

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representatives Ross, Reagan, and Brown offered the following:

2
3 **Substitute Amendment for Amendment (439287) to Senate Bill**
4 **(with title amendment)**

5 Remove everything after the enacting clause and insert:

6
7 Section 1. Section 215.5595, Florida Statutes, is amended
8 to read:

9 215.5595 Insurance Capital Build-Up Incentive Program.--

10 (1) Upon entering the 2008 ~~2006~~ hurricane season, the
11 Legislature finds that:

12 (a) The losses in this state ~~Florida~~ from eight hurricanes
13 in 2004 and 2005 have seriously strained the resources of both
14 the voluntary insurance market and the public sector mechanisms
15 of Citizens Property Insurance Corporation and the Florida
16 Hurricane Catastrophe Fund.

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17 ~~(b) Private reinsurance is much less available and at a~~
18 ~~significantly greater cost to residential property insurers as~~
19 ~~compared to 1 year ago, particularly for amounts below the~~
20 ~~insurer's retention or retained losses that must be paid before~~
21 ~~reimbursement is provided by the Florida Hurricane Catastrophe~~
22 ~~Fund.~~

23 ~~(c) The Office of Insurance Regulation has reported that~~
24 ~~the insolvency of certain insurers may be imminent.~~

25 ~~(d) Hurricane forecast experts predict that the 2006~~
26 ~~hurricane season will be an active hurricane season and that the~~
27 ~~Atlantic and Gulf Coast regions face an active hurricane cycle~~
28 ~~of 10 to 20 years or longer.~~

29 (b)(e) Citizens Property Insurance Corporation has over
30 1.2 million policies in force, has the largest market share of
31 any insurer writing residential property insurer in the state,
32 and faces the threat of a catastrophic loss that ~~The number of~~
33 ~~cancellations or nonrenewals of residential property insurance~~
34 ~~policies is expected to increase and the number of new~~
35 ~~residential policies written in the voluntary market are likely~~
36 ~~to decrease, causing increased policy growth and exposure to the~~
37 ~~state insurer of last resort, Citizens Property Insurance~~
38 ~~Corporation, and threatening to increase the deficit of the~~
39 ~~corporation, currently estimated to be over \$1.7 billion. This~~
40 ~~deficit must be funded by assessments against insurers and~~
41 ~~policyholders, unless otherwise funded by the state. The program~~
42 has a substantial positive effect on the depopulation efforts of
43 Citizens Property Insurance Corporation since companies
44 participating in the program have removed over 199,000 policies

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45 from the corporation. Companies participating in the program
46 have issued a significant number of new policies, thereby
47 keeping an estimated 480,000 new policies out of the
48 corporation.

49 (c)-(f) Policyholders are subject to high ~~increased~~
50 premiums and assessments that are increasingly making such
51 coverage unaffordable and that may force policyholders to sell
52 their homes and even leave the state.

53 (d)-(g) The increased risk to the public sector and private
54 sector continues to pose ~~poses~~ a serious threat to the economy
55 of this state, particularly the building and financing of
56 residential structures, and existing mortgages may be placed in
57 default.

58 ~~(h) The losses from 2004 and 2005, combined with the~~
59 ~~expectation that the increase in hurricane activity will~~
60 ~~continue for the foreseeable future, have caused both insurers~~
61 ~~and reinsurers to limit the capital they are willing to commit~~
62 ~~to covering the hurricane risk in Florida; attracting new~~
63 ~~capital to the Florida market is a critical priority; and~~
64 ~~providing a low cost source of capital would enable insurers to~~
65 ~~write additional residential property insurance coverage and act~~
66 ~~to mitigate premium increases.~~

67 (e)-(i) Appropriating state funds to be exchanged for ~~used~~
68 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
69 under conditions requiring the insurer to contribute additional
70 private sector capital and to write a minimum level of premiums
71 for residential hurricane coverage, is a valid and important
72 public purpose.

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73 (f) Extending the Insurance Capital Build-up Incentive
74 Program will provide an incentive for investors to commit
75 additional capital to Florida's residential insurance market.

76 (2) The purpose of this section is to provide funds in
77 exchange for surplus notes to be issued by ~~to~~ new or existing
78 authorized residential property insurers under the Insurance
79 Capital Build-Up Incentive Program administered by the State
80 Board of Administration, under the following conditions:

81 (a) The amount of state funds provided in exchange for a
82 the surplus note to ~~for~~ any insurer ~~or insurer group~~, other than
83 an insurer writing only manufactured housing policies, may not
84 exceed \$25 million or 20 percent of the total amount of funds
85 appropriated for available under the program, whichever is
86 greater. The amount of the surplus note for any insurer or
87 insurer group writing residential property insurance covering
88 only manufactured housing may not exceed \$7 million.

89 (b) On or after April 1, 2008, the insurer must contribute
90 an amount of new capital to its surplus which is at least equal
91 to the amount of the surplus note and must apply to the board by
92 September 1, 2008 ~~July 1, 2006~~. If an insurer applies after
93 September 1, 2008 ~~July 1, 2006~~, but before June 1, 2009 ~~2007~~,
94 the amount of the surplus note is limited to one-half of the new
95 capital that the insurer contributes to its surplus, except that
96 an insurer writing only manufactured housing policies is
97 eligible to receive a surplus note of up to \$7 million. For
98 purposes of this section, new capital must be in the form of
99 cash or cash equivalents as specified in s. 625.012(1).

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100 (c) The insurer's surplus, new capital, and the surplus
101 note must total at least \$50 million, except for insurers
102 writing residential property insurance covering only
103 manufactured housing. The insurer's surplus, new capital, and
104 the surplus note must total at least \$14 million for insurers
105 writing only residential property insurance covering
106 manufactured housing policies as provided in paragraph (a).

107 (d) The insurer must commit to increase its writings of
108 residential property insurance, including the peril of wind, and
109 to meet ~~meeting~~ a minimum writing ratio of net written premium
110 to surplus of at least 1:1 for the first calendar year after
111 receiving the state funds or renegotiation of the surplus note,
112 1.5:1 for the second calendar year, and 2:1 for the remaining
113 term of the surplus note. Alternatively, the insurer must meet a
114 minimum writing ratio of gross written premium to surplus of at
115 least 3:1 for the first calendar year after receiving the state
116 funds or renegotiation of the surplus note, 4.5:1 for the second
117 calendar year, and 6:1 for the remaining term of the surplus
118 note. The writing ratios, which shall be determined by the
119 Office of Insurance Regulation and certified quarterly to the
120 board. For this purpose, the term "premium" ~~"net written~~
121 premium" means ~~net written~~ premium for residential property
122 insurance in this state Florida, including the peril of wind,
123 and "surplus" means the new capital and surplus note ~~refers to~~
124 ~~the entire surplus~~ of the insurer. An insurer that makes an
125 initial application after July 1, 2008, must also commit to
126 writing at least 15 percent of its net or gross written premium
127 for new policies, not including renewal premiums, for policies

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128 taken out of Citizens Property Insurance Corporation, during
129 each of the first 3 years after receiving the state funds in
130 exchange for the surplus note, which shall be determined by the
131 Office of Insurance Regulation and certified annually to the
132 board. The insurer must also commit to maintaining a level of
133 surplus and reinsurance sufficient to cover in excess of its 1-
134 in-100 year probable maximum loss, as determined by a hurricane
135 loss model accepted by the Florida Commission on Hurricane Loss
136 Projection Methodology, which shall be determined by the Office
137 of Insurance Regulation and certified annually to the board. If
138 the board determines that the insurer has failed to meet any of
139 the requirements of this paragraph ~~required ratio is not~~
140 ~~maintained~~ during the term of the surplus note, the board may
141 increase the interest rate, accelerate the repayment of interest
142 and principal, or shorten the term of the surplus note, subject
143 to approval by the Commissioner of Insurance of payments by the
144 insurer of principal and interest as provided in paragraph (f).

145 (e) If the requirements of this section are met, the board
146 may approve an application by an insurer for funds in exchange
147 for issuance of a surplus note, unless the board determines that
148 the financial condition of the insurer and its business plan for
149 writing residential property insurance in Florida places an
150 unreasonably high level of financial risk to the state of
151 nonpayment in full of the interest and principal. The board
152 shall consult with the Office of Insurance Regulation and may
153 contract with independent financial and insurance consultants in
154 making this determination.

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155 (f) The surplus note must be repayable to the state with a
156 term of 20 years. The surplus note shall accrue interest on the
157 unpaid principal balance at a rate equivalent to the 10-year
158 U.S. Treasury Bond rate, require the payment only of interest
159 during the first 3 years, and include such other terms as
160 approved by the board. The board may charge late fees up to 5
161 percent for late payments or other late remittances. Payment of
162 principal, ~~or~~ interest, or late fees by the insurer on the
163 surplus note must be approved by the Commissioner of Insurance,
164 who shall approve such payment unless the commissioner
165 determines that such payment will substantially impair the
166 financial condition of the insurer. If such a determination is
167 made, the commissioner shall approve such payment that will not
168 substantially impair the financial condition of the insurer.

169 (g) The total amount of funds available for the program is
170 limited to the amount appropriated by the Legislature for this
171 purpose. If the amount of surplus notes requested by insurers
172 exceeds the amount of funds available, the board may prioritize
173 insurers that are eligible and approved, with priority for
174 funding given to insurers writing only manufactured housing
175 policies, regardless of the date of application, based on the
176 financial strength of the insurer, the viability of its proposed
177 business plan for writing additional residential property
178 insurance in the state, and the effect on competition in the
179 residential property insurance market. Between insurers writing
180 residential property insurance covering manufactured housing,
181 priority shall be given to the insurer writing the highest
182 percentage of its policies covering manufactured housing.

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183 ~~(h) The board may allocate portions of the funds available~~
184 ~~for the program and establish dates for insurers to apply for~~
185 ~~surplus notes from such allocation which are earlier than the~~
186 ~~dates established in paragraph (b).~~

187 (h)(i) Notwithstanding paragraph (d), a newly formed
188 manufactured housing insurer that is eligible for a surplus note
189 under this section shall meet the premium to surplus ratio
190 provisions of s. 624.4095.

191 (i)(j) As used in this section, "an insurer writing only
192 manufactured housing policies" includes:

193 1. A Florida domiciled insurer that begins writing
194 personal lines residential manufactured housing policies in
195 Florida after March 1, 2007, and that removes a minimum of
196 50,000 policies from Citizens Property Insurance Corporation
197 without accepting a bonus, provided at least 25 percent of its
198 policies cover manufactured housing. Such an insurer may count
199 any funds above the minimum capital and surplus requirement that
200 were contributed into the insurer after March 1, 2007, as new
201 capital under this section.

202 2. A Florida domiciled insurer that writes at least 40
203 percent of its policies covering manufactured housing in
204 Florida.

205 (3) As used in this section, the term:

206 (a) "Board" means the State Board of Administration.

207 (b) "Program" means the Insurance Capital Build-Up
208 Incentive Program established by this section.

209 (4) The state funds provided to the insurer in exchange
210 for the A surplus note provided to an insurer pursuant to this

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211 section are ~~is~~ considered borrowed surplus ~~an asset~~ of the
212 insurer pursuant to s. 628.401 ~~s. 625.012~~.

213 (5) If an insurer that receives funds in exchange for
214 issuance of a surplus note pursuant to this section is rendered
215 insolvent, the state is a ~~class-3~~ creditor pursuant to s.
216 631.271 for the unpaid principal and interest on the surplus
217 note.

218 (6) The board shall adopt rules prescribing the
219 procedures, administration, and criteria for approving the
220 applications of insurers to receive funds in exchange for
221 issuance of surplus notes pursuant to this section, which may be
222 adopted pursuant to the procedures for emergency rules of
223 chapter 120. Otherwise, actions and determinations by the board
224 pursuant to this section are exempt from chapter 120.

225 (7) The board shall invest and reinvest the funds
226 appropriated for the program in accordance with s. 215.47 and
227 consistent with board policy.

228 (8) Costs and fees incurred by the board in administering
229 this program, including fees for investment services, shall be
230 paid from funds appropriated by the Legislature for this
231 program, but are limited to 1 percent of the amount
232 appropriated.

233 (9) The board shall submit a report to the President of
234 the Senate and the Speaker of the House of Representatives by
235 February 1 of each year as to the results of the program and
236 each insurer's compliance with the terms of its surplus note.

237 (10) The amendments to this section enacted in 2008 do not
238 affect the terms or conditions of the surplus notes that were

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239 approved prior to January 1, 2008. However, the board may
240 renegotiate the terms of any surplus note issued by an insurer
241 prior to January 2008 under this program upon the agreement of
242 the insurer and the board and consistent with the requirements
243 of this section as amended in 2008.

244 (11) On January 15, 2009, the State Board of
245 Administration shall transfer to Citizens Property Insurance
246 Corporation any funds that have not been committed or reserved
247 for insurers approved to receive such funds under the program,
248 from the funds that were appropriated from Citizens Property
249 Insurance Corporation in 2008-2009 for such purposes.

250 Section 2. Subsection (6) is added to section, 624.3161,
251 Florida Statutes, to read:

252 624.3161 Market conduct examinations.--

253 (6) Based on the findings of a market conduct examination
254 that an insurer has exhibited a pattern or practice of willful
255 violations of an unfair insurance trade practice related to
256 claims-handling which caused harm to policyholders, as
257 prohibited by s. 626.9541(1)(i), the office may order an insurer
258 pursuant to chapter 120 to file its claims-handling practices
259 and procedures related to that line of insurance with the office
260 for review and inspection, to be held by the office for the
261 following 36-month period. Such claims-handling practices and
262 procedures are public records and are not trade secrets or
263 otherwise exempt from the provisions of s. 119.07(1). As used in
264 this section, "claims-handling practices and procedures" are any
265 policies, guidelines, rules, protocols, standard operating
266 procedures, instructions, or directives that govern or guide how

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267 and the manner in which an insured's claims for benefits under
268 any policy will be processed.

269 Section 3. Subsections (2) and (3) of section 624.4211,
270 Florida Statutes, are amended to read:

271 624.4211 Administrative fine in lieu of suspension or
272 revocation.--

273 (2) With respect to any nonwillful violation, such fine
274 may shall not exceed \$5,000 ~~\$2,500~~ per violation. In no event
275 shall such fine exceed an aggregate amount of \$20,000 ~~\$10,000~~
276 for all nonwillful violations arising out of the same action. If
277 ~~When~~ an insurer discovers a nonwillful violation, the insurer
278 shall correct the violation and, if restitution is due, make
279 restitution to all affected persons. Such restitution shall
280 include interest at 12 percent per year from either the date of
281 the violation or the date of inception of the affected person's
282 policy, at the insurer's option. The restitution may be a credit
283 against future premiums due provided that ~~the~~ interest
284 accumulates shall accumulate until the premiums are due. If the
285 amount of restitution due to any person is \$50 or more and the
286 insurer wishes to credit it against future premiums, it shall
287 notify such person that she or he may receive a check instead of
288 a credit. If the credit is on a policy that ~~which~~ is not
289 renewed, the insurer shall pay the restitution to the person to
290 whom it is due.

291 (3) With respect to any knowing and willful violation of a
292 lawful order or rule of the office or commission or a provision
293 of this code, the office may impose a fine upon the insurer in
294 an amount not to exceed \$40,000 ~~\$20,000~~ for each such violation.

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295 In no event shall such fine exceed an aggregate amount of
296 \$200,000 ~~\$100,000~~ for all knowing and willful violations arising
297 out of the same action. In addition to such fines, the such
298 insurer shall make restitution when due in accordance with ~~the~~
299 ~~provisions of~~ subsection (2).

300 Section 4. Section 624.4213, Florida Statutes, is created
301 to read:

302 624.4213 Trade secret documents.--

303 (1) If any person who is required to submit documents or
304 other information to the office or department pursuant to the
305 Insurance Code or by rule or order of the office, department, or
306 commission claims that such submission contains a trade secret,
307 such person may file with the office or department a notice of
308 trade secret as provided in this section. Failure to do so
309 constitutes a waiver of any claim by such person that the
310 document or information is a trade secret.

311 (a) Each page of such document or specific portion of a
312 document claimed to be a trade secret must be clearly marked as
313 "trade secret."

314 (b) All material marked as a trade secret must be
315 separated from all non-trade secret material, such as being
316 submitted in a separate envelope clearly marked as "trade
317 secret."

318 (c) In submitting a notice of trade secret to the office
319 or department, the submitting party must include an affidavit
320 certifying under oath to the truth of the following statements
321 concerning all documents or information that are claimed to be
322 trade secrets:

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323 1. [I consider/My company considers] this information a
324 trade secret that has value and provides an advantage or an
325 opportunity to obtain an advantage over those who do not know or
326 use it.

327 2. [I have/My company has] taken measures to prevent the
328 disclosure of the information to anyone other than those who
329 have been selected to have access for limited purposes, and [I
330 intend/my company intends] to continue to take such measures.

331 3. The information is not, and has not been, reasonably
332 obtainable without [my/our] consent by other persons by use of
333 legitimate means.

334 4. The information is not publicly available elsewhere.

335 (2) If the office or department receives a public-records
336 request for a document or information that is marked and
337 certified as a trade secret, the office or department shall
338 promptly notify the person that certified the document as a
339 trade secret. The notice shall inform such person that he or she
340 or his or her company has 30 days following receipt of such
341 notice to file an action in circuit court seeking a
342 determination whether the document in question contains trade
343 secrets and an order barring public disclosure of the document.
344 If that person or company files an action within 30 days after
345 receipt of notice of the public-records request, the office or
346 department may not release the documents pending the outcome of
347 the legal action. The failure to file an action within 30 days
348 constitutes a waiver of any claim of confidentiality and the
349 office or department shall release the document as requested.

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350 (3) The office or department may disclose a trade secret,
351 together with the claim that it is a trade secret, to an officer
352 or employee of another governmental agency whose use of the
353 trade secret is within the scope of his or her employment.

354 Section 5. Section 624.4305, Florida Statutes, is created
355 to read:

356 624.4305 Nonrenewal of residential property insurance
357 policies.--Any insurer planning to nonrenew more than 10,000
358 residential property insurance policies in this state within a
359 12-month period shall give notice in writing to the Office of
360 Insurance Regulation for informational purposes 90 days before
361 the issuance of any notices of nonrenewal. The notice provided
362 to the office must set forth the insurer's reasons for such
363 action, the effective dates of nonrenewal, and any arrangements
364 made for other insurers to offer coverage to affected
365 policyholders.

366 Section 6. Subsection (2) of section 626.9521, Florida
367 Statutes, is amended to read:

368 626.9521 Unfair methods of competition and unfair or
369 deceptive acts or practices prohibited; penalties.--

370 (2) Any person who violates any provision of this part
371 shall be subject to a fine in an amount not greater than \$5,000
372 ~~\$2,500~~ for each nonwillful violation and not greater than
373 \$40,000 ~~\$20,000~~ for each willful violation. Fines under this
374 subsection imposed against an insurer may not exceed an
375 aggregate amount of \$20,000 ~~\$10,000~~ for all nonwillful
376 violations arising out of the same action or an aggregate amount
377 of \$200,000 ~~\$100,000~~ for all willful violations arising out of

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378 the same action. The fines authorized by this subsection may be
379 imposed in addition to any other applicable penalty.

