assessments shall be shown separately on the declarations  
11       page of policies issued for subject lines of business, and shall not be  
12       considered premium, nor subject to any premium taxes or other  
13       charges.

14       F. Policies issued by the corporation shall be subject to  
15       emergency assessments, as specified in Subsection E hereof.  
16       Furthermore, when a regular assessment is levied, all policies shall be  
17       subject to a market equalization charge. The market equalization  
18       charge shall be a uniform percentage of premium. The market  
19       equalization charge percentage shall be the ratio of the total regular  
20       assessment levied by the corporation to the aggregate statewide direct  
21       written premium for subject lines of business for the prior year. The  
22       market equalization charge shall not be considered premium.  
23       Assessable insurers shall notify the Louisiana Insurance Rating  
24       Commission at least thirty days in advance of the commencement of  
25       such a charge.



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

24           H. The office of property and casualty shall determine annually  
25          the aggregate statewide written premium in subject lines of business  
26          and shall report that information to the corporation in a form and at a

1        time the corporation specifies to ensure that the corporation can meet  
2        the requirements of this Section and the corporation's financing  
3        obligations.

4                I. All bonds, other indebtedness, lines of credit, or other  
5        financing mechanisms under this Section shall be approved by the  
6        Louisiana State Bond Commission.

7                J. Under no circumstances shall it be construed that the full faith  
8        and credit of the state of Louisiana be used to secure the bonds or  
9        indebtedness issued under this Section. Any offering documents  
10       associated with any debts under this Section shall clearly state it is not  
11       secured by the full faith and credit of the state.

12       §1430.17. Louisiana Citizens Property Insurance Corporation not  
13       taxable

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

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

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

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

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DIGEST

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

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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 provides that members of the board may be reimbursed for necessary travel and actual expenses for attending meetings and while on board business.

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 of 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 requires the corporation to file with the Louisiana Insurance Rating Commission and the office of property and casualty an annual audited statement.

Proposed law requires the commissioner of insurance to make examinations of the corporation and the plans. Provides that the corporation and the plans are subject to examination by the legislative auditor.

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 requires bonds, other indebtedness, lines of credit, and other financing to be approved by the Louisiana State Bond Commission.

Proposed law prohibits construing proposed law to use the full faith and credit of the state to secure the bonds. Requires offering documents to state it is not secured by the full faith and credit of the state.

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 State Law Institute to redesignate certain provisions of present law.

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

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the original bill.

1. Deletes provision providing that proposed law is to be liberally construed.
2. Changes the definition of "subject lines of business".



3. Provides that members of the board may be reimbursed for necessary travel and actual expenses.
4. Requires the filing of annual audited statements.
5. Allows examination by the legislative auditor.
6. Requires bonds to be approved by the Louisiana State Bond Commission.
7. Prohibits construing the proposed law to use the full faith and credit of the state to secure the bonds.
8. Requires offering documents to state it is not secured by the full faith and credit of the state.