380 Section 7. Paragraph (i) of subsection (1) of section
381 626.9541, Florida Statutes, is amended to read:

382 626.9541 Unfair methods of competition and unfair or
383 deceptive acts or practices defined.--

384 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
385 ACTS.--The following are defined as unfair methods of
386 competition and unfair or deceptive acts or practices:

387 (i) Unfair claim settlement practices.--

388 1. Attempting to settle claims on the basis of an
389 application, when serving as a binder or intended to become a
390 part of the policy, or any other material document which was
391 altered without notice to, or knowledge or consent of, the
392 insured;

393 2. A material misrepresentation made to an insured or any
394 other person having an interest in the proceeds payable under
395 such contract or policy, for the purpose and with the intent of
396 effecting settlement of such claims, loss, or damage under such
397 contract or policy on less favorable terms than those provided
398 in, and contemplated by, such contract or policy; or

399 3. Committing or performing with such frequency as to
400 indicate a general business practice any of the following:

401 a. Failing to adopt and implement standards for the proper
402 investigation of claims;

403 b. Misrepresenting pertinent facts or insurance policy
404 provisions relating to coverages at issue;

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405 c. Failing to acknowledge and act promptly upon
406 communications with respect to claims;

407 d. Denying claims without conducting reasonable
408 investigations based upon available information;

409 e. Failing to affirm or deny full or partial coverage of
410 claims, and, as to partial coverage, the dollar amount or extent
411 of coverage, or failing to provide a written statement that the
412 claim is being investigated, upon the written request of the
413 insured within 30 days after proof-of-loss statements have been
414 completed;

415 f. Failing to promptly provide a reasonable explanation in
416 writing to the insured of the basis in the insurance policy, in
417 relation to the facts or applicable law, for denial of a claim
418 or for the offer of a compromise settlement;

419 g. Failing to promptly notify the insured of any
420 additional information necessary for the processing of a claim;
421 or

422 h. Failing to clearly explain the nature of the requested
423 information and the reasons why such information is necessary.

424 4. Failing to pay undisputed amounts of partial or full
425 benefits owed under first-party property insurance policies
426 within 90 days after an insurer receives notice of a residential
427 property insurance claim, determines the amounts of partial or
428 full benefits, and agrees to coverage, unless payment of the
429 undisputed benefits is prevented by an act of God, prevented by
430 unforeseen circumstances beyond the control of the insurer, or
431 due to actions by the insured or claimant that constitute fraud,

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432 lack of cooperation, or intentional misrepresentation regarding
433 the claim for which benefits are owed.

434 Section 8. Section 627.0612, Florida Statutes, is amended
435 to read:

436 627.0612 Administrative proceedings in rating
437 determinations.--

438 (1) In any proceeding to determine whether rates, rating
439 plans, or other matters governed by this part comply with the
440 law, the appellate court shall set aside a final order of the
441 office if the office has violated s. 120.57(1)(k) by
442 substituting its findings of fact for findings of an
443 administrative law judge which were supported by competent
444 substantial evidence.

445 (2) In an administrative hearing to determine whether an
446 insurer's rates, rating schedules, rating manuals, premium
447 credits, discount schedules, surcharge schedules, or changes
448 thereto, for property insurance comply with the law, in addition
449 to any other findings of fact, findings on the following matters
450 shall be considered findings of fact:

451 (a) Whether a factor or factors used in a rate filing or
452 applied by the office is consistent with standard actuarial
453 techniques or practices or are otherwise based on reasonable
454 actuarial judgment.

455 (b) Whether a factor for underwriting profit and
456 contingencies is reasonable or excessive.

457 (c) Whether the cost of reinsurance is reasonable or
458 excessive.

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459 (3) In an administrative hearing to determine whether an
460 insurer's rates, rating schedules, rating manuals, premium
461 credits, discount schedules, surcharge schedules, or changes
462 thereto, for property insurance comply with the law, a
463 recommended order may be entered that approves, modifies, or
464 rejects the requested change. A recommended order modifying the
465 requested rate change shall recommend such change as is
466 supported by the record in the case.

467 Section 9. Paragraphs (a), (b), and (g) of subsection (2),
468 subsection (6), and paragraph (a) of subsection (9) of section
469 627.062, Florida Statutes, are amended to read:

470 627.062 Rate standards.--

471 (2) As to all such classes of insurance:

472 (a) Insurers or rating organizations shall establish and
473 use rates, rating schedules, or rating manuals to allow the
474 insurer a reasonable rate of return on such classes of insurance
475 written in this state. A copy of rates, rating schedules, rating
476 manuals, premium credits or discount schedules, and surcharge
477 schedules, and changes thereto, shall be filed with the office
478 under one of the following procedures except as provided in
479 subparagraph 3.:

480 1. If the filing is made at least 90 days before the
481 proposed effective date and the filing is not implemented during
482 the office's review of the filing and any proceeding and
483 judicial review, then such filing shall be considered a "file
484 and use" filing. In such case, the office shall finalize its
485 review by issuance of a notice of intent to approve or a notice
486 of intent to disapprove within 90 days after receipt of the

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487 filing. The notice of intent to approve and the notice of intent
488 to disapprove constitute agency action for purposes of the
489 Administrative Procedure Act. Requests for supporting
490 information, requests for mathematical or mechanical
491 corrections, or notification to the insurer by the office of its
492 preliminary findings shall not toll the 90-day period during any
493 such proceedings and subsequent judicial review. The rate shall
494 be deemed approved if the office does not issue a notice of
495 intent to approve or a notice of intent to disapprove within 90
496 days after receipt of the filing.

497 2. If the filing is not made in accordance with the
498 provisions of subparagraph 1., such filing shall be made as soon
499 as practicable, but no later than 30 days after the effective
500 date, and shall be considered a "use and file" filing. An
501 insurer making a "use and file" filing is potentially subject to
502 an order by the office to return to policyholders portions of
503 rates found to be excessive, as provided in paragraph (h).

504 3. For all property insurance filings made or submitted
505 after January 25, 2007, but before December 31, 2009 ~~2008~~, an
506 insurer seeking a rate that is greater than the rate most
507 recently approved by the office shall make a "file and use"
508 filing. ~~This subparagraph applies to property insurance only.~~
509 For purposes of this subparagraph, motor vehicle collision and
510 comprehensive coverages are not considered to be property
511 coverages.

512 (b) Upon receiving a rate filing, the office shall review
513 the rate filing to determine if a rate is excessive, inadequate,
514 or unfairly discriminatory. In making that determination, the

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515 office shall, in accordance with generally accepted and
516 reasonable actuarial techniques, consider the following factors:

517 1. Past and prospective loss experience within and without
518 this state.

519 2. Past and prospective expenses.

520 3. The degree of competition among insurers for the risk
521 insured.

522 4. Investment income reasonably expected by the insurer,
523 consistent with the insurer's investment practices, from
524 investable premiums anticipated in the filing, plus any other
525 expected income from currently invested assets representing the
526 amount expected on unearned premium reserves and loss reserves.

527 The commission may adopt rules using ~~utilizing~~ reasonable
528 techniques of actuarial science and economics to specify the
529 manner in which insurers shall calculate investment income
530 attributable to such classes of insurance written in this state
531 and the manner in which such investment income shall be used to
532 calculate ~~in the calculation of~~ insurance rates. Such manner
533 shall contemplate allowances for an underwriting profit factor
534 and full consideration of investment income which produce a
535 reasonable rate of return; however, investment income from
536 invested surplus may ~~shall~~ not be considered.

537 5. The reasonableness of the judgment reflected in the
538 filing.

539 6. Dividends, savings, or unabsorbed premium deposits
540 allowed or returned to Florida policyholders, members, or
541 subscribers.

542 7. The adequacy of loss reserves.

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543 8. The cost of reinsurance. The office shall not
544 disapprove a rate as excessive solely due to the insurer having
545 obtained catastrophic reinsurance to cover the insurer's
546 estimated 250-year probable maximum loss or any lower level of
547 loss.

548 9. Trend factors, including trends in actual losses per
549 insured unit for the insurer making the filing.

550 10. Conflagration and catastrophe hazards, if applicable.

551 11. Projected hurricane losses, if applicable, which must
552 be estimated using a model or method found to be acceptable or
553 reliable by the Florida Commission on Hurricane Loss Projection
554 Methodology, and as further provided in s. 627.0628.

555 ~~12.11.~~ A reasonable margin for underwriting profit and
556 contingencies. ~~For that portion of the rate covering the risk of~~
557 ~~hurricanes and other catastrophic losses for which the insurer~~
558 ~~has not purchased reinsurance and has exposed its capital and~~
559 ~~surplus to such risk, the office must approve a rating factor~~
560 ~~that provides the insurer a reasonable rate of return that is~~
561 ~~commensurate with such risk.~~

562 ~~13.12.~~ The cost of medical services, if applicable.

563 ~~14.13.~~ Other relevant factors which impact upon the
564 frequency or severity of claims or upon expenses.

565 (g) The office may at any time review a rate, rating
566 schedule, rating manual, or rate change; the pertinent records
567 of the insurer; and market conditions. If the office finds on a
568 preliminary basis that a rate may be excessive, inadequate, or
569 unfairly discriminatory, the office shall initiate proceedings
570 to disapprove the rate and shall so notify the insurer. However,
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571 the office may not disapprove as excessive any rate for which it
572 has given final approval or which has been deemed approved for a
573 period of 1 year after the effective date of the filing unless
574 the office finds that a material misrepresentation or material
575 error was made by the insurer or was contained in the filing.
576 Upon being so notified, the insurer or rating organization
577 shall, within 60 days, file with the office all information
578 which, in the belief of the insurer or organization, proves the
579 reasonableness, adequacy, and fairness of the rate or rate
580 change. The office shall issue a notice of intent to approve or
581 a notice of intent to disapprove pursuant to the procedures of
582 paragraph (a) within 90 days after receipt of the insurer's
583 initial response. In such instances and in any administrative
584 proceeding relating to the legality of the rate, the insurer or
585 rating organization shall carry the burden of proof by a
586 preponderance of the evidence to show that the rate is not
587 excessive, inadequate, or unfairly discriminatory. After the
588 office notifies an insurer that a rate may be excessive,
589 inadequate, or unfairly discriminatory, unless the office
590 withdraws the notification, the insurer shall not alter the rate
591 except to conform with the office's notice until the earlier of
592 120 days after the date the notification was provided or 180
593 days after the date of the implementation of the rate. The
594 office may, subject to chapter 120, disapprove without the 60-
595 day notification any rate increase filed by an insurer within
596 the prohibited time period or during the time that the legality
597 of the increased rate is being contested.

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599 The provisions of this subsection shall not apply to workers'
600 compensation and employer's liability insurance and to motor
601 vehicle insurance.

602 (6) (a) If an insurer requests an administrative hearing
603 pursuant to s. 120.57 related to a rate filing under this
604 section, the director of the Division of Administrative Hearings
605 shall expedite the hearing and assign an administrative law
606 judge who shall commence the hearing within 30 days after the
607 receipt of the formal request and shall enter a recommended
608 order within 30 days after the hearing or within 30 days after
609 receipt of the hearing transcript by the administrative law
610 judge, whichever is later. Each party shall be allowed 10 days
611 in which to submit written exceptions to the recommended order.
612 The office shall enter a final order within 30 days after the
613 entry of the recommended order. The provisions of this paragraph
614 may be waived upon stipulation of all parties.

615 (b) Upon entry of a final order, the insurer may request a
616 expedited appellate review pursuant to the Florida Rules of
617 Appellate Procedure. It is the intent of the Legislature that
618 the First District Court of Appeal grant an insurer's request
619 for an expedited appellate review.

620 ~~(a) After any action with respect to a rate filing that~~
621 ~~constitutes agency action for purposes of the Administrative~~
622 ~~Procedure Act, except for a rate filing for medical malpractice,~~
623 ~~an insurer may, in lieu of demanding a hearing under s. 120.57,~~
624 ~~require arbitration of the rate filing. However, the arbitration~~
625 ~~option provision in this subsection does not apply to a rate~~
626 ~~filing that is made on or after the effective date of this act~~

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627 ~~until January 1, 2009. Arbitration shall be conducted by a board~~
628 ~~of arbitrators consisting of an arbitrator selected by the~~
629 ~~office, an arbitrator selected by the insurer, and an arbitrator~~
630 ~~selected jointly by the other two arbitrators. Each arbitrator~~
631 ~~must be certified by the American Arbitration Association. A~~
632 ~~decision is valid only upon the affirmative vote of at least two~~
633 ~~of the arbitrators. No arbitrator may be an employee of any~~
634 ~~insurance regulator or regulatory body or of any insurer,~~
635 ~~regardless of whether or not the employing insurer does business~~
636 ~~in this state. The office and the insurer must treat the~~
637 ~~decision of the arbitrators as the final approval of a rate~~
638 ~~filing. Costs of arbitration shall be paid by the insurer.~~

639 ~~(b) Arbitration under this subsection shall be conducted~~
640 ~~pursuant to the procedures specified in ss. 682.06-682.10.~~
641 ~~Either party may apply to the circuit court to vacate or modify~~
642 ~~the decision pursuant to s. 682.13 or s. 682.14. The commission~~
643 ~~shall adopt rules for arbitration under this subsection, which~~
644 ~~rules may not be inconsistent with the arbitration rules of the~~
645 ~~American Arbitration Association as of January 1, 1996.~~

646 ~~(c) Upon initiation of the arbitration process, the~~
647 ~~insurer waives all rights to challenge the action of the office~~
648 ~~under the Administrative Procedure Act or any other provision of~~
649 ~~law; however, such rights are restored to the insurer if the~~
650 ~~arbitrators fail to render a decision within 90 days after~~
651 ~~initiation of the arbitration process.~~

652 (9) (a) ~~Effective March 1, 2007,~~ The chief executive
653 officer or chief financial officer of a property insurer and the
654 chief actuary of a property insurer must certify under oath and

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655 subject to the penalty of perjury, on a form approved by the
656 commission, the following information, which must accompany a
657 rate filing:

658 1. The signing officer and actuary have reviewed the rate
659 filing;

660 2. Based on the signing officer's and actuary's knowledge,
661 the rate filing does not contain any untrue statement of a
662 material fact or omit to state a material fact necessary in
663 order to make the statements made, in light of the circumstances
664 under which such statements were made, not misleading;

665 3. Based on the signing officer's and actuary's knowledge,
666 the information and other factors described in paragraph (2) (b),
667 including, but not limited to, investment income, fairly present
668 in all material respects the basis of the rate filing for the
669 periods presented in the filing; and

670 4. Based on the signing officer's and actuary's knowledge,
671 the rate filing reflects all premium savings that are reasonably
672 expected to result from legislative enactments and are in
673 accordance with generally accepted and reasonable actuarial
674 techniques.

675 Section 10. Paragraph (c) of subsection (1) and subsection
676 (3) of section 627.0628, Florida Statutes, are amended, and
677 paragraph (e) is added to subsection (1) of that section, to
678 read:

679 627.0628 Florida Commission on Hurricane Loss Projection
680 Methodology; public records exemption; public meetings
681 exemption.--

682 (1) LEGISLATIVE FINDINGS AND INTENT.--

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683 (c) It is the intent of the Legislature to create the
684 Florida Commission on Hurricane Loss Projection Methodology as a
685 panel of experts to provide the most actuarially sophisticated
686 guidelines and standards for projection of hurricane losses
687 possible, given the current state of actuarial science. It is
688 the further intent of the Legislature that such standards and
689 guidelines must be used by the State Board of Administration in
690 developing reimbursement premium rates for the Florida Hurricane
691 Catastrophe Fund, and, subject to paragraph (3)(c), must ~~may~~ be
692 used by insurers in rate filings under s. 627.062 unless the way
693 in which such standards and guidelines were applied by the
694 insurer was erroneous, as shown by a preponderance of the
695 evidence.

696 (e) The Legislature finds that the authority to take final
697 agency action with respect to insurance ratemaking is vested in
698 the Office of Insurance Regulation and the Financial Services
699 Commission, and that the processes, standards, and guidelines of
700 the Florida Commission on Hurricane Loss Projection Methodology
701 do not constitute final agency action or statements of general
702 applicability that implement, interpret, or prescribe law or
703 policy; accordingly, chapter 120 does not apply to the
704 processes, standards, and guidelines of the Florida Commission
705 on Hurricane Loss Projection Methodology.

706 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

707 (a) The commission shall consider any actuarial methods,
708 principles, standards, models, or output ranges that have the
709 potential for improving the accuracy of or reliability of the
710 hurricane loss projections used in residential property

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711 insurance rate filings. The commission shall, from time to time,
712 adopt findings as to the accuracy or reliability of particular
713 methods, principles, standards, models, or output ranges.

714 (b) The commission shall consider any actuarial methods,
715 principles, standards, or models that have the potential for
716 improving the accuracy of or reliability of projecting probable
717 maximum loss levels. The commission shall adopt findings as to
718 the accuracy or reliability of particular methods, principles,
719 standards, or models related to probable maximum loss
720 calculations.

721 (c) ~~(b)~~ In establishing reimbursement premiums for the
722 Florida Hurricane Catastrophe Fund, the State Board of
723 Administration must, to the extent feasible, employ actuarial
724 methods, principles, standards, models, or output ranges found
725 by the commission to be accurate or reliable.

726 (d) ~~(e)~~ With respect to a rate filing under s. 627.062, an
727 insurer shall may employ and may not modify or adjust actuarial
728 methods, principles, standards, models, or output ranges found
729 by the commission to be accurate or reliable in determining ~~to~~
730 ~~determine~~ hurricane loss factors for use in a rate filing under
731 s. 627.062. An insurer shall employ and may not modify or adjust
732 models found by the commission to be accurate or reliable in
733 determining probable maximum loss levels pursuant to paragraph
734 (b) with respect to a rate filing under s. 627.062 made more
735 than 60 days after the commission has made such findings. Such
736 ~~findings and factors are admissible and relevant in~~
737 ~~consideration of a rate filing by the office or in any~~
738 ~~arbitration or administrative or judicial review only if the~~

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739 ~~office and the consumer advocate appointed pursuant to s.~~
740 ~~627.0613 have access to all of the assumptions and factors that~~
741 ~~were used in developing the actuarial methods, principles,~~
742 ~~standards, models, or output ranges, and are not precluded from~~
743 ~~disclosing such information in a rate proceeding. In any rate~~
744 ~~hearing under s. 120.57 or in any arbitration proceeding under~~
745 ~~s. 627.062(6), the hearing officer, judge, or arbitration panel~~
746 ~~may determine whether the office and the consumer advocate were~~
747 ~~provided with access to all of the assumptions and factors that~~
748 ~~were used in developing the actuarial methods, principles,~~
749 ~~standards, models, or output ranges and to determine their~~
750 ~~admissibility.~~

751 (e)~~(d)~~ The commission shall adopt revisions to previously
752 adopted actuarial methods, principles, standards, models, or
753 output ranges at least annually.

754 (f)~~(e)~~1. A trade secret, as defined in s. 812.081, that is
755 used in designing and constructing a hurricane loss model and
756 that is provided pursuant to this section, by a private company,
757 to the commission, office, or consumer advocate appointed
758 pursuant to s. 627.0613, is confidential and exempt from s.
759 119.07(1) and s. 24(a), Art. I of the State Constitution.

760 2. That portion of a meeting of the commission or of a
761 rate proceeding on an insurer's rate filing at which a trade
762 secret made confidential and exempt by this paragraph is
763 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
764 State Constitution.

765 3. This paragraph is subject to the Open Government Sunset
766 Review Act of 1995 in accordance with s. 119.15, and shall stand

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767 repealed on October 2, 2010, unless reviewed and saved from
768 repeal through reenactment by the Legislature.

769 Section 11. Subsection (1) of section 627.0629, Florida
770 Statutes, is amended to read:

771 627.0629 Residential property insurance; rate filings.--

772 (1)(a) It is the intent of the Legislature that insurers
773 must provide savings to consumers who install or implement
774 windstorm damage mitigation techniques, alterations, or
775 solutions to their properties to prevent windstorm losses. A
776 rate filing for residential property insurance must include
777 actuarially reasonable discounts, credits, or other rate
778 differentials, or appropriate reductions in deductibles, for
779 properties on which fixtures or construction techniques
780 demonstrated to reduce the amount of loss in a windstorm have
781 been installed or implemented. The fixtures or construction
782 techniques shall include, but not be limited to, fixtures or
783 construction techniques which enhance roof strength, roof
784 covering performance, roof-to-wall strength, wall-to-floor-to-
785 foundation strength, opening protection, and window, door, and
786 skylight strength. Credits, discounts, or other rate
787 differentials, or appropriate reductions in deductibles, for
788 fixtures and construction techniques which meet the minimum
789 requirements of the Florida Building Code must be included in
790 the rate filing. All insurance companies must make a rate filing
791 which includes the credits, discounts, or other rate
792 differentials or reductions in deductibles by February 28, 2003.
793 By July 1, 2007, the office shall reevaluate the discounts,
794 credits, other rate differentials, and appropriate reductions in
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795 deductibles for fixtures and construction techniques that meet
796 the minimum requirements of the Florida Building Code, based
797 upon actual experience or any other loss relativity studies
798 available to the office. The office shall determine the
799 discounts, credits, other rate differentials, and appropriate
800 reductions in deductibles that reflect the full actuarial value
801 of such revaluation, which may be used by insurers in rate
802 filings.

803 (b) By February 1, 2011, the Office of Insurance
804 Regulation, in consultation with the Department of Financial
805 Services and the Department of Community Affairs, shall develop
806 and make publicly available a proposed method for insurers to
807 establish discounts, credits, or other rate differentials for
808 hurricane mitigation measures which directly correlate to the
809 numerical rating assigned to a structure pursuant to the uniform
810 home grading scale adopted by the Financial Services Commission
811 pursuant to s. 215.55865, including any proposed changes to the
812 uniform home grading scale. By October 1, 2011, the commission
813 shall adopt rules requiring insurers to make rate filings for
814 residential property insurance which revise insurers' discounts,
815 credits, or other rate differentials for hurricane mitigation
816 measures so that such rate differentials correlate directly to
817 the uniform home grading scale. The rules may include such
818 changes to the uniform home grading scale as the commission
819 determines are necessary, and may specify the minimum required
820 discounts, credits, or other rate differentials. Such rate
821 differentials must be consistent with generally accepted
822 actuarial principles and wind-loss mitigation studies. The rules

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823 shall allow a period of at least 2 years after the effective
824 date of the revised mitigation discounts, credits, or other rate
825 differentials for a property owner to obtain an inspection or
826 otherwise qualify for the revised credit, during which time the
827 insurer shall continue to apply the mitigation credit that was
828 applied immediately prior to the effective date of the revised
829 credit.

830 Section 12. Subsection (2) and paragraphs (a), (b), (c),
831 (m), (p), (w), (dd), (ee), and (ff) of subsection (6) of section
832 627.351, Florida Statutes, are amended to read:

833 627.351 Insurance risk apportionment plans.--

834 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

835 (b) The department shall require all insurers holding a
836 certificate of authority to transact property insurance on a
837 direct basis in this state, other than joint underwriting
838 associations and other entities formed pursuant to this section,
839 to provide windstorm coverage to applicants from areas
840 determined to be eligible pursuant to paragraph (c) who in good
841 faith are entitled to, but are unable to procure, such coverage
842 through ordinary means; or it shall adopt a reasonable plan or
843 plans for the equitable apportionment or sharing among such
844 insurers of windstorm coverage, which may include formation of
845 an association for this purpose. As used in this subsection, the
846 term "property insurance" means insurance on real or personal
847 property, as defined in s. 624.604, including insurance for
848 fire, industrial fire, allied lines, farmowners multiperil,
849 homeowners' multiperil, commercial multiperil, and mobile homes,
850 and including liability coverages on all such insurance, but

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851 excluding inland marine as defined in s. 624.607(3) and
852 excluding vehicle insurance as defined in s. 624.605(1)(a) other
853 than insurance on mobile homes used as permanent dwellings. The
854 department shall adopt rules that provide a formula for the
855 recovery and repayment of any deferred assessments.

856 1. For the purpose of this section, properties eligible
857 for such windstorm coverage are defined as dwellings, buildings,
858 and other structures, including mobile homes which are used as
859 dwellings and which are tied down in compliance with mobile home
860 tie-down requirements prescribed by the Department of Highway
861 Safety and Motor Vehicles pursuant to s. 320.8325, and the
862 contents of all such properties. An applicant or policyholder is
863 eligible for coverage only if an offer of coverage cannot be
864 obtained by or for the applicant or policyholder from an
865 admitted insurer at approved rates.

866 2.a.(I) All insurers required to be members of such
867 association shall participate in its writings, expenses, and
868 losses. Surplus of the association shall be retained for the
869 payment of claims and shall not be distributed to the member
870 insurers. Such participation by member insurers shall be in the
871 proportion that the net direct premiums of each member insurer
872 written for property insurance in this state during the
873 preceding calendar year bear to the aggregate net direct
874 premiums for property insurance of all member insurers, as
875 reduced by any credits for voluntary writings, in this state
876 during the preceding calendar year. For the purposes of this
877 subsection, the term "net direct premiums" means direct written
878 premiums for property insurance, reduced by premium for

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879 liability coverage and for the following if included in allied
880 lines: rain and hail on growing crops; livestock; association
881 direct premiums booked; National Flood Insurance Program direct
882 premiums; and similar deductions specifically authorized by the
883 plan of operation and approved by the department. A member's
884 participation shall begin on the first day of the calendar year
885 following the year in which it is issued a certificate of
886 authority to transact property insurance in the state and shall
887 terminate 1 year after the end of the calendar year during which
888 it no longer holds a certificate of authority to transact
889 property insurance in the state. The commissioner, after review
890 of annual statements, other reports, and any other statistics
891 that the commissioner deems necessary, shall certify to the
892 association the aggregate direct premiums written for property
893 insurance in this state by all member insurers.

894 (II) Effective July 1, 2002, the association shall operate
895 subject to the supervision and approval of a board of governors
896 who are the same individuals that have been appointed by the
897 Treasurer to serve on the board of governors of the Citizens
898 Property Insurance Corporation.

899 (III) The plan of operation shall provide a formula
900 whereby a company voluntarily providing windstorm coverage in
901 affected areas will be relieved wholly or partially from
902 apportionment of a regular assessment pursuant to sub-sub-
903 subparagraph d.(I) or sub-sub-subparagraph d.(II).

904 (IV) A company which is a member of a group of companies
905 under common management may elect to have its credits applied on

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906 a group basis, and any company or group may elect to have its
907 credits applied to any other company or group.

908 (V) There shall be no credits or relief from apportionment
909 to a company for emergency assessments collected from its
910 policyholders under sub-sub-subparagraph d.(III).

911 (VI) The plan of operation may also provide for the award
912 of credits, for a period not to exceed 3 years, from a regular
913 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
914 subparagraph d.(II) as an incentive for taking policies out of
915 the Residential Property and Casualty Joint Underwriting
916 Association. In order to qualify for the exemption under this
917 sub-sub-subparagraph, the take-out plan must provide that at
918 least 40 percent of the policies removed from the Residential
919 Property and Casualty Joint Underwriting Association cover risks
920 located in Dade, Broward, and Palm Beach Counties or at least 30
921 percent of the policies so removed cover risks located in Dade,
922 Broward, and Palm Beach Counties and an additional 50 percent of
923 the policies so removed cover risks located in other coastal
924 counties, and must also provide that no more than 15 percent of
925 the policies so removed may exclude windstorm coverage. With the
926 approval of the department, the association may waive these
927 geographic criteria for a take-out plan that removes at least
928 the lesser of 100,000 Residential Property and Casualty Joint
929 Underwriting Association policies or 15 percent of the total
930 number of Residential Property and Casualty Joint Underwriting
931 Association policies, provided the governing board of the
932 Residential Property and Casualty Joint Underwriting Association
933 certifies that the take-out plan will materially reduce the

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934 Residential Property and Casualty Joint Underwriting
935 Association's 100-year probable maximum loss from hurricanes.
936 With the approval of the department, the board may extend such
937 credits for an additional year if the insurer guarantees an
938 additional year of renewability for all policies removed from
939 the Residential Property and Casualty Joint Underwriting
940 Association, or for 2 additional years if the insurer guarantees
941 2 additional years of renewability for all policies removed from
942 the Residential Property and Casualty Joint Underwriting
943 Association.

944 b. Assessments to pay deficits in the association under
945 this subparagraph shall be included as an appropriate factor in
946 the making of rates as provided in s. 627.3512.

947 c. The Legislature finds that the potential for unlimited
948 deficit assessments under this subparagraph may induce insurers
949 to attempt to reduce their writings in the voluntary market, and
950 that such actions would worsen the availability problems that
951 the association was created to remedy. It is the intent of the
952 Legislature that insurers remain fully responsible for paying
953 regular assessments and collecting emergency assessments for any
954 deficits of the association; however, it is also the intent of
955 the Legislature to provide a means by which assessment
956 liabilities may be amortized over a period of years.

957 d.(I) When the deficit incurred in a particular calendar
958 year is 10 percent or less of the aggregate statewide direct
959 written premium for property insurance for the prior calendar
960 year for all member insurers, the association shall levy an
961 assessment on member insurers in an amount equal to the deficit.

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962 (II) When the deficit incurred in a particular calendar
963 year exceeds 10 percent of the aggregate statewide direct
964 written premium for property insurance for the prior calendar
965 year for all member insurers, the association shall levy an
966 assessment on member insurers in an amount equal to the greater
967 of 10 percent of the deficit or 10 percent of the aggregate
968 statewide direct written premium for property insurance for the
969 prior calendar year for member insurers. Any remaining deficit
970 shall be recovered through emergency assessments under sub-sub-
971 subparagraph (III).

972 (III) Upon a determination by the board of directors that
973 a deficit exceeds the amount that will be recovered through
974 regular assessments on member insurers, pursuant to sub-sub-
975 subparagraph (I) or sub-sub-subparagraph (II), the board shall
976 levy, after verification by the department, emergency
977 assessments to be collected by member insurers and by
978 underwriting associations created pursuant to this section which
979 write property insurance, upon issuance or renewal of property
980 insurance policies other than National Flood Insurance policies
981 in the year or years following levy of the regular assessments.
982 The amount of the emergency assessment collected in a particular
983 year shall be a uniform percentage of that year's direct written
984 premium for property insurance for all member insurers and
985 underwriting associations, excluding National Flood Insurance
986 policy premiums, as annually determined by the board and
987 verified by the department. The department shall verify the
988 arithmetic calculations involved in the board's determination
989 within 30 days after receipt of the information on which the

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990 determination was based. Notwithstanding any other provision of
991 law, each member insurer and each underwriting association
992 created pursuant to this section shall collect emergency
993 assessments from its policyholders without such obligation being
994 affected by any credit, limitation, exemption, or deferment. The
995 emergency assessments so collected shall be transferred directly
996 to the association on a periodic basis as determined by the
997 association. The aggregate amount of emergency assessments
998 levied under this sub-sub-subparagraph in any calendar year may
999 not exceed the greater of 10 percent of the amount needed to
1000 cover the original deficit, plus interest, fees, commissions,
1001 required reserves, and other costs associated with financing of
1002 the original deficit, or 10 percent of the aggregate statewide
1003 direct written premium for property insurance written by member
1004 insurers and underwriting associations for the prior year, plus
1005 interest, fees, commissions, required reserves, and other costs
1006 associated with financing the original deficit. The board may
1007 pledge the proceeds of the emergency assessments under this sub-
1008 sub-subparagraph as the source of revenue for bonds, to retire
1009 any other debt incurred as a result of the deficit or events
1010 giving rise to the deficit, or in any other way that the board
1011 determines will efficiently recover the deficit. The emergency
1012 assessments under this sub-sub-subparagraph shall continue as
1013 long as any bonds issued or other indebtedness incurred with
1014 respect to a deficit for which the assessment was imposed remain
1015 outstanding, unless adequate provision has been made for the
1016 payment of such bonds or other indebtedness pursuant to the
1017 document governing such bonds or other indebtedness. Emergency

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1018 assessments collected under this sub-sub-subparagraph are not
1019 part of an insurer's rates, are not premium, and are not subject
1020 to premium tax, fees, or commissions; however, failure to pay
1021 the emergency assessment shall be treated as failure to pay
1022 premium.

1023 (IV) Each member insurer's share of the total regular
1024 assessments under sub-sub-subparagraph (I) or sub-sub-
1025 subparagraph (II) shall be in the proportion that the insurer's
1026 net direct premium for property insurance in this state, for the
1027 year preceding the assessment bears to the aggregate statewide
1028 net direct premium for property insurance of all member
1029 insurers, as reduced by any credits for voluntary writings for
1030 that year.

1031 (V) If regular deficit assessments are made under sub-sub-
1032 subparagraph (I) or sub-sub-subparagraph (II), or by the
1033 Residential Property and Casualty Joint Underwriting Association
1034 under sub-subparagraph (6)(b)3.a. or sub-subparagraph
1035 (6)(b)3.b., the association shall levy upon the association's
1036 policyholders, as part of its next rate filing, or by a separate
1037 rate filing solely for this purpose, a market equalization
1038 surcharge in a percentage equal to the total amount of such
1039 regular assessments divided by the aggregate statewide direct
1040 written premium for property insurance for member insurers for
1041 the prior calendar year. Market equalization surcharges under
1042 this sub-sub-subparagraph are not considered premium and are not
1043 subject to commissions, fees, or premium taxes; however, failure
1044 to pay a market equalization surcharge shall be treated as
1045 failure to pay premium.

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1046 e. The governing body of any unit of local government, any
1047 residents of which are insured under the plan, may issue bonds
1048 as defined in s. 125.013 or s. 166.101 to fund an assistance
1049 program, in conjunction with the association, for the purpose of
1050 defraying deficits of the association. In order to avoid
1051 needless and indiscriminate proliferation, duplication, and
1052 fragmentation of such assistance programs, any unit of local
1053 government, any residents of which are insured by the
1054 association, may provide for the payment of losses, regardless
1055 of whether or not the losses occurred within or outside of the
1056 territorial jurisdiction of the local government. Revenue bonds
1057 may not be issued until validated pursuant to chapter 75, unless
1058 a state of emergency is declared by executive order or
1059 proclamation of the Governor pursuant to s. 252.36 making such
1060 findings as are necessary to determine that it is in the best
1061 interests of, and necessary for, the protection of the public
1062 health, safety, and general welfare of residents of this state
1063 and the protection and preservation of the economic stability of
1064 insurers operating in this state, and declaring it an essential
1065 public purpose to permit certain municipalities or counties to
1066 issue bonds as will provide relief to claimants and
1067 policyholders of the association and insurers responsible for
1068 apportionment of plan losses. Any such unit of local government
1069 may enter into such contracts with the association and with any
1070 other entity created pursuant to this subsection as are
1071 necessary to carry out this paragraph. Any bonds issued under
1072 this sub-subparagraph shall be payable from and secured by
1073 moneys received by the association from assessments under this
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1074 subparagraph, and assigned and pledged to or on behalf of the
1075 unit of local government for the benefit of the holders of such
1076 bonds. The funds, credit, property, and taxing power of the
1077 state or of the unit of local government shall not be pledged
1078 for the payment of such bonds. If any of the bonds remain unsold
1079 60 days after issuance, the department shall require all
1080 insurers subject to assessment to purchase the bonds, which
1081 shall be treated as admitted assets; each insurer shall be
1082 required to purchase that percentage of the unsold portion of
1083 the bond issue that equals the insurer's relative share of
1084 assessment liability under this subsection. An insurer shall not
1085 be required to purchase the bonds to the extent that the
1086 department determines that the purchase would endanger or impair
1087 the solvency of the insurer. The authority granted by this sub-
1088 subparagraph is additional to any bonding authority granted by
1089 subparagraph 6.

1090 3. The plan shall also provide that any member with a
1091 surplus as to policyholders of \$20 million or less writing 25
1092 percent or more of its total countrywide property insurance
1093 premiums in this state may petition the department, within the
1094 first 90 days of each calendar year, to qualify as a limited
1095 apportionment company. The apportionment of such a member
1096 company in any calendar year for which it is qualified shall not
1097 exceed its gross participation, which shall not be affected by
1098 the formula for voluntary writings. In no event shall a limited
1099 apportionment company be required to participate in any
1100 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1101 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds

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1102 \$50 million after payment of available plan funds in any
1103 calendar year. However, a limited apportionment company shall
1104 collect from its policyholders any emergency assessment imposed
1105 under sub-sub-subparagraph 2.d.(III). The plan shall provide
1106 that, if the department determines that any regular assessment
1107 will result in an impairment of the surplus of a limited
1108 apportionment company, the department may direct that all or
1109 part of such assessment be deferred. However, there shall be no
1110 limitation or deferment of an emergency assessment to be
1111 collected from policyholders under sub-sub-subparagraph
1112 2.d.(III).

1113 4. The plan shall provide for the deferment, in whole or
1114 in part, of a regular assessment of a member insurer under sub-
1115 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
1116 not for an emergency assessment collected from policyholders
1117 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1118 commissioner, payment of such regular assessment would endanger
1119 or impair the solvency of the member insurer. In the event a
1120 regular assessment against a member insurer is deferred in whole
1121 or in part, the amount by which such assessment is deferred may
1122 be assessed against the other member insurers in a manner
1123 consistent with the basis for assessments set forth in sub-sub-
1124 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1125 5.a. The plan of operation may include deductibles and
1126 rules for classification of risks and rate modifications
1127 consistent with the objective of providing and maintaining funds
1128 sufficient to pay catastrophe losses.

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1129 b. ~~The association may require arbitration of a rate~~
1130 ~~filing under s. 627.062(6).~~ It is the intent of the Legislature
1131 that the rates for coverage provided by the association be
1132 actuarially sound and not competitive with approved rates
1133 charged in the admitted voluntary market such that the
1134 association functions as a residual market mechanism to provide
1135 insurance only when the insurance cannot be procured in the
1136 voluntary market. The plan of operation shall provide a
1137 mechanism to assure that, beginning no later than January 1,
1138 1999, the rates charged by the association for each line of
1139 business are reflective of approved rates in the voluntary
1140 market for hurricane coverage for each line of business in the
1141 various areas eligible for association coverage.

1142 c. The association shall provide for windstorm coverage on
1143 residential properties in limits up to \$10 million for
1144 commercial lines residential risks and up to \$1 million for
1145 personal lines residential risks. If coverage with the
1146 association is sought for a residential risk valued in excess of
1147 these limits, coverage shall be available to the risk up to the
1148 replacement cost or actual cash value of the property, at the
1149 option of the insured, if coverage for the risk cannot be
1150 located in the authorized market. The association must accept a
1151 commercial lines residential risk with limits above \$10 million
1152 or a personal lines residential risk with limits above \$1
1153 million if coverage is not available in the authorized market.
1154 The association may write coverage above the limits specified in
1155 this subparagraph with or without facultative or other
1156 reinsurance coverage, as the association determines appropriate.

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1157 d. The plan of operation must provide objective criteria
1158 and procedures, approved by the department, to be uniformly
1159 applied for all applicants in determining whether an individual
1160 risk is so hazardous as to be uninsurable. In making this
1161 determination and in establishing the criteria and procedures,
1162 the following shall be considered:

1163 (I) Whether the likelihood of a loss for the individual
1164 risk is substantially higher than for other risks of the same
1165 class; and

1166 (II) Whether the uncertainty associated with the
1167 individual risk is such that an appropriate premium cannot be
1168 determined.

1169
1170 The acceptance or rejection of a risk by the association
1171 pursuant to such criteria and procedures must be construed as
1172 the private placement of insurance, and the provisions of
1173 chapter 120 do not apply.

1174 e. If the risk accepts an offer of coverage through the
1175 market assistance program or through a mechanism established by
1176 the association, either before the policy is issued by the
1177 association or during the first 30 days of coverage by the
1178 association, and the producing agent who submitted the
1179 application to the association is not currently appointed by the
1180 insurer, the insurer shall:

1181 (I) Pay to the producing agent of record of the policy,
1182 for the first year, an amount that is the greater of the
1183 insurer's usual and customary commission for the type of policy

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1184 written or a fee equal to the usual and customary commission of
1185 the association; or

1186 (II) Offer to allow the producing agent of record of the
1187 policy to continue servicing the policy for a period of not less
1188 than 1 year and offer to pay the agent the greater of the
1189 insurer's or the association's usual and customary commission
1190 for the type of policy written.

1191

1192 If the producing agent is unwilling or unable to accept
1193 appointment, the new insurer shall pay the agent in accordance
1194 with sub-sub-subparagraph (I). Subject to the provisions of s.
1195 627.3517, the policies issued by the association must provide
1196 that if the association obtains an offer from an authorized
1197 insurer to cover the risk at its approved rates under either a
1198 standard policy including wind coverage or, if consistent with
1199 the insurer's underwriting rules as filed with the department, a
1200 basic policy including wind coverage, the risk is no longer
1201 eligible for coverage through the association. Upon termination
1202 of eligibility, the association shall provide written notice to
1203 the policyholder and agent of record stating that the
1204 association policy must be canceled as of 60 days after the date
1205 of the notice because of the offer of coverage from an
1206 authorized insurer. Other provisions of the insurance code
1207 relating to cancellation and notice of cancellation do not apply
1208 to actions under this sub-subparagraph.

1209 f. When the association enters into a contractual
1210 agreement for a take-out plan, the producing agent of record of

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1211 the association policy is entitled to retain any unearned
1212 commission on the policy, and the insurer shall:

1213 (I) Pay to the producing agent of record of the
1214 association policy, for the first year, an amount that is the
1215 greater of the insurer's usual and customary commission for the
1216 type of policy written or a fee equal to the usual and customary
1217 commission of the association; or

1218 (II) Offer to allow the producing agent of record of the
1219 association policy to continue servicing the policy for a period
1220 of not less than 1 year and offer to pay the agent the greater
1221 of the insurer's or the association's usual and customary
1222 commission for the type of policy written.

1223
1224 If the producing agent is unwilling or unable to accept
1225 appointment, the new insurer shall pay the agent in accordance
1226 with sub-sub-subparagraph (I).

1227 6.a. The plan of operation may authorize the formation of
1228 a private nonprofit corporation, a private nonprofit
1229 unincorporated association, a partnership, a trust, a limited
1230 liability company, or a nonprofit mutual company which may be
1231 empowered, among other things, to borrow money by issuing bonds
1232 or by incurring other indebtedness and to accumulate reserves or
1233 funds to be used for the payment of insured catastrophe losses.
1234 The plan may authorize all actions necessary to facilitate the
1235 issuance of bonds, including the pledging of assessments or
1236 other revenues.

1237 b. Any entity created under this subsection, or any entity
1238 formed for the purposes of this subsection, may sue and be sued,

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1239 may borrow money; issue bonds, notes, or debt instruments;
1240 pledge or sell assessments, market equalization surcharges and
1241 other surcharges, rights, premiums, contractual rights,
1242 projected recoveries from the Florida Hurricane Catastrophe
1243 Fund, other reinsurance recoverables, and other assets as
1244 security for such bonds, notes, or debt instruments; enter into
1245 any contracts or agreements necessary or proper to accomplish
1246 such borrowings; and take other actions necessary to carry out
1247 the purposes of this subsection. The association may issue bonds
1248 or incur other indebtedness, or have bonds issued on its behalf
1249 by a unit of local government pursuant to subparagraph (6)(p)2.,
1250 in the absence of a hurricane or other weather-related event,
1251 upon a determination by the association subject to approval by
1252 the department that such action would enable it to efficiently
1253 meet the financial obligations of the association and that such
1254 financings are reasonably necessary to effectuate the
1255 requirements of this subsection. Any such entity may accumulate
1256 reserves and retain surpluses as of the end of any association
1257 year to provide for the payment of losses incurred by the
1258 association during that year or any future year. The association
1259 shall incorporate and continue the plan of operation and
1260 articles of agreement in effect on the effective date of chapter
1261 76-96, Laws of Florida, to the extent that it is not
1262 inconsistent with chapter 76-96, and as subsequently modified
1263 consistent with chapter 76-96. The board of directors and
1264 officers currently serving shall continue to serve until their
1265 successors are duly qualified as provided under the plan. The
1266 assets and obligations of the plan in effect immediately prior

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1267 to the effective date of chapter 76-96 shall be construed to be
1268 the assets and obligations of the successor plan created herein.

1269 c. In recognition of s. 10, Art. I of the State
1270 Constitution, prohibiting the impairment of obligations of
1271 contracts, it is the intent of the Legislature that no action be
1272 taken whose purpose is to impair any bond indenture or financing
1273 agreement or any revenue source committed by contract to such
1274 bond or other indebtedness issued or incurred by the association
1275 or any other entity created under this subsection.

1276 7. On such coverage, an agent's remuneration shall be that
1277 amount of money payable to the agent by the terms of his or her
1278 contract with the company with which the business is placed.
1279 However, no commission will be paid on that portion of the
1280 premium which is in excess of the standard premium of that
1281 company.

1282 8. Subject to approval by the department, the association
1283 may establish different eligibility requirements and operational
1284 procedures for any line or type of coverage for any specified
1285 eligible area or portion of an eligible area if the board
1286 determines that such changes to the eligibility requirements and
1287 operational procedures are justified due to the voluntary market
1288 being sufficiently stable and competitive in such area or for
1289 such line or type of coverage and that consumers who, in good
1290 faith, are unable to obtain insurance through the voluntary
1291 market through ordinary methods would continue to have access to
1292 coverage from the association. When coverage is sought in
1293 connection with a real property transfer, such requirements and
1294 procedures shall not provide for an effective date of coverage

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1295 later than the date of the closing of the transfer as
1296 established by the transferor, the transferee, and, if
1297 applicable, the lender.

1298 9. Notwithstanding any other provision of law:

1299 a. The pledge or sale of, the lien upon, and the security
1300 interest in any rights, revenues, or other assets of the
1301 association created or purported to be created pursuant to any
1302 financing documents to secure any bonds or other indebtedness of
1303 the association shall be and remain valid and enforceable,
1304 notwithstanding the commencement of and during the continuation
1305 of, and after, any rehabilitation, insolvency, liquidation,
1306 bankruptcy, receivership, conservatorship, reorganization, or
1307 similar proceeding against the association under the laws of
1308 this state or any other applicable laws.

1309 b. No such proceeding shall relieve the association of its
1310 obligation, or otherwise affect its ability to perform its
1311 obligation, to continue to collect, or levy and collect,
1312 assessments, market equalization or other surcharges, projected
1313 recoveries from the Florida Hurricane Catastrophe Fund,
1314 reinsurance recoverables, or any other rights, revenues, or
1315 other assets of the association pledged.

1316 c. Each such pledge or sale of, lien upon, and security
1317 interest in, including the priority of such pledge, lien, or
1318 security interest, any such assessments, emergency assessments,
1319 market equalization or renewal surcharges, projected recoveries
1320 from the Florida Hurricane Catastrophe Fund, reinsurance
1321 recoverables, or other rights, revenues, or other assets which
1322 are collected, or levied and collected, after the commencement

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1323 of and during the pendency of or after any such proceeding shall
1324 continue unaffected by such proceeding.

1325 d. As used in this subsection, the term "financing
1326 documents" means any agreement, instrument, or other document
1327 now existing or hereafter created evidencing any bonds or other
1328 indebtedness of the association or pursuant to which any such
1329 bonds or other indebtedness has been or may be issued and
1330 pursuant to which any rights, revenues, or other assets of the
1331 association are pledged or sold to secure the repayment of such
1332 bonds or indebtedness, together with the payment of interest on
1333 such bonds or such indebtedness, or the payment of any other
1334 obligation of the association related to such bonds or
1335 indebtedness.

1336 e. Any such pledge or sale of assessments, revenues,
1337 contract rights or other rights or assets of the association
1338 shall constitute a lien and security interest, or sale, as the
1339 case may be, that is immediately effective and attaches to such
1340 assessments, revenues, contract, or other rights or assets,
1341 whether or not imposed or collected at the time the pledge or
1342 sale is made. Any such pledge or sale is effective, valid,
1343 binding, and enforceable against the association or other entity
1344 making such pledge or sale, and valid and binding against and
1345 superior to any competing claims or obligations owed to any
1346 other person or entity, including policyholders in this state,
1347 asserting rights in any such assessments, revenues, contract, or
1348 other rights or assets to the extent set forth in and in
1349 accordance with the terms of the pledge or sale contained in the
1350 applicable financing documents, whether or not any such person

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1351 or entity has notice of such pledge or sale and without the need
1352 for any physical delivery, recordation, filing, or other action.

1353 f. There shall be no liability on the part of, and no
1354 cause of action of any nature shall arise against, any member
1355 insurer or its agents or employees, agents or employees of the
1356 association, members of the board of directors of the
1357 association, or the department or its representatives, for any
1358 action taken by them in the performance of their duties or
1359 responsibilities under this subsection. Such immunity does not
1360 apply to actions for breach of any contract or agreement
1361 pertaining to insurance, or any willful tort.

1362 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1363 (a)1. It is the public purpose of this subsection to
1364 ensure the existence of an orderly market for property insurance
1365 for Floridians and Florida businesses. The Legislature finds
1366 that private insurers are unwilling or unable to provide
1367 affordable property insurance coverage in this state to the
1368 extent sought and needed. The absence of affordable property
1369 insurance threatens the public health, safety, and welfare and
1370 likewise threatens the economic health of the state. The state
1371 therefore has a compelling public interest and a public purpose
1372 to assist in assuring that property in the state is insured and
1373 that it is insured at affordable rates so as to facilitate the
1374 remediation, reconstruction, and replacement of damaged or
1375 destroyed property in order to reduce or avoid the negative
1376 effects otherwise resulting to the public health, safety, and
1377 welfare, to the economy of the state, and to the revenues of the
1378 state and local governments which are needed to provide for the

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1379 public welfare. It is necessary, therefore, to provide
1380 affordable property insurance to applicants who are in good
1381 faith entitled to procure insurance through the voluntary market
1382 but are unable to do so. The Legislature intends by this
1383 subsection that affordable property insurance be provided and
1384 that it continue to be provided, as long as necessary, through
1385 Citizens Property Insurance Corporation, a government entity
1386 that is an integral part of the state, and that is not a private
1387 insurance company. To that end, Citizens Property Insurance
1388 Corporation shall strive to increase the availability of
1389 affordable property insurance in this state, while achieving
1390 efficiencies and economies, and while providing service to
1391 policyholders, applicants, and agents which is no less than the
1392 quality generally provided in the voluntary market, for the
1393 achievement of the foregoing public purposes. Because it is
1394 essential for this government entity to have the maximum
1395 financial resources to pay claims following a catastrophic
1396 hurricane, it is the intent of the Legislature that Citizens
1397 Property Insurance Corporation continue to be an integral part
1398 of the state and that the income of the corporation be exempt
1399 from federal income taxation and that interest on the debt
1400 obligations issued by the corporation be exempt from federal
1401 income taxation.

1402 2. The Residential Property and Casualty Joint
1403 Underwriting Association originally created by this statute
1404 shall be known, as of July 1, 2002, as the Citizens Property
1405 Insurance Corporation. The corporation shall provide insurance
1406 for residential and commercial property, for applicants who are
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1407 in good faith entitled, but are unable, to procure insurance
1408 through the voluntary market. The corporation shall operate
1409 pursuant to a plan of operation approved by order of the
1410 Financial Services Commission. The plan is subject to continuous
1411 review by the commission. The commission may, by order, withdraw
1412 approval of all or part of a plan if the commission determines
1413 that conditions have changed since approval was granted and that
1414 the purposes of the plan require changes in the plan. The
1415 corporation shall continue to operate pursuant to the plan of
1416 operation approved by the Office of Insurance Regulation until
1417 October 1, 2006. For the purposes of this subsection,
1418 residential coverage includes both personal lines residential
1419 coverage, which consists of the type of coverage provided by
1420 homeowner's, mobile home owner's, dwelling, tenant's,
1421 condominium unit owner's, and similar policies, and commercial
1422 lines residential coverage, which consists of the type of
1423 coverage provided by condominium association, apartment
1424 building, and similar policies.

1425 ~~3. For the purposes of this subsection, the term~~
1426 ~~"homestead property" means:~~

1427 ~~a. Property that has been granted a homestead exemption~~
1428 ~~under chapter 196;~~

1429 ~~b. Property for which the owner has a current, written~~
1430 ~~lease with a renter for a term of at least 7 months and for~~
1431 ~~which the dwelling is insured by the corporation for \$200,000 or~~
1432 ~~less;~~

1433 ~~c. An owner-occupied mobile home or manufactured home, as~~
1434 ~~defined in s. 320.01, which is permanently affixed to real~~

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1435 ~~property, is owned by a Florida resident, and has been granted a~~
1436 ~~homestead exemption under chapter 196 or, if the owner does not~~
1437 ~~own the real property, the owner certifies that the mobile home~~
1438 ~~or manufactured home is his or her principal place of residence;~~

1439 ~~d. Tenant's coverage;~~

1440 ~~e. Commercial lines residential property; or~~

1441 ~~f. Any county, district, or municipal hospital; a hospital~~
1442 ~~licensed by any not for profit corporation qualified under s.~~
1443 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
1444 ~~continuing care retirement community that is certified under~~
1445 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1446 ~~under chapter 196.~~

1447 ~~4. For the purposes of this subsection, the term~~
1448 ~~"nonhomestead property" means property that is not homestead~~
1449 ~~property.~~

1450 ~~3.5.~~ Effective January 1, 2009, a personal lines
1451 residential structure that has a dwelling replacement cost of \$2
1452 ~~\$1~~ million or more, or a single condominium unit that has a
1453 combined dwelling and content replacement cost of \$2 ~~\$1~~ million
1454 or more is not eligible for coverage by the corporation. Such
1455 dwellings insured by the corporation on December 31, 2008, may
1456 continue to be covered by the corporation until the end of the
1457 policy term. However, such dwellings that are insured by the
1458 corporation and become ineligible for coverage due to the
1459 provisions of this subparagraph may reapply and obtain coverage
1460 ~~in the high risk account and be considered "nonhomestead~~
1461 ~~property"~~ if the property owner provides the corporation with a
1462 sworn affidavit from one or more insurance agents, on a form

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1463 provided by the corporation, stating that the agents have made
1464 their best efforts to obtain coverage and that the property has
1465 been rejected for coverage by at least one authorized insurer
1466 and at least three surplus lines insurers. If such conditions
1467 are met, the dwelling may be insured by the corporation for up
1468 to 3 years, after which time the dwelling is ineligible for
1469 coverage. The office shall approve the method used by the
1470 corporation for valuing the dwelling replacement cost for the
1471 purposes of this subparagraph. If a policyholder is insured by
1472 the corporation prior to being determined to be ineligible
1473 pursuant to this subparagraph and such policyholder files a
1474 lawsuit challenging the determination, the policyholder may
1475 remain insured by the corporation until the conclusion of the
1476 litigation.

1477 ~~6. For properties constructed on or after January 1, 2009,~~
1478 ~~the corporation may not insure any property located within 2,500~~
1479 ~~feet landward of the coastal construction control line created~~
1480 ~~pursuant to s. 161.053 unless the property meets the~~
1481 ~~requirements of the code plus building standards developed by~~
1482 ~~the Florida Building Commission.~~

1483 4.7. It is the intent of the Legislature that
1484 policyholders, applicants, and agents of the corporation receive
1485 service and treatment of the highest possible level but never
1486 less than that generally provided in the voluntary market. It
1487 also is intended that the corporation be held to service
1488 standards no less than those applied to insurers in the
1489 voluntary market by the office with respect to responsiveness,

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1490 timeliness, customer courtesy, and overall dealings with
1491 policyholders, applicants, or agents of the corporation.

1492 ~~5.8-~~ Effective January 1, 2009, a personal lines
1493 residential structure that is located in the "wind-borne debris
1494 region," as defined in s. 1609.2, International Building Code
1495 (2006), and that has an insured value on the structure of
1496 \$750,000 or more is not eligible for coverage by the corporation
1497 unless the structure has opening protections as required under
1498 the Florida Building Code for a newly constructed residential
1499 structure in that area. A residential structure shall be deemed
1500 to comply with the requirements of this subparagraph if it has
1501 shutters or opening protections on all openings and if such
1502 opening protections complied with the Florida Building Code at
1503 the time they were installed. Effective January 1, 2010, for
1504 personal lines residential property insured by the corporation
1505 that is located in the wind-borne debris region and has an
1506 insured value on the structure of \$500,000 or more, a
1507 prospective purchaser of any such residential property must be
1508 provided by the seller a written disclosure that contains the
1509 structure's windstorm mitigation rating based on the uniform
1510 home grading scale adopted under s. 215.55865. Such rating shall
1511 be provided to the purchaser at or before the time the purchaser
1512 executes a contract for sale and purchase.

1513 (b)1. All insurers authorized to write one or more subject
1514 lines of business in this state are subject to assessment by the
1515 corporation and, for the purposes of this subsection, are
1516 referred to collectively as "assessable insurers." Insurers
1517 writing one or more subject lines of business in this state

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1518 pursuant to part VIII of chapter 626 are not assessable
1519 insurers, but insureds who procure one or more subject lines of
1520 business in this state pursuant to part VIII of chapter 626 are
1521 subject to assessment by the corporation and are referred to
1522 collectively as "assessable insureds." An authorized insurer's
1523 assessment liability shall begin on the first day of the
1524 calendar year following the year in which the insurer was issued
1525 a certificate of authority to transact insurance for subject
1526 lines of business in this state and shall terminate 1 year after
1527 the end of the first calendar year during which the insurer no
1528 longer holds a certificate of authority to transact insurance
1529 for subject lines of business in this state.

1530 2.a. All revenues, assets, liabilities, losses, and
1531 expenses of the corporation shall be divided into three separate
1532 accounts as follows:

1533 (I) A personal lines account for personal residential
1534 policies issued by the corporation or issued by the Residential
1535 Property and Casualty Joint Underwriting Association and renewed
1536 by the corporation that provide comprehensive, multiperil
1537 coverage on risks that are not located in areas eligible for
1538 coverage in the Florida Windstorm Underwriting Association as
1539 those areas were defined on January 1, 2002, and for such
1540 policies that do not provide coverage for the peril of wind on
1541 risks that are located in such areas;

1542 (II) A commercial lines account for commercial residential
1543 and commercial nonresidential policies issued by the corporation
1544 or issued by the Residential Property and Casualty Joint
1545 Underwriting Association and renewed by the corporation that

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1546 provide coverage for basic property perils on risks that are not
1547 located in areas eligible for coverage in the Florida Windstorm
1548 Underwriting Association as those areas were defined on January
1549 1, 2002, and for such policies that do not provide coverage for
1550 the peril of wind on risks that are located in such areas; and

1551 (III) A high-risk account for personal residential
1552 policies and commercial residential and commercial
1553 nonresidential property policies issued by the corporation or
1554 transferred to the corporation that provide coverage for the
1555 peril of wind on risks that are located in areas eligible for
1556 coverage in the Florida Windstorm Underwriting Association as
1557 those areas were defined on January 1, 2002. ~~Subject to the~~
1558 ~~approval of a business plan by the Financial Services Commission~~
1559 ~~and Legislative Budget Commission as provided in this sub sub~~
1560 ~~subparagraph, but no earlier than March 31, 2007,~~ The
1561 corporation may offer policies that provide multiperil coverage
1562 and the corporation shall continue to offer policies that
1563 provide coverage only for the peril of wind for risks located in
1564 areas eligible for coverage in the high-risk account. In issuing
1565 multiperil coverage, the corporation may use its approved policy
1566 forms and rates for the personal lines account. An applicant or
1567 insured who is eligible to purchase a multiperil policy from the
1568 corporation may purchase a multiperil policy from an authorized
1569 insurer without prejudice to the applicant's or insured's
1570 eligibility to prospectively purchase a policy that provides
1571 coverage only for the peril of wind from the corporation. An
1572 applicant or insured who is eligible for a corporation policy
1573 that provides coverage only for the peril of wind may elect to

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1574 purchase or retain such policy and also purchase or retain
1575 coverage excluding wind from an authorized insurer without
1576 prejudice to the applicant's or insured's eligibility to
1577 prospectively purchase a policy that provides multiperil
1578 coverage from the corporation. It is the goal of the Legislature
1579 that there would be an overall average savings of 10 percent or
1580 more for a policyholder who currently has a wind-only policy
1581 with the corporation, and an ex-wind policy with a voluntary
1582 insurer or the corporation, and who then obtains a multiperil
1583 policy from the corporation. It is the intent of the Legislature
1584 that the offer of multiperil coverage in the high-risk account
1585 be made and implemented in a manner that does not adversely
1586 affect the tax-exempt status of the corporation or
1587 creditworthiness of or security for currently outstanding
1588 financing obligations or credit facilities of the high-risk
1589 account, the personal lines account, or the commercial lines
1590 account. ~~By March 1, 2007, the corporation shall prepare and
1591 submit for approval by the Financial Services Commission and
1592 Legislative Budget Commission a report detailing the
1593 corporation's business plan for issuing multiperil coverage in
1594 the high-risk account. The business plan shall be approved or
1595 disapproved within 30 days after receipt, as submitted or
1596 modified and resubmitted by the corporation. The business plan
1597 must include: the impact of such multiperil coverage on the
1598 corporation's financial resources, the impact of such multiperil
1599 coverage on the corporation's tax exempt status, the manner in
1600 which the corporation plans to implement the processing of
1601 applications and policy forms for new and existing~~

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1602 ~~policyholders, the impact of such multiperil coverage on the~~
1603 ~~corporation's ability to deliver customer service at the high~~
1604 ~~level required by this subsection, the ability of the~~
1605 ~~corporation to process claims, the ability of the corporation to~~
1606 ~~quote and issue policies, the impact of such multiperil coverage~~
1607 ~~on the corporation's agents, the impact of such multiperil~~
1608 ~~coverage on the corporation's existing policyholders, and the~~
1609 ~~impact of such multiperil coverage on rates and premium. The~~
1610 high-risk account must also include quota share primary
1611 insurance under subparagraph (c)2. The area eligible for
1612 coverage under the high-risk account also includes the area
1613 within Port Canaveral, which is bordered on the south by the
1614 City of Cape Canaveral, bordered on the west by the Banana
1615 River, and bordered on the north by Federal Government property.

1616 b. The three separate accounts must be maintained as long
1617 as financing obligations entered into by the Florida Windstorm
1618 Underwriting Association or Residential Property and Casualty
1619 Joint Underwriting Association are outstanding, in accordance
1620 with the terms of the corresponding financing documents. When
1621 the financing obligations are no longer outstanding, in
1622 accordance with the terms of the corresponding financing
1623 documents, the corporation may use a single account for all
1624 revenues, assets, liabilities, losses, and expenses of the
1625 corporation. Consistent with the requirement of this
1626 subparagraph and prudent investment policies that minimize the
1627 cost of carrying debt, the board shall exercise its best efforts
1628 to retire existing debt or to obtain approval of necessary
1629 parties to amend the terms of existing debt, so as to structure

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1630 the most efficient plan to consolidate the three separate
1631 accounts into a single account. By February 1, 2007, the board
1632 shall submit a report to the Financial Services Commission, the
1633 President of the Senate, and the Speaker of the House of
1634 Representatives which includes an analysis of consolidating the
1635 accounts, the actions the board has taken to minimize the cost
1636 of carrying debt, and its recommendations for executing the most
1637 efficient plan.

1638 c. Creditors of the Residential Property and Casualty
1639 Joint Underwriting Association and of the accounts specified in
1640 sub-sub-paragraphs a.(I) and (II) may have a claim against,
1641 and recourse to, the accounts referred to in sub-sub-
1642 subparagraphs a.(I) and (II) and shall have no claim against, or
1643 recourse to, the account referred to in sub-sub-subparagraph
1644 a.(III). Creditors of the Florida Windstorm Underwriting
1645 Association shall have a claim against, and recourse to, the
1646 account referred to in sub-sub-subparagraph a.(III) and shall
1647 have no claim against, or recourse to, the accounts referred to
1648 in sub-sub-subparagraphs a.(I) and (II).

1649 d. Revenues, assets, liabilities, losses, and expenses not
1650 attributable to particular accounts shall be prorated among the
1651 accounts.

1652 e. The Legislature finds that the revenues of the
1653 corporation are revenues that are necessary to meet the
1654 requirements set forth in documents authorizing the issuance of
1655 bonds under this subsection.

1656 f. No part of the income of the corporation may inure to
1657 the benefit of any private person.

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1658 3. With respect to a deficit in an account:

1659 a. After accounting for the Citizens policyholder
1660 surcharges imposed under sub-subparagraph i., when the remaining
1661 projected deficit incurred in a particular calendar year is not
1662 greater than 6 ~~10~~ percent of the aggregate statewide direct
1663 written premium for the subject lines of business for the prior
1664 calendar year, the entire deficit shall be recovered through
1665 regular assessments of assessable insurers under paragraph (p)
1666 and assessable insureds.

1667 b. After accounting for the Citizens policyholder
1668 surcharges imposed under sub-subparagraph i., when the remaining
1669 projected deficit incurred in a particular calendar year exceeds
1670 6 ~~10~~ percent of the aggregate statewide direct written premium
1671 for the subject lines of business for the prior calendar year,
1672 the corporation shall levy regular assessments on assessable
1673 insurers under paragraph (p) and on assessable insureds in an
1674 amount equal to the greater of 6 ~~10~~ percent of the deficit or 6
1675 ~~10~~ percent of the aggregate statewide direct written premium for
1676 the subject lines of business for the prior calendar year. Any
1677 remaining deficit shall be recovered through emergency
1678 assessments under sub-subparagraph d.

1679 c. Each assessable insurer's share of the amount being
1680 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1681 be in the proportion that the assessable insurer's direct
1682 written premium for the subject lines of business for the year
1683 preceding the assessment bears to the aggregate statewide direct
1684 written premium for the subject lines of business for that year.
1685 The assessment percentage applicable to each assessable insured

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1686 is the ratio of the amount being assessed under sub-subparagraph
1687 a. or sub-subparagraph b. to the aggregate statewide direct
1688 written premium for the subject lines of business for the prior
1689 year. Assessments levied by the corporation on assessable
1690 insurers under sub-subparagraphs a. and b. shall be paid as
1691 required by the corporation's plan of operation and paragraph
1692 (p). ~~notwithstanding any other provision of this subsection, the~~
1693 ~~aggregate amount of a regular assessment for a deficit incurred~~
1694 ~~in a particular calendar year shall be reduced by the estimated~~
1695 ~~amount to be received by the corporation from the Citizens~~
1696 ~~policyholder surcharge under subparagraph (c)10. and the amount~~
1697 ~~collected or estimated to be collected from the assessment on~~
1698 ~~Citizens policyholders pursuant to sub-subparagraph i.~~
1699 Assessments levied by the corporation on assessable insureds
1700 under sub-subparagraphs a. and b. shall be collected by the
1701 surplus lines agent at the time the surplus lines agent collects
1702 the surplus lines tax required by s. 626.932 and shall be paid
1703 to the Florida Surplus Lines Service Office at the time the
1704 surplus lines agent pays the surplus lines tax to the Florida
1705 Surplus Lines Service Office. Upon receipt of regular
1706 assessments from surplus lines agents, the Florida Surplus Lines
1707 Service Office shall transfer the assessments directly to the
1708 corporation as determined by the corporation.

1709 d. Upon a determination by the board of governors that a
1710 deficit in an account exceeds the amount that will be recovered
1711 through regular assessments under sub-subparagraph a. or sub-
1712 subparagraph b., plus the amount that is expected to be
1713 recovered through surcharges under sub-subparagraph i., as to

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1714 the remaining projected deficit the board shall levy, after
1715 verification by the office, emergency assessments, for as many
1716 years as necessary to cover the deficits, to be collected by
1717 assessable insurers and the corporation and collected from
1718 assessable insureds upon issuance or renewal of policies for
1719 subject lines of business, excluding National Flood Insurance
1720 policies. The amount of the emergency assessment collected in a
1721 particular year shall be a uniform percentage of that year's
1722 direct written premium for subject lines of business and all
1723 accounts of the corporation, excluding National Flood Insurance
1724 Program policy premiums, as annually determined by the board and
1725 verified by the office. The office shall verify the arithmetic
1726 calculations involved in the board's determination within 30
1727 days after receipt of the information on which the determination
1728 was based. Notwithstanding any other provision of law, the
1729 corporation and each assessable insurer that writes subject
1730 lines of business shall collect emergency assessments from its
1731 policyholders without such obligation being affected by any
1732 credit, limitation, exemption, or deferment. Emergency
1733 assessments levied by the corporation on assessable insureds
1734 shall be collected by the surplus lines agent at the time the
1735 surplus lines agent collects the surplus lines tax required by
1736 s. 626.932 and shall be paid to the Florida Surplus Lines
1737 Service Office at the time the surplus lines agent pays the
1738 surplus lines tax to the Florida Surplus Lines Service Office.
1739 The emergency assessments so collected shall be transferred
1740 directly to the corporation on a periodic basis as determined by
1741 the corporation and shall be held by the corporation solely in
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1742 the applicable account. The aggregate amount of emergency
1743 assessments levied for an account under this sub-subparagraph in
1744 any calendar year may, at the discretion of the board of
1745 governors, be less than but may not exceed the greater of 10
1746 percent of the amount needed to cover the ~~original~~ deficit, plus
1747 interest, fees, commissions, required reserves, and other costs
1748 associated with financing of the original deficit, or 10 percent
1749 of the aggregate statewide direct written premium for subject
1750 lines of business and for all accounts of the corporation for
1751 the prior year, plus interest, fees, commissions, required
1752 reserves, and other costs associated with financing the ~~original~~
1753 deficit.

1754 e. The corporation may pledge the proceeds of assessments,
1755 projected recoveries from the Florida Hurricane Catastrophe
1756 Fund, other insurance and reinsurance recoverables, policyholder
1757 surcharges and other surcharges, and other funds available to
1758 the corporation as the source of revenue for and to secure bonds
1759 issued under paragraph (p), bonds or other indebtedness issued
1760 under subparagraph (c)3., or lines of credit or other financing
1761 mechanisms issued or created under this subsection, or to retire
1762 any other debt incurred as a result of deficits or events giving
1763 rise to deficits, or in any other way that the board determines
1764 will efficiently recover such deficits. The purpose of the lines
1765 of credit or other financing mechanisms is to provide additional
1766 resources to assist the corporation in covering claims and
1767 expenses attributable to a catastrophe. As used in this
1768 subsection, the term "assessments" includes regular assessments
1769 under sub-subparagraph a., sub-subparagraph b., or subparagraph

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1770 (p)1. and emergency assessments under sub-subparagraph d.
1771 Emergency assessments collected under sub-subparagraph d. are
1772 not part of an insurer's rates, are not premium, and are not
1773 subject to premium tax, fees, or commissions; however, failure
1774 to pay the emergency assessment shall be treated as failure to
1775 pay premium. The emergency assessments under sub-subparagraph d.
1776 shall continue as long as any bonds issued or other indebtedness
1777 incurred with respect to a deficit for which the assessment was
1778 imposed remain outstanding, unless adequate provision has been
1779 made for the payment of such bonds or other indebtedness
1780 pursuant to the documents governing such bonds or other
1781 indebtedness.

1782 f. As used in this subsection for purposes of any deficit
1783 incurred on or after January 25, 2007, the term "subject lines
1784 of business" means insurance written by assessable insurers or
1785 procured by assessable insureds for all property and casualty
1786 lines of business in this state, but not including workers'
1787 compensation or medical malpractice. As used in the sub-
1788 subparagraph, the term "property and casualty lines of business"
1789 includes all lines of business identified on Form 2, Exhibit of
1790 Premiums and Losses, in the annual statement required of
1791 authorized insurers by s. 624.424 and any rule adopted under
1792 this section, except for those lines identified as accident and
1793 health insurance and except for policies written under the
1794 National Flood Insurance Program or the Federal Crop Insurance
1795 Program. For purposes of this sub-subparagraph, the term
1796 "workers' compensation" includes both workers' compensation
1797 insurance and excess workers' compensation insurance.

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1798 g. The Florida Surplus Lines Service Office shall
1799 determine annually the aggregate statewide written premium in
1800 subject lines of business procured by assessable insureds and
1801 shall report that information to the corporation in a form and
1802 at a time the corporation specifies to ensure that the
1803 corporation can meet the requirements of this subsection and the
1804 corporation's financing obligations.

1805 h. The Florida Surplus Lines Service Office shall verify
1806 the proper application by surplus lines agents of assessment
1807 percentages for regular assessments and emergency assessments
1808 levied under this subparagraph on assessable insureds and shall
1809 assist the corporation in ensuring the accurate, timely
1810 collection and payment of assessments by surplus lines agents as
1811 required by the corporation.

1812 i. If a deficit is incurred in any account in 2008 or
1813 thereafter, the board of governors shall levy a Citizens
1814 policyholder surcharge ~~an immediate assessment against the~~
1815 ~~premium of each nonhomestead property policyholder in all~~
1816 ~~accounts of the corporation, as a uniform percentage of the~~
1817 ~~premium of the policy of up to 10 percent of such premium, which~~
1818 ~~funds shall be used to offset the deficit. If this assessment is~~
1819 ~~insufficient to eliminate the deficit, the board of governors~~
1820 ~~shall levy an additional assessment~~ against all policyholders of
1821 the corporation for a 12-month period, which shall be collected
1822 at the time of issuance or renewal of a policy, as a uniform
1823 percentage of the premium for the policy of up to 15 ~~10~~ percent
1824 of such premium, which funds shall be used to ~~further~~ offset the
1825 deficit. Citizens policyholder surcharges under this sub-

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1826 subparagraph are not considered premium and are not subject to
1827 commissions, fees, or premium taxes. However, failure to pay
1828 such surcharges shall be treated as failure to pay premium.

1829 j. If the amount of any assessments or surcharges
1830 collected from corporation policyholders, assessable insurers or
1831 their policyholders, or assessable insureds exceeds the amount
1832 of the deficits, such excess amounts shall be remitted to and
1833 retained by the corporation in a reserve to be used by the
1834 corporation, as determined by the board of governors and
1835 approved by the office, to pay claims or reduce any past,
1836 present, or future plan-year deficits or to reduce outstanding
1837 debt. The board of governors shall maintain separate accounting
1838 records that consolidate data for nonhomestead properties,
1839 including, but not limited to, number of policies, insured
1840 values, premiums written, and losses. The board of governors
1841 shall annually report to the office and the Legislature a
1842 summary of such data.

1843 (c) The plan of operation of the corporation:

1844 1. Must provide for adoption of residential property and
1845 casualty insurance policy forms and commercial residential and
1846 nonresidential property insurance forms, which forms must be
1847 approved by the office prior to use. The corporation shall adopt
1848 the following policy forms:

1849 a. Standard personal lines policy forms that are
1850 comprehensive multiperil policies providing full coverage of a
1851 residential property equivalent to the coverage provided in the
1852 private insurance market under an HO-3, HO-4, or HO-6 policy.

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1853 b. Basic personal lines policy forms that are policies
1854 similar to an HO-8 policy or a dwelling fire policy that provide
1855 coverage meeting the requirements of the secondary mortgage
1856 market, but which coverage is more limited than the coverage
1857 under a standard policy.

1858 c. Commercial lines residential and nonresidential policy
1859 forms that are generally similar to the basic perils of full
1860 coverage obtainable for commercial residential structures and
1861 commercial nonresidential structures in the admitted voluntary
1862 market.

1863 d. Personal lines and commercial lines residential
1864 property insurance forms that cover the peril of wind only. The
1865 forms are applicable only to residential properties located in
1866 areas eligible for coverage under the high-risk account referred
1867 to in sub-subparagraph (b)2.a.

1868 e. Commercial lines nonresidential property insurance
1869 forms that cover the peril of wind only. The forms are
1870 applicable only to nonresidential properties located in areas
1871 eligible for coverage under the high-risk account referred to in
1872 sub-subparagraph (b)2.a.

1873 f. The corporation may adopt variations of the policy
1874 forms listed in sub-subparagraphs a.-e. that contain more
1875 restrictive coverage.

1876 2.a. Must provide that the corporation adopt a program in
1877 which the corporation and authorized insurers enter into quota
1878 share primary insurance agreements for hurricane coverage, as
1879 defined in s. 627.4025(2)(a), for eligible risks, and adopt

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1880 property insurance forms for eligible risks which cover the
1881 peril of wind only. As used in this subsection, the term:

1882 (I) "Quota share primary insurance" means an arrangement
1883 in which the primary hurricane coverage of an eligible risk is
1884 provided in specified percentages by the corporation and an
1885 authorized insurer. The corporation and authorized insurer are
1886 each solely responsible for a specified percentage of hurricane
1887 coverage of an eligible risk as set forth in a quota share
1888 primary insurance agreement between the corporation and an
1889 authorized insurer and the insurance contract. The
1890 responsibility of the corporation or authorized insurer to pay
1891 its specified percentage of hurricane losses of an eligible
1892 risk, as set forth in the quota share primary insurance
1893 agreement, may not be altered by the inability of the other
1894 party to the agreement to pay its specified percentage of
1895 hurricane losses. Eligible risks that are provided hurricane
1896 coverage through a quota share primary insurance arrangement
1897 must be provided policy forms that set forth the obligations of
1898 the corporation and authorized insurer under the arrangement,
1899 clearly specify the percentages of quota share primary insurance
1900 provided by the corporation and authorized insurer, and
1901 conspicuously and clearly state that neither the authorized
1902 insurer nor the corporation may be held responsible beyond its
1903 specified percentage of coverage of hurricane losses.

1904 (II) "Eligible risks" means personal lines residential and
1905 commercial lines residential risks that meet the underwriting
1906 criteria of the corporation and are located in areas that were

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1907 eligible for coverage by the Florida Windstorm Underwriting
1908 Association on January 1, 2002.

1909 b. The corporation may enter into quota share primary
1910 insurance agreements with authorized insurers at corporation
1911 coverage levels of 90 percent and 50 percent.

1912 c. If the corporation determines that additional coverage
1913 levels are necessary to maximize participation in quota share
1914 primary insurance agreements by authorized insurers, the
1915 corporation may establish additional coverage levels. However,
1916 the corporation's quota share primary insurance coverage level
1917 may not exceed 90 percent.

1918 d. Any quota share primary insurance agreement entered
1919 into between an authorized insurer and the corporation must
1920 provide for a uniform specified percentage of coverage of
1921 hurricane losses, by county or territory as set forth by the
1922 corporation board, for all eligible risks of the authorized
1923 insurer covered under the quota share primary insurance
1924 agreement.

1925 e. Any quota share primary insurance agreement entered
1926 into between an authorized insurer and the corporation is
1927 subject to review and approval by the office. However, such
1928 agreement shall be authorized only as to insurance contracts
1929 entered into between an authorized insurer and an insured who is
1930 already insured by the corporation for wind coverage.

1931 f. For all eligible risks covered under quota share
1932 primary insurance agreements, the exposure and coverage levels
1933 for both the corporation and authorized insurers shall be
1934 reported by the corporation to the Florida Hurricane Catastrophe
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1935 Fund. For all policies of eligible risks covered under quota
1936 share primary insurance agreements, the corporation and the
1937 authorized insurer shall maintain complete and accurate records
1938 for the purpose of exposure and loss reimbursement audits as
1939 required by Florida Hurricane Catastrophe Fund rules. The
1940 corporation and the authorized insurer shall each maintain
1941 duplicate copies of policy declaration pages and supporting
1942 claims documents.

1943 g. The corporation board shall establish in its plan of
1944 operation standards for quota share agreements which ensure that
1945 there is no discriminatory application among insurers as to the
1946 terms of quota share agreements, pricing of quota share
1947 agreements, incentive provisions if any, and consideration paid
1948 for servicing policies or adjusting claims.

1949 h. The quota share primary insurance agreement between the
1950 corporation and an authorized insurer must set forth the
1951 specific terms under which coverage is provided, including, but
1952 not limited to, the sale and servicing of policies issued under
1953 the agreement by the insurance agent of the authorized insurer
1954 producing the business, the reporting of information concerning
1955 eligible risks, the payment of premium to the corporation, and
1956 arrangements for the adjustment and payment of hurricane claims
1957 incurred on eligible risks by the claims adjuster and personnel
1958 of the authorized insurer. Entering into a quota sharing
1959 insurance agreement between the corporation and an authorized
1960 insurer shall be voluntary and at the discretion of the
1961 authorized insurer.

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1962 3. May provide that the corporation may employ or
1963 otherwise contract with individuals or other entities to provide
1964 administrative or professional services that may be appropriate
1965 to effectuate the plan. The corporation shall have the power to
1966 borrow funds, by issuing bonds or by incurring other
1967 indebtedness, and shall have other powers reasonably necessary
1968 to effectuate the requirements of this subsection, including,
1969 without limitation, the power to issue bonds and incur other
1970 indebtedness in order to refinance outstanding bonds or other
1971 indebtedness. The corporation may, but is not required to, seek
1972 judicial validation of its bonds or other indebtedness under
1973 chapter 75. The corporation may issue bonds or incur other
1974 indebtedness, or have bonds issued on its behalf by a unit of
1975 local government pursuant to subparagraph (p)2., in the absence
1976 of a hurricane or other weather-related event, upon a
1977 determination by the corporation, subject to approval by the
1978 office, that such action would enable it to efficiently meet the
1979 financial obligations of the corporation and that such
1980 financings are reasonably necessary to effectuate the
1981 requirements of this subsection. The corporation is authorized
1982 to take all actions needed to facilitate tax-free status for any
1983 such bonds or indebtedness, including formation of trusts or
1984 other affiliated entities. The corporation shall have the
1985 authority to pledge assessments, projected recoveries from the
1986 Florida Hurricane Catastrophe Fund, other reinsurance
1987 recoverables, market equalization and other surcharges, and
1988 other funds available to the corporation as security for bonds
1989 or other indebtedness. In recognition of s. 10, Art. I of the
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1990 State Constitution, prohibiting the impairment of obligations of
1991 contracts, it is the intent of the Legislature that no action be
1992 taken whose purpose is to impair any bond indenture or financing
1993 agreement or any revenue source committed by contract to such
1994 bond or other indebtedness.

1995 4.a. Must require that the corporation operate subject to
1996 the supervision and approval of a board of governors consisting
1997 of eight individuals who are residents of this state, from
1998 different geographical areas of this state. The Governor, the
1999 Chief Financial Officer, the President of the Senate, and the
2000 Speaker of the House of Representatives shall each appoint two
2001 members of the board. At least one of the two members appointed
2002 by each appointing officer must have demonstrated expertise in
2003 insurance. The Chief Financial Officer shall designate one of
2004 the appointees as chair. All board members serve at the pleasure
2005 of the appointing officer. All members of the board of governors
2006 are subject to removal at will by the officers who appointed
2007 them. All board members, including the chair, must be appointed
2008 to serve for 3-year terms beginning annually on a date
2009 designated by the plan. Any board vacancy shall be filled for
2010 the unexpired term by the appointing officer. The Chief
2011 Financial Officer shall appoint a technical advisory group to
2012 provide information and advice to the board of governors in
2013 connection with the board's duties under this subsection. The
2014 executive director and senior managers of the corporation shall
2015 be engaged by the board and serve at the pleasure of the board.
2016 Any executive director appointed on or after July 1, 2006, is
2017 subject to confirmation by the Senate. The executive director is

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2018 responsible for employing other staff as the corporation may
2019 require, subject to review and concurrence by the board.

2020 b. The board shall create a Market Accountability Advisory
2021 Committee to assist the corporation in developing awareness of
2022 its rates and its customer and agent service levels in
2023 relationship to the voluntary market insurers writing similar
2024 coverage. The members of the advisory committee shall consist of
2025 the following 11 persons, one of whom must be elected chair by
2026 the members of the committee: four representatives, one
2027 appointed by the Florida Association of Insurance Agents, one by
2028 the Florida Association of Insurance and Financial Advisors, one
2029 by the Professional Insurance Agents of Florida, and one by the
2030 Latin American Association of Insurance Agencies; three
2031 representatives appointed by the insurers with the three highest
2032 voluntary market share of residential property insurance
2033 business in the state; one representative from the Office of
2034 Insurance Regulation; one consumer appointed by the board who is
2035 insured by the corporation at the time of appointment to the
2036 committee; one representative appointed by the Florida
2037 Association of Realtors; and one representative appointed by the
2038 Florida Bankers Association. All members must serve for 3-year
2039 terms and may serve for consecutive terms. The committee shall
2040 report to the corporation at each board meeting on insurance
2041 market issues which may include rates and rate competition with
2042 the voluntary market; service, including policy issuance, claims
2043 processing, and general responsiveness to policyholders,
2044 applicants, and agents; and matters relating to depopulation.

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2045 5. Must provide a procedure for determining the
2046 eligibility of a risk for coverage, as follows:

2047 a. Subject to the provisions of s. 627.3517, with respect
2048 to personal lines residential risks, if the risk is offered
2049 coverage from an authorized insurer at the insurer's approved
2050 rate under either a standard policy including wind coverage or,
2051 if consistent with the insurer's underwriting rules as filed
2052 with the office, a basic policy including wind coverage, for a
2053 new application to the corporation for coverage, the risk is not
2054 eligible for any policy issued by the corporation unless the
2055 premium for coverage from the authorized insurer is more than 15
2056 percent greater than the premium for comparable coverage from
2057 the corporation. If the risk is not able to obtain any such
2058 offer, the risk is eligible for either a standard policy
2059 including wind coverage or a basic policy including wind
2060 coverage issued by the corporation; however, if the risk could
2061 not be insured under a standard policy including wind coverage
2062 regardless of market conditions, the risk shall be eligible for
2063 a basic policy including wind coverage unless rejected under
2064 subparagraph 9. However, with regard to a policyholder of the
2065 corporation or a policyholder removed from the corporation
2066 through an assumption agreement until the end of the assumption
2067 period, the policyholder remains eligible for coverage from the
2068 corporation regardless of any offer of coverage from an
2069 authorized insurer or surplus lines insurer. The corporation
2070 shall determine the type of policy to be provided on the basis
2071 of objective standards specified in the underwriting manual and
2072 based on generally accepted underwriting practices.

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2073 (I) If the risk accepts an offer of coverage through the
2074 market assistance plan or an offer of coverage through a
2075 mechanism established by the corporation before a policy is
2076 issued to the risk by the corporation or during the first 30
2077 days of coverage by the corporation, and the producing agent who
2078 submitted the application to the plan or to the corporation is
2079 not currently appointed by the insurer, the insurer shall:

2080 (A) Pay to the producing agent of record of the policy,
2081 for the first year, an amount that is the greater of the
2082 insurer's usual and customary commission for the type of policy
2083 written or a fee equal to the usual and customary commission of
2084 the corporation; or

2085 (B) Offer to allow the producing agent of record of the
2086 policy to continue servicing the policy for a period of not less
2087 than 1 year and offer to pay the agent the greater of the
2088 insurer's or the corporation's usual and customary commission
2089 for the type of policy written.

2090
2091 If the producing agent is unwilling or unable to accept
2092 appointment, the new insurer shall pay the agent in accordance
2093 with sub-sub-sub-subparagraph (A).

2094 (II) When the corporation enters into a contractual
2095 agreement for a take-out plan, the producing agent of record of
2096 the corporation policy is entitled to retain any unearned
2097 commission on the policy, and the insurer shall:

2098 (A) Pay to the producing agent of record of the
2099 corporation policy, for the first year, an amount that is the
2100 greater of the insurer's usual and customary commission for the
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2101 type of policy written or a fee equal to the usual and customary
2102 commission of the corporation; or

2103 (B) Offer to allow the producing agent of record of the
2104 corporation policy to continue servicing the policy for a period
2105 of not less than 1 year and offer to pay the agent the greater
2106 of the insurer's or the corporation's usual and customary
2107 commission for the type of policy written.

2108
2109 If the producing agent is unwilling or unable to accept
2110 appointment, the new insurer shall pay the agent in accordance
2111 with sub-sub-sub-subparagraph (A).

2112 b. With respect to commercial lines residential risks, for
2113 a new application to the corporation for coverage, if the risk
2114 is offered coverage under a policy including wind coverage from
2115 an authorized insurer at its approved rate, the risk is not
2116 eligible for any policy issued by the corporation unless the
2117 premium for coverage from the authorized insurer is more than 15
2118 percent greater than the premium for comparable coverage from
2119 the corporation. If the risk is not able to obtain any such
2120 offer, the risk is eligible for a policy including wind coverage
2121 issued by the corporation. However, with regard to a
2122 policyholder of the corporation or a policyholder removed from
2123 the corporation through an assumption agreement until the end of
2124 the assumption period, the policyholder remains eligible for
2125 coverage from the corporation regardless of any offer of
2126 coverage from an authorized insurer or surplus lines insurer.

2127 (I) If the risk accepts an offer of coverage through the
2128 market assistance plan or an offer of coverage through a

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2129 mechanism established by the corporation before a policy is
2130 issued to the risk by the corporation or during the first 30
2131 days of coverage by the corporation, and the producing agent who
2132 submitted the application to the plan or the corporation is not
2133 currently appointed by the insurer, the insurer shall:

2134 (A) Pay to the producing agent of record of the policy,
2135 for the first year, an amount that is the greater of the
2136 insurer's usual and customary commission for the type of policy
2137 written or a fee equal to the usual and customary commission of
2138 the corporation; or

2139 (B) Offer to allow the producing agent of record of the
2140 policy to continue servicing the policy for a period of not less
2141 than 1 year and offer to pay the agent the greater of the
2142 insurer's or the corporation's usual and customary commission
2143 for the type of policy written.

2144

2145 If the producing agent is unwilling or unable to accept
2146 appointment, the new insurer shall pay the agent in accordance
2147 with sub-sub-sub-subparagraph (A).

2148 (II) When the corporation enters into a contractual
2149 agreement for a take-out plan, the producing agent of record of
2150 the corporation policy is entitled to retain any unearned
2151 commission on the policy, and the insurer shall:

2152 (A) Pay to the producing agent of record of the
2153 corporation policy, for the first year, an amount that is the
2154 greater of the insurer's usual and customary commission for the
2155 type of policy written or a fee equal to the usual and customary
2156 commission of the corporation; or

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2157 (B) Offer to allow the producing agent of record of the
2158 corporation policy to continue servicing the policy for a period
2159 of not less than 1 year and offer to pay the agent the greater
2160 of the insurer's or the corporation's usual and customary
2161 commission for the type of policy written.

2162
2163 If the producing agent is unwilling or unable to accept
2164 appointment, the new insurer shall pay the agent in accordance
2165 with sub-sub-sub-subparagraph (A).

2166 c. For purposes of determining comparable coverage under
2167 sub-subparagraphs a. and b., the comparison shall be based on
2168 those forms and coverages that are reasonably comparable. The
2169 corporation may rely on a determination of comparable coverage
2170 and premium made by the producing agent who submits the
2171 application to the corporation, made in the agent's capacity as
2172 the corporation's agent. A comparison may be made solely of the
2173 premium with respect to the main building or structure only on
2174 the following basis: the same coverage A or other building
2175 limits; the same percentage hurricane deductible that applies on
2176 an annual basis or that applies to each hurricane for commercial
2177 residential property; the same percentage of ordinance and law
2178 coverage, if the same limit is offered by both the corporation
2179 and the authorized insurer; the same mitigation credits, to the
2180 extent the same types of credits are offered both by the
2181 corporation and the authorized insurer; the same method for loss
2182 payment, such as replacement cost or actual cash value, if the
2183 same method is offered both by the corporation and the
2184 authorized insurer in accordance with underwriting rules; and

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2185 any other form or coverage that is reasonably comparable as
2186 determined by the board. If an application is submitted to the
2187 corporation for wind-only coverage in the high-risk account, the
2188 premium for the corporation's wind-only policy plus the premium
2189 for the ex-wind policy that is offered by an authorized insurer
2190 to the applicant shall be compared to the premium for multiperil
2191 coverage offered by an authorized insurer, subject to the
2192 standards for comparison specified in this subparagraph. If the
2193 corporation or the applicant requests from the authorized
2194 insurer a breakdown of the premium of the offer by types of
2195 coverage so that a comparison may be made by the corporation or
2196 its agent and the authorized insurer refuses or is unable to
2197 provide such information, the corporation may treat the offer as
2198 not being an offer of coverage from an authorized insurer at the
2199 insurer's approved rate.

2200 6. Must include rules for classifications of risks and
2201 rates therefor.

2202 7. Must provide that if premium and investment income for
2203 an account attributable to a particular calendar year are in
2204 excess of projected losses and expenses for the account
2205 attributable to that year, such excess shall be held in surplus
2206 in the account. Such surplus shall be available to defray
2207 deficits in that account as to future years and shall be used
2208 for that purpose prior to assessing assessable insurers and
2209 assessable insureds as to any calendar year.

2210 8. Must provide objective criteria and procedures to be
2211 uniformly applied for all applicants in determining whether an
2212 individual risk is so hazardous as to be uninsurable. In making

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2213 this determination and in establishing the criteria and
2214 procedures, the following shall be considered:

2215 a. Whether the likelihood of a loss for the individual
2216 risk is substantially higher than for other risks of the same
2217 class; and

2218 b. Whether the uncertainty associated with the individual
2219 risk is such that an appropriate premium cannot be determined.

2220
2221 The acceptance or rejection of a risk by the corporation shall
2222 be construed as the private placement of insurance, and the
2223 provisions of chapter 120 shall not apply.

2224 9. Must provide that the corporation shall make its best
2225 efforts to procure catastrophe reinsurance at reasonable rates,
2226 to cover its projected 100-year probable maximum loss as
2227 determined by the board of governors.

2228 ~~10. Must provide that in the event of regular deficit~~
2229 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2230 ~~(b)3.b., in the personal lines account, the commercial lines~~
2231 ~~residential account, or the high risk account, the corporation~~
2232 ~~shall levy upon corporation policyholders in its next rate~~
2233 ~~filing, or by a separate rate filing solely for this purpose, a~~
2234 ~~Citizens policyholder surcharge arising from a regular~~
2235 ~~assessment in such account in a percentage equal to the total~~
2236 ~~amount of such regular assessments divided by the aggregate~~
2237 ~~statewide direct written premium for subject lines of business~~
2238 ~~for the prior calendar year. For purposes of calculating the~~
2239 ~~Citizens policyholder surcharge to be levied under this~~
2240 ~~subparagraph, the total amount of the regular assessment to~~

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2241 ~~which this surcharge is related shall be determined as set forth~~
2242 ~~in subparagraph (b)3., without deducting the estimated Citizens~~
2243 ~~policyholder surcharge. Citizens policyholder surcharges under~~
2244 ~~this subparagraph are not considered premium and are not subject~~
2245 ~~to commissions, fees, or premium taxes; however, failure to pay~~
2246 ~~a market equalization surcharge shall be treated as failure to~~
2247 ~~pay premium.~~

2248 10.11. The policies issued by the corporation must provide
2249 that, if the corporation or the market assistance plan obtains
2250 an offer from an authorized insurer to cover the risk at its
2251 approved rates, the risk is no longer eligible for renewal
2252 through the corporation, except as otherwise provided in this
2253 subsection.

2254 11.12. Corporation policies and applications must include
2255 a notice that the corporation policy could, under this section,
2256 be replaced with a policy issued by an authorized insurer that
2257 does not provide coverage identical to the coverage provided by
2258 the corporation. The notice shall also specify that acceptance
2259 of corporation coverage creates a conclusive presumption that
2260 the applicant or policyholder is aware of this potential.

2261 12.13. May establish, subject to approval by the office,
2262 different eligibility requirements and operational procedures
2263 for any line or type of coverage for any specified county or
2264 area if the board determines that such changes to the
2265 eligibility requirements and operational procedures are
2266 justified due to the voluntary market being sufficiently stable
2267 and competitive in such area or for such line or type of
2268 coverage and that consumers who, in good faith, are unable to

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2269 obtain insurance through the voluntary market through ordinary
2270 methods would continue to have access to coverage from the
2271 corporation. When coverage is sought in connection with a real
2272 property transfer, such requirements and procedures shall not
2273 provide for an effective date of coverage later than the date of
2274 the closing of the transfer as established by the transferor,
2275 the transferee, and, if applicable, the lender.

2276 ~~13.14.~~ Must provide that, with respect to the high-risk
2277 account, any assessable insurer with a surplus as to
2278 policyholders of \$25 million or less writing 25 percent or more
2279 of its total countrywide property insurance premiums in this
2280 state may petition the office, within the first 90 days of each
2281 calendar year, to qualify as a limited apportionment company. A
2282 regular assessment levied by the corporation on a limited
2283 apportionment company for a deficit incurred by the corporation
2284 for the high-risk account in 2006 or thereafter may be paid to
2285 the corporation on a monthly basis as the assessments are
2286 collected by the limited apportionment company from its insureds
2287 pursuant to s. 627.3512, but the regular assessment must be paid
2288 in full within 12 months after being levied by the corporation.
2289 A limited apportionment company shall collect from its
2290 policyholders any emergency assessment imposed under sub-
2291 subparagraph (b)3.d. The plan shall provide that, if the office
2292 determines that any regular assessment will result in an
2293 impairment of the surplus of a limited apportionment company,
2294 the office may direct that all or part of such assessment be
2295 deferred as provided in subparagraph (p)4. However, there shall

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2296 be no limitation or deferment of an emergency assessment to be
2297 collected from policyholders under sub-subparagraph (b)3.d.

2298 ~~14.15.~~ Must provide that the corporation appoint as its
2299 licensed agents only those agents who also hold an appointment
2300 as defined in s. 626.015(3) with an insurer who at the time of
2301 the agent's initial appointment by the corporation is authorized
2302 to write and is actually writing personal lines residential
2303 property coverage, commercial residential property coverage, or
2304 commercial nonresidential property coverage within the state.

2305 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
2306 plan option to its policyholders which allows at a minimum for
2307 quarterly and semiannual payment of premiums. A monthly payment
2308 plan may, but is not required to, be offered.

2309 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
2310 homes built prior to 1994 to actual cash value of the dwelling
2311 rather than replacement costs of the dwelling.

2312 ~~17.18.~~ May provide such limits of coverage as the board
2313 determines, consistent with the requirements of this subsection.

2314 ~~18.19.~~ May require commercial property to meet specified
2315 hurricane mitigation construction features as a condition of
2316 eligibility for coverage.

2317 (m)1. Rates for coverage provided by the corporation shall
2318 be actuarially sound and subject to the requirements of s.
2319 627.062, except as otherwise provided in this paragraph. The
2320 corporation shall file its recommended rates with the office at
2321 least annually. The corporation shall provide any additional
2322 information regarding the rates which the office requires. The
2323 office shall consider the recommendations of the board and issue

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2324 a final order establishing the rates for the corporation within
2325 45 days after the recommended rates are filed. The corporation
2326 may not pursue an administrative challenge or judicial review of
2327 the final order of the office.

2328 2. In addition to the rates otherwise determined pursuant
2329 to this paragraph, the corporation shall impose and collect an
2330 amount equal to the premium tax provided for in s. 624.509 to
2331 augment the financial resources of the corporation.

2332 3. After the public hurricane loss-projection model under
2333 s. 627.06281 has been found to be accurate and reliable by the
2334 Florida Commission on Hurricane Loss Projection Methodology,
2335 that model shall serve as the minimum benchmark for determining
2336 the windstorm portion of the corporation's rates. This
2337 subparagraph does not require or allow the corporation to adopt
2338 rates lower than the rates otherwise required or allowed by this
2339 paragraph.

2340 4. The rate filings for the corporation which were
2341 approved by the office and which took effect January 1, 2007,
2342 are rescinded, except for those rates that were lowered. As soon
2343 as possible, the corporation shall begin using the lower rates
2344 that were in effect on December 31, 2006, and shall provide
2345 refunds to policyholders who have paid higher rates as a result
2346 of that rate filing. The rates in effect on December 31, 2006,
2347 shall remain in effect for the 2007 and 2008 calendar years
2348 except for any rate change that results in a lower rate. The
2349 next rate change that may increase rates shall take effect
2350 ~~January 1, 2009,~~ pursuant to a new rate filing recommended by

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2351 the corporation and established by the office, subject to the
2352 requirements of this paragraph.

2353 5. Beginning on July 15, 2009, and each year thereafter,
2354 the corporation must make a recommended actuarially sound rate
2355 filing for each personal and commercial line of business it
2356 writes, to be effective no earlier than January 1, 2010.

2357 (p)1. The corporation shall certify to the office its
2358 needs for annual assessments as to a particular calendar year,
2359 and for any interim assessments that it deems to be necessary to
2360 sustain operations as to a particular year pending the receipt
2361 of annual assessments. Upon verification, the office shall
2362 approve such certification, and the corporation shall levy such
2363 annual or interim assessments. Such assessments shall be
2364 prorated as provided in paragraph (b). The corporation shall
2365 take all reasonable and prudent steps necessary to collect the
2366 amount of assessment due from each assessable insurer,
2367 including, if prudent, filing suit to collect such assessment.
2368 If the corporation is unable to collect an assessment from any
2369 assessable insurer, the uncollected assessments shall be levied
2370 as an additional assessment against the assessable insurers and
2371 any assessable insurer required to pay an additional assessment
2372 as a result of such failure to pay shall have a cause of action
2373 against such nonpaying assessable insurer. Assessments shall be
2374 included as an appropriate factor in the making of rates. The
2375 failure of a surplus lines agent to collect and remit any
2376 regular or emergency assessment levied by the corporation is
2377 considered to be a violation of s. 626.936 and subjects the
2378 surplus lines agent to the penalties provided in that section.

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HOUSE AMENDMENT

Bill No. CS/CS/SB 2860

Amendment No.

2379 2. The governing body of any unit of local government, any
2380 residents of which are insured by the corporation, may issue
2381 bonds as defined in s. 125.013 or s. 166.101 from time to time
2382 to fund an assistance program, in conjunction with the
2383 corporation, for the purpose of defraying deficits of the
2384 corporation. In order to avoid needless and indiscriminate
2385 proliferation, duplication, and fragmentation of such assistance
2386 programs, any unit of local government, any residents of which
2387 are insured by the corporation, may provide for the payment of
2388 losses, regardless of whether or not the losses occurred within
2389 or outside of the territorial jurisdiction of the local
2390 government. Revenue bonds under this subparagraph may not be
2391 issued until validated pursuant to chapter 75, unless a state of
2392 emergency is declared by executive order or proclamation of the
2393 Governor pursuant to s. 252.36 making such findings as are
2394 necessary to determine that it is in the best interests of, and
2395 necessary for, the protection of the public health, safety, and
2396 general welfare of residents of this state and declaring it an
2397 essential public purpose to permit certain municipalities or
2398 counties to issue such bonds as will permit relief to claimants
2399 and policyholders of the corporation. Any such unit of local
2400 government may enter into such contracts with the corporation
2401 and with any other entity created pursuant to this subsection as
2402 are necessary to carry out this paragraph. Any bonds issued
2403 under this subparagraph shall be payable from and secured by
2404 moneys received by the corporation from emergency assessments
2405 under sub-subparagraph (b)3.d., and assigned and pledged to or
2406 on behalf of the unit of local government for the benefit of the

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2407 holders of such bonds. The funds, credit, property, and taxing
2408 power of the state or of the unit of local government shall not
2409 be pledged for the payment of such bonds. ~~If any of the bonds~~
2410 ~~remain unsold 60 days after issuance, the office shall require~~
2411 ~~all insurers subject to assessment to purchase the bonds, which~~
2412 ~~shall be treated as admitted assets; each insurer shall be~~
2413 ~~required to purchase that percentage of the unsold portion of~~
2414 ~~the bond issue that equals the insurer's relative share of~~
2415 ~~assessment liability under this subsection. An insurer shall not~~
2416 ~~be required to purchase the bonds to the extent that the office~~
2417 ~~determines that the purchase would endanger or impair the~~
2418 ~~solvency of the insurer.~~

2419 3.a. The corporation shall adopt one or more programs
2420 subject to approval by the office for the reduction of both new
2421 and renewal writings in the corporation. Beginning January 1,
2422 2008, any program the corporation adopts for the payment of
2423 bonuses to an insurer for each risk the insurer removes from the
2424 corporation shall comply with s. 627.3511(2) and may not exceed
2425 the amount referenced in s. 627.3511(2) for each risk removed.
2426 The corporation may consider any prudent and not unfairly
2427 discriminatory approach to reducing corporation writings, and
2428 may adopt a credit against assessment liability or other
2429 liability that provides an incentive for insurers to take risks
2430 out of the corporation and to keep risks out of the corporation
2431 by maintaining or increasing voluntary writings in counties or
2432 areas in which corporation risks are highly concentrated and a
2433 program to provide a formula under which an insurer voluntarily
2434 taking risks out of the corporation by maintaining or increasing

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2435 voluntary writings will be relieved wholly or partially from
2436 assessments under sub-subparagraphs (b)3.a. and b. However, any
2437 "take-out bonus" or payment to an insurer must be conditioned on
2438 the property being insured for at least 5 years by the insurer,
2439 unless canceled or nonrenewed by the policyholder. If the policy
2440 is canceled or nonrenewed by the policyholder before the end of
2441 the 5-year period, the amount of the take-out bonus must be
2442 prorated for the time period the policy was insured. When the
2443 corporation enters into a contractual agreement for a take-out
2444 plan, the producing agent of record of the corporation policy is
2445 entitled to retain any unearned commission on such policy, and
2446 the insurer shall either:

2447 (I) Pay to the producing agent of record of the policy,
2448 for the first year, an amount which is the greater of the
2449 insurer's usual and customary commission for the type of policy
2450 written or a policy fee equal to the usual and customary
2451 commission of the corporation; or

2452 (II) Offer to allow the producing agent of record of the
2453 policy to continue servicing the policy for a period of not less
2454 than 1 year and offer to pay the agent the insurer's usual and
2455 customary commission for the type of policy written. If the
2456 producing agent is unwilling or unable to accept appointment by
2457 the new insurer, the new insurer shall pay the agent in
2458 accordance with sub-sub-subparagraph (I).

2459 b. Any credit or exemption from regular assessments
2460 adopted under this subparagraph shall last no longer than the 3
2461 years following the cancellation or expiration of the policy by
2462 the corporation. With the approval of the office, the board may

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2463 extend such credits for an additional year if the insurer
2464 guarantees an additional year of renewability for all policies
2465 removed from the corporation, or for 2 additional years if the
2466 insurer guarantees 2 additional years of renewability for all
2467 policies so removed.

2468 c. There shall be no credit, limitation, exemption, or
2469 deferment from emergency assessments to be collected from
2470 policyholders pursuant to sub-subparagraph (b)3.d.

2471 4. The plan shall provide for the deferment, in whole or
2472 in part, of the assessment of an assessable insurer, other than
2473 an emergency assessment collected from policyholders pursuant to
2474 sub-subparagraph (b)3.d., if the office finds that payment of
2475 the assessment would endanger or impair the solvency of the
2476 insurer. In the event an assessment against an assessable
2477 insurer is deferred in whole or in part, the amount by which
2478 such assessment is deferred may be assessed against the other
2479 assessable insurers in a manner consistent with the basis for
2480 assessments set forth in paragraph (b).

2481 5. Effective July 1, 2007, in order to evaluate the costs
2482 and benefits of approved take-out plans, if the corporation pays
2483 a bonus or other payment to an insurer for an approved take-out
2484 plan, it shall maintain a record of the address or such other
2485 identifying information on the property or risk removed in order
2486 to track if and when the property or risk is later insured by
2487 the corporation.

2488 6. Any policy taken out, assumed, or removed from the
2489 corporation is, as of the effective date of the take-out,
2490 assumption, or removal, direct insurance issued by the insurer

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2491 and not by the corporation, even if the corporation continues to
2492 service the policies. This subparagraph applies to policies of
2493 the corporation and not policies taken out, assumed, or removed
2494 from any other entity.

2495 (w)1. The following records of the corporation are
2496 confidential and exempt from the provisions of s. 119.07(1) and
2497 s. 24(a), Art. I of the State Constitution:

2498 a. Underwriting files, except that a policyholder or an
2499 applicant shall have access to his or her own underwriting
2500 files. Confidential and exempt underwriting file records may
2501 also be released to other governmental agencies upon written
2502 request and demonstration of need; such records held by the
2503 receiving agency remain confidential and exempt as provided
2504 herein.

2505 b. Claims files, until termination of all litigation and
2506 settlement of all claims arising out of the same incident,
2507 although portions of the claims files may remain exempt, as
2508 otherwise provided by law. Confidential and exempt claims file
2509 records may be released to other governmental agencies upon
2510 written request and demonstration of need; such records held by
2511 the receiving agency remain confidential and exempt as provided
2512 ~~for~~ herein.

2513 c. Records obtained or generated by an internal auditor
2514 pursuant to a routine audit, until the audit is completed, or if
2515 the audit is conducted as part of an investigation, until the
2516 investigation is closed or ceases to be active. An investigation
2517 is considered "active" while the investigation is being
2518 conducted with a reasonable, good faith belief that it could

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2519 lead to the filing of administrative, civil, or criminal
2520 proceedings.

2521 d. Matters reasonably encompassed in privileged attorney-
2522 client communications.

2523 e. Proprietary information licensed to the corporation
2524 under contract and the contract provides for the confidentiality
2525 of such proprietary information.

2526 f. All information relating to the medical condition or
2527 medical status of a corporation employee which is not relevant
2528 to the employee's capacity to perform his or her duties, except
2529 as otherwise provided in this paragraph. Information that ~~which~~
2530 is exempt shall include, but is not limited to, information
2531 relating to workers' compensation, insurance benefits, and
2532 retirement or disability benefits.

2533 g. Upon an employee's entrance into the employee
2534 assistance program, a program to assist any employee who has a
2535 behavioral or medical disorder, substance abuse problem, or
2536 emotional difficulty which affects the employee's job
2537 performance, all records relative to that participation shall be
2538 confidential and exempt from the provisions of s. 119.07(1) and
2539 s. 24(a), Art. I of the State Constitution, except as otherwise
2540 provided in s. 112.0455(11).

2541 h. Information relating to negotiations for financing,
2542 reinsurance, depopulation, or contractual services, until the
2543 conclusion of the negotiations.

2544 i. Minutes of closed meetings regarding underwriting
2545 files, and minutes of closed meetings regarding an open claims
2546 file until termination of all litigation and settlement of all

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2547 claims with regard to that claim, except that information
2548 otherwise confidential or exempt by law shall ~~will~~ be redacted.

2549 2. If ~~When~~ an authorized insurer is considering
2550 underwriting a risk insured by the corporation, relevant
2551 underwriting files and confidential claims files may be released
2552 to the insurer provided the insurer agrees in writing, notarized
2553 and under oath, to maintain the confidentiality of such files.

2554 If ~~When~~ a file is transferred to an insurer that file is no
2555 longer a public record because it is not held by an agency
2556 subject to the provisions of the public records law.

2557 Underwriting files and confidential claims files may also be
2558 released to staff ~~of~~ and the board of governors of the market
2559 assistance plan established pursuant to s. 627.3515, who must
2560 retain the confidentiality of such files, except such files may
2561 be released to authorized insurers that are considering assuming
2562 the risks to which the files apply, provided the insurer agrees
2563 in writing, notarized and under oath, to maintain the
2564 confidentiality of such files. Finally, the corporation or the
2565 board or staff of the market assistance plan may make the
2566 following information obtained from underwriting files and
2567 confidential claims files available to licensed general lines
2568 insurance agents: name, address, and telephone number of the
2569 residential property owner or insured; location of the risk;
2570 rating information; loss history; and policy type. The receiving
2571 licensed general lines insurance agent must retain the
2572 confidentiality of the information received.

2573 3. A policyholder who has filed suit against the
2574 corporation has the right to discover the contents of his or her

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2575 own claims file to the same extent that discovery of such
2576 contents would be available from a private insurer in litigation
2577 as provided by the Florida Rules of Civil Procedure, the Florida
2578 Evidence Code, and other applicable law. Pursuant to subpoena, a
2579 third party has the right to discover the contents of an
2580 insured's or applicant's underwriting or claims file to the same
2581 extent that discovery of such contents would be available from a
2582 private insurer by subpoena as provided by the Florida Rules of
2583 Civil Procedure, the Florida Evidence Code, and other applicable
2584 law, and subject to any confidentiality protections requested by
2585 the corporation and agreed to by the seeking party or ordered by
2586 the court. The corporation may release confidential underwriting
2587 and claims file contents and information as it deems necessary
2588 and appropriate to underwrite or service insurance policies and
2589 claims, subject to any confidentiality protections deemed
2590 necessary and appropriate by the corporation.

2591 4.2- Portions of meetings of the corporation are exempt
2592 from the provisions of s. 286.011 and s. 24(b), Art. I of the
2593 State Constitution wherein confidential underwriting files or
2594 confidential open claims files are discussed. All portions of
2595 corporation meetings which are closed to the public shall be
2596 recorded by a court reporter. The court reporter shall record
2597 the times of commencement and termination of the meeting, all
2598 discussion and proceedings, the names of all persons present at
2599 any time, and the names of all persons speaking. No portion of
2600 any closed meeting shall be off the record. Subject to the
2601 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
2602 notes of any closed meeting shall be retained by the corporation

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2603 for a minimum of 5 years. A copy of the transcript, less any
2604 exempt matters, of any closed meeting wherein claims are
2605 discussed shall become public as to individual claims after
2606 settlement of the claim.

2607 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2608 ~~the risk being no longer eligible for coverage due to being~~
2609 ~~valued at \$1 million or more, the corporation shall, directly or~~
2610 ~~through the market assistance plan, make information from~~
2611 ~~confidential underwriting and claims files of policyholders~~
2612 ~~available only to licensed general lines agents who register~~
2613 ~~with the corporation to receive such information according to~~
2614 ~~the following procedures:~~

2615 ~~2. By August 1, 2006, the corporation shall provide such~~
2616 ~~policyholders who are not eligible for renewal the opportunity~~
2617 ~~to request in writing, within 30 days after the notification is~~
2618 ~~sent, that information from their confidential underwriting and~~
2619 ~~claims files not be released to licensed general lines agents~~
2620 ~~registered pursuant to this paragraph.~~

2621 ~~3. By August 1, 2006, the corporation shall make available~~
2622 ~~to licensed general lines agents the registration procedures to~~
2623 ~~be used to obtain confidential information from underwriting and~~
2624 ~~claims files for such policies not eligible for renewal. As a~~
2625 ~~condition of registration, the corporation shall require the~~
2626 ~~licensed general lines agent to attest that the agent has the~~
2627 ~~experience and relationships with authorized or surplus lines~~
2628 ~~carriers to attempt to offer replacement coverage for such~~
2629 ~~policies.~~

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2630 ~~4. By September 1, 2006, the corporation shall make~~
2631 ~~available through a secured website to licensed general lines~~
2632 ~~agents registered pursuant to this paragraph application,~~
2633 ~~rating, loss history, mitigation, and policy type information~~
2634 ~~relating to such policies not eligible for renewal and for which~~
2635 ~~the policyholder has not requested the corporation withhold such~~
2636 ~~information. The registered licensed general lines agent may use~~
2637 ~~such information to contact and assist the policyholder in~~
2638 ~~securing replacement policies, and the agent may disclose to the~~
2639 ~~policyholder that such information was obtained from the~~
2640 ~~corporation.~~

2641 ~~(dd)~~(ee) The assets of the corporation may be invested and
2642 managed by the State Board of Administration.

2643 ~~(ee)~~(ff) The office may establish a pilot program to offer
2644 optional sinkhole coverage in one or more counties or other
2645 territories of the corporation for the purpose of implementing
2646 s. 627.706, as amended by s. 30, chapter 2007-1, Laws of
2647 Florida. Under the pilot program, the corporation is not
2648 required to issue a notice of nonrenewal to exclude sinkhole
2649 coverage upon the renewal of existing policies, but may exclude
2650 such coverage using a notice of coverage change.

2651 Section 13. Paragraph (b) of subsection (2) of section
2652 627.4133, Florida Statutes, is amended to read:

2653 627.4133 Notice of cancellation, nonrenewal, or renewal
2654 premium.--

2655 (2) With respect to any personal lines or commercial
2656 residential property insurance policy, including, but not
2657 limited to, any homeowner's, mobile home owner's, farmowner's,

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2658 condominium association, condominium unit owner's, apartment
2659 building, or other policy covering a residential structure or
2660 its contents:

2661 (b) The insurer shall give the named insured written
2662 notice of nonrenewal, cancellation, or termination at least 100
2663 days prior to the effective date of the nonrenewal,
2664 cancellation, or termination. However, the insurer shall give at
2665 least 100 days' written notice, or written notice by June 1,
2666 whichever is earlier, for any nonrenewal, cancellation, or
2667 termination that would be effective between June 1 and November
2668 30. The notice must include the reason or reasons for the
2669 nonrenewal, cancellation, or termination, except that:

2670 1. The insurer shall give the named insured written notice
2671 of nonrenewal, cancellation, or termination at least 180 days
2672 prior to the effective date of the nonrenewal, cancellation, or
2673 termination for a named insured whose residential structure has
2674 been insured by that insurer or an affiliated insurer for at
2675 least a 5-year period immediately prior to date of the written
2676 notice.

2677 ~~2.1-~~ When cancellation is for nonpayment of premium, at
2678 least 10 days' written notice of cancellation accompanied by the
2679 reason therefor shall be given. As used in this subparagraph,
2680 the term "nonpayment of premium" means failure of the named
2681 insured to discharge when due any of her or his obligations in
2682 connection with the payment of premiums on a policy or any
2683 installment of such premium, whether the premium is payable
2684 directly to the insurer or its agent or indirectly under any
2685 premium finance plan or extension of credit, or failure to

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2686 maintain membership in an organization if such membership is a
2687 condition precedent to insurance coverage. "Nonpayment of
2688 premium" also means the failure of a financial institution to
2689 honor an insurance applicant's check after delivery to a
2690 licensed agent for payment of a premium, even if the agent has
2691 previously delivered or transferred the premium to the insurer.
2692 If a dishonored check represents the initial premium payment,
2693 the contract and all contractual obligations shall be void ab
2694 initio unless the nonpayment is cured within the earlier of 5
2695 days after actual notice by certified mail is received by the
2696 applicant or 15 days after notice is sent to the applicant by
2697 certified mail or registered mail, and if the contract is void,
2698 any premium received by the insurer from a third party shall be
2699 refunded to that party in full.

2700 ~~3.2-~~ When such cancellation or termination occurs during
2701 the first 90 days during which the insurance is in force and the
2702 insurance is canceled or terminated for reasons other than
2703 nonpayment of premium, at least 20 days' written notice of
2704 cancellation or termination accompanied by the reason therefor
2705 shall be given except where there has been a material
2706 misstatement or misrepresentation or failure to comply with the
2707 underwriting requirements established by the insurer.

2708 ~~4.3-~~ The requirement for providing written notice of
2709 nonrenewal by June 1 of any nonrenewal that would be effective
2710 between June 1 and November 30 does not apply to the following
2711 situations, but the insurer remains subject to the requirement
2712 to provide such notice at least 100 days prior to the effective
2713 date of nonrenewal:

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2714 a. A policy that is nonrenewed due to a revision in the
2715 coverage for sinkhole losses and catastrophic ground cover
2716 collapse pursuant to s. 627.730, as amended by s. 30, chapter
2717 2007-1, Laws of Florida.

2718 b. A policy that is nonrenewed by Citizens Property
2719 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2720 that has been assumed by an authorized insurer offering
2721 replacement or renewal coverage to the policyholder.

2722
2723 After the policy has been in effect for 90 days, the policy
2724 shall not be canceled by the insurer except when there has been
2725 a material misstatement, a nonpayment of premium, a failure to
2726 comply with underwriting requirements established by the insurer
2727 within 90 days of the date of effectuation of coverage, or a
2728 substantial change in the risk covered by the policy or when the
2729 cancellation is for all insureds under such policies for a given
2730 class of insureds. This paragraph does not apply to individually
2731 rated risks having a policy term of less than 90 days.

2732 Section 14. Effective January 1, 2011, section 689.262,
2733 Florida Statutes, is created to read:

2734 689.262 Sale of residential property; disclosure of
2735 windstorm mitigation rating.--A purchaser of residential
2736 property that is located in the wind-borne debris region, as
2737 defined in s. 1609.2 of the International Building Code(2006),
2738 must be informed of the windstorm mitigation rating of the
2739 structure, based on the uniform home grading scale adopted
2740 pursuant to s. 215.55865. The rating must be included in the
2741 contract for sale or as a separate document attached to the

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2742 contract for sale. The Financial Services Commission may adopt
2743 rules, consistent with other state laws, to administer this
2744 section, including the form of the disclosure and the
2745 requirements for the windstorm mitigation inspection or report
2746 that is required for purposes of determining the rating.

2747 Section 15. (1) By December 15, 2008, Citizens Property
2748 Insurance Corporation shall transfer \$250 million to the General
2749 Revenue Fund, from the personal lines account and the commercial
2750 lines account only, if the combined surplus of the personal
2751 lines account and commercial lines account as defined in s.
2752 627.351(6), Florida Statutes, exceeds \$1 billion. The board of
2753 governors of Citizens Property Insurance Corporation must make a
2754 reasonable estimate of such surplus on or after December 1,
2755 2008, and no later than December 14, 2008, using generally
2756 accepted actuarial and accounting practices, recognizing that
2757 audited financial statements will not yet be available.

2758 (2) Beginning July 1, 2009, the board shall make quarterly
2759 transfers of any interest earned prior to the issuance of any
2760 surplus notes, interest paid, and principal repaid to the state
2761 for any surplus notes issued by the program after December 1,
2762 2008, to Citizens Property Insurance Corporation, provided such
2763 surplus notes were funded exclusively by an appropriation to the
2764 program by the Legislature for the 2008-2009 fiscal year. The
2765 corporation shall credit each account as defined in s.
2766 627.351(6) in a pro rata manner for the funds removed from each
2767 account to make the transfer required by subsection (1).

2768 (3) On July 1, 2009, the State Board of Administration
2769 shall transfer to Citizens Property Insurance Corporation any

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2770 funds that have not been committed or reserved for insurers
2771 approved to receive such funds under the program from the funds
2772 that were appropriated from the corporation in 2008-2009 for
2773 such purposes.

2774 Section 16. Citizens Property Insurance Corporation may
2775 not use any amendments made to s. 215.5595, Florida Statutes, by
2776 this act or any transfer of funds authorized by this act as
2777 justification or cause in seeking any rate or assessment
2778 increase.

2779 Section 17. Subsection (3) is added to section 627.06281,
2780 Florida Statutes, to read:

2781 627.06281 Public hurricane loss projection model;
2782 reporting of data by insurers.--

2783 (3) (a) A residential property insurer may have access to
2784 and use the public hurricane loss projection model, including
2785 all assumptions and factors and all detailed loss results, for
2786 the purpose of calculating rate indications in a rate filing and
2787 for analytical purposes, including any analysis or evaluation of
2788 the model required under actuarial standards of practice.

2789 (b) By January 1, 2009, the office shall establish by rule
2790 a fee schedule for access to and the use of the model. The fee
2791 schedule must be reasonably calculated to cover only the actual
2792 costs of providing access to and the use of the model.

2793 Section 18. Section 627.0655, Florida Statutes, is amended
2794 to read:

2795 627.0655 Policyholder loss or expense-related premium
2796 discounts.--An insurer or person authorized to engage in the
2797 business of insurance in this state may include, in the premium
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2798 charged an insured for any policy, contract, or certificate of
2799 insurance, a discount based on the fact that another policy,
2800 contract, or certificate of any type has been purchased by the
2801 insured from the same insurer or insurer group, the Citizens
2802 Property Insurance Corporation created under s. 627.351(6) if
2803 the same insurance agent is servicing both policies, or an
2804 insurer that has removed the policy from the Citizens Property
2805 Insurance Corporation if the same insurance agent is servicing
2806 both policies.

2807 Section 19. (1) The Citizens Property Insurance
2808 Corporation Mission Review Task Force is created to analyze and
2809 compile available data and to develop a report setting forth the
2810 statutory and operational changes needed to return Citizens
2811 Property Insurance Corporation to its former role as a state-
2812 created, noncompetitive residual market mechanism that provides
2813 property insurance coverage to risks that are otherwise entitled
2814 but unable to obtain such coverage in the private insurance
2815 market. The task force shall submit a report to the Governor,
2816 the President of the Senate, and the Speaker of the House of
2817 Representatives by January 31, 2009. At a minimum, the task
2818 force shall analyze and evaluate relevant and applicable
2819 information and data and develop recommendations concerning:

2820 (a) The nature of Citizens Property Insurance
2821 Corporation's role in providing property insurance coverage only
2822 if such coverage is not available from private insurers.

2823 (b) The ability of the admitted market to offer policies
2824 to those consumers formerly insured through Citizens Property
2825 Insurance Corporation. This consideration shall include, but not

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2826 be limited to, the availability of private market reinsurance
2827 and coverage through the Florida Hurricane Catastrophe Fund and
2828 the capacity of the industry to offer policies to former
2829 Citizens Property Insurance Corporation policyholders within
2830 existing writing ratio limitations.

2831 (c) The relationship of rates charged by Citizens Property
2832 Insurance Corporation to rates charged by private insurers, with
2833 due consideration for the corporation's role as a noncompetitive
2834 residual market mechanism.

2835 (d) The relationships between the exposure of Citizens
2836 Property Insurance Corporation to catastrophic hurricane losses,
2837 the corporation's history of purchasing any reinsurance
2838 coverage, and the corporation's capital capacity to meet its
2839 potential claim obligations without incurring large deficits.

2840 (e) The projected assessments on all policies required to
2841 offset the lack of capitol to pay claims.

2842 (f) The projections under paragraph (e) shall be specific
2843 to losses of \$3 billion, \$12 billion, and \$23 billion caused by
2844 a storm or a group of storms in any given year.

2845 (g) The operational implications of the variation in the
2846 number of policies in force over time in Citizens Property
2847 Insurance Corporation and the merits of outsourcing some or all
2848 of its operational responsibilities.

2849 (h) Changes in the mission and operations of Citizens
2850 Property Insurance Corporation to reduce or eliminate any
2851 adverse effect such mission and operations may be having on the
2852 promotion of sound and economic growth and development of the
2853 coastal areas of this state.

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2854 (i) Appropriate and consistent geographic boundaries of
2855 the high-risk account.

2856 (j) The rankings, by county, of the average approved rates
2857 in Citizens Property Insurance Corporation and any savings
2858 associated with policyholder choice in selecting Citizens.

2859 (2) The task force shall be composed of 11 members as
2860 follows:

2861 (a) Two members appointed by the Speaker of the House of
2862 Representatives.

2863 1. One member representing a property and casualty
2864 residential insurer that provides at least 150,000 homeowner's
2865 insurance policies in this state at the time of the creation of
2866 the task force.

2867 2. One member representing a surplus lines insurance
2868 company.

2869 (b) Two members appointed by the President of the
2870 Senate.

2871 1. One member representing a property and casualty
2872 commercial non-residential insurer.

2873 2. One member representing a property and casualty
2874 residential insurer with fewer than 150,000 homeowner's policies
2875 in this state at the time of the creation of the task force.

2876 (c) Three members appointed by the Governor who are not
2877 employed by or professionally affiliated with an insurance
2878 company or a subsidiary of an insurance company, at least one of
2879 whom must be consumer advocates or members of a consumer
2880 advocacy organization or agency.

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2881 (d) Two members appointed by the Chief Financial Officer
2882 representing insurance agents in this state.

2883 (e) One member representing Citizens Property Insurance
2884 Corporation selected by Citizens Chairman of the Board.

2885 (f) The Commissioner of Insurance Regulation or his or her
2886 designee.

2887 (3) The task force shall conduct research, hold public
2888 meetings, receive testimony, employ consultants and
2889 administrative staff, and undertake other activities determined
2890 by its members to be necessary to complete its responsibilities.
2891 Citizens Property Insurance Corporation shall have appropriate
2892 senior staff attend task force meetings, shall respond to
2893 requests for testimony and data by the task force, shall
2894 otherwise cooperate with the task force, and shall provide
2895 funding for the necessary costs of implementing the provisions
2896 of this section.

2897 (4) A member of the task force may not delegate his or her
2898 attendance or voting power to a designee.

2899 (5) Members of the task force shall serve without
2900 compensation but are entitled to receive reimbursement for
2901 travel and per diem as provided in s. 112.061, Florida Statutes.

2902 (6) The appointments to the task force must be completed
2903 within 30 calendar days after the effective date of this act,
2904 and the task force must hold its initial meeting within 1 month
2905 after appointment of all members. The task force shall expire no
2906 later than 60 calendar days after submission of the report
2907 required in subsection (1).

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2908 Section 20. The Chief Financial Officer shall provide a
2909 report on the economic impact on the state of a 1-in-100-year
2910 hurricane to the Governor, the President of the Senate, and the
2911 Speaker of the House of Representatives by March 1 of each year.
2912 The report shall include an estimate of the short-term and long-
2913 term fiscal impacts of such a storm on Citizens Property
2914 Insurance Corporation, the Florida Hurricane Catastrophe Fund,
2915 the private insurance and reinsurance markets, the state
2916 economy, and the state debt. The report shall also include an
2917 analysis of the average premium increase to fund a 1-in-100-year
2918 hurricane event and list the average cost, in both a percentage
2919 and dollar amount, impact to consumers on a county-level basis.
2920 The report may also include recommendations by the Chief
2921 Financial Officer for preparing for such a hurricane and
2922 reducing the economic impact of such a hurricane on the state.
2923 In preparing the analysis, the Chief Financial Officer shall
2924 coordinate with and obtain data from the Office of Insurance
2925 Regulation, Citizens Property Insurance Corporation, the Florida
2926 Hurricane Catastrophe Fund, the Florida Commission on Hurricane
2927 Loss Projection Methodology, the State Board of Administration,
2928 the Office of Economic and Demographic Research, and other state
2929 agencies.

2930 Section 21. Section 627.0621, Florida Statutes, is created
2931 to read:

2932 627.0621 Transparency in rate regulation.--

2933 (1) DEFINITIONS.--As used in this section, the term:

2934 (a) "Rate filing" means any original or amended rate
2935 residential property insurance filing.

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2936 (b) "Recommendation" means any proposed, preliminary, or
2937 final recommendation from an office actuary reviewing a rate
2938 filing with respect to the issue of approval or disapproval of
2939 the rate filing or with respect to rate indications that the
2940 office would consider acceptable.

2941 (2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING
2942 INFORMATION.--With respect to any rate filing made on after July
2943 1, 2008, the office shall provide the following information on a
2944 publicly accessible Internet website:

2945 (a) The overall rate change requested by the insurer.

2946 (b) All assumptions made by the office's actuaries.

2947 (c) A statement describing any assumptions or methods that
2948 deviate from the actuarial standards of practice of the Casualty
2949 Actuarial Society or the American Academy of Actuaries,
2950 including an explanation of the nature, rationale, and effect of
2951 the deviation.

2952 (d) All recommendations made by any office actuary who
2953 reviewed the rate filing.

2954 (e) Certification by the office's actuary that, based on
2955 the actuary's knowledge, his or her recommendations are
2956 consistent with accepted actuarial principles.

2957 (f) The overall rate change approved by the office.

2958 (3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT.--It is the
2959 intent of the Legislature that the principles of the public
2960 records and open meetings laws apply to the assertion of
2961 attorney-client privilege and work product confidentiality by
2962 the office in connection with a challenge to its actions on a
2963 rate filing. Therefore, in any administrative or judicial

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2964 proceeding relating to a rate filing, attorney-client privilege
2965 and work product exemptions from disclosure do not apply to
2966 communications with office attorneys or records prepared by or
2967 at the direction of an office attorney, except when the
2968 conditions of paragraphs (a) and (b) have been met:

2969 (a) The communication or record reflects a mental
2970 impression, conclusion, litigation strategy, or legal theory of
2971 the attorney or office that was prepared exclusively for civil
2972 or criminal litigation or adversarial administrative
2973 proceedings.

2974 (b) The communication occurred or the record was prepared
2975 after the initiation of an action in a court of competent
2976 jurisdiction, after the issuance of a notice of intent to deny a
2977 rate filing, or after the filing of a request for a proceeding
2978 under ss. 120.569 and 120.57.

2979 Section 22. Paragraph (b) of subsection (4) of section
2980 215.555, Florida Statutes, is amended to read:

2981 215.555 Florida Hurricane Catastrophe Fund.--

2982 (4) REIMBURSEMENT CONTRACTS.--

2983 (b)1. The contract shall contain a promise by the board to
2984 reimburse the insurer for 45 percent, 75 percent, or 90 percent
2985 of its losses from each covered event in excess of the insurer's
2986 retention, plus 5 percent of the reimbursed losses to cover loss
2987 adjustment expenses.

2988 2. The insurer must elect one of the percentage coverage
2989 levels specified in this paragraph and may, upon renewal of a
2990 reimbursement contract, elect a lower percentage coverage level
2991 if no revenue bonds issued under subsection (6) after a covered

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2992 event are outstanding, or elect a higher percentage coverage
2993 level, regardless of whether or not revenue bonds are
2994 outstanding. All members of an insurer group must elect the same
2995 percentage coverage level. Any joint underwriting association,
2996 risk apportionment plan, or other entity created under s.
2997 627.351 must elect the 90-percent coverage level.

2998 3. The contract shall provide that reimbursement amounts
2999 shall not be reduced by reinsurance paid or payable to the
3000 insurer from other sources.

3001 4. Notwithstanding any other provision contained in this
3002 section, the board shall make available to insurers that
3003 purchased coverage provided by this subparagraph in 2007 ~~2006~~,
3004 insurers qualifying as limited apportionment companies under s.
3005 627.351(6)(c), and insurers that have been ~~were~~ approved to
3006 participate in ~~2006 or that are approved in 2007~~ for the
3007 Insurance Capital Build-Up Incentive Program pursuant to s.
3008 215.5595, a contract or contract addendum that provides an
3009 additional amount of reimbursement coverage of up to \$10
3010 million. The premium to be charged for this additional
3011 reimbursement coverage shall be 50 percent of the additional
3012 reimbursement coverage provided, which shall include one prepaid
3013 reinstatement. The minimum retention level that an eligible
3014 participating insurer must retain associated with this
3015 additional coverage layer is 30 percent of the insurer's surplus
3016 as of December 31, 2007 ~~2006~~. This coverage shall be in addition
3017 to all other coverage that may be provided under this section.
3018 The coverage provided by the fund under this subparagraph shall
3019 be in addition to the claims-paying capacity as defined in

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3020 subparagraph (c)1., but only with respect to those insurers that
3021 select the additional coverage option and meet the requirements
3022 of this subparagraph. The claims-paying capacity with respect to
3023 all other participating insurers and limited apportionment
3024 companies that do not select the additional coverage option
3025 shall be limited to their reimbursement premium's proportionate
3026 share of the actual claims-paying capacity otherwise defined in
3027 subparagraph (c)1. and as provided for under the terms of the
3028 reimbursement contract. Coverage provided in the reimbursement
3029 contract shall ~~will~~ not be affected by the additional premiums
3030 paid by participating insurers exercising the additional
3031 coverage option allowed in this subparagraph. This subparagraph
3032 expires on May 31, 2009 ~~2008~~.

3033 Section 23. Subsection (1) of section 627.0613, Florida
3034 Statutes, is amended to read:

3035 627.0613 Consumer advocate.--The Chief Financial Officer
3036 must appoint a consumer advocate who must represent the general
3037 public of the state before the department and the office. The
3038 consumer advocate must report directly to the Chief Financial
3039 Officer, but is not otherwise under the authority of the
3040 department or of any employee of the department. The consumer
3041 advocate has such powers as are necessary to carry out the
3042 duties of the office of consumer advocate, including, but not
3043 limited to, the powers to:

3044 (1) Recommend to the department or office, by petition,
3045 the commencement of any proceeding or action; appear in any
3046 proceeding or action before the department or office; or appear
3047 in any proceeding before the Division of Administrative Hearings

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3048 ~~er arbitration panel specified in s. 627.062(6)~~ relating to
3049 subject matter under the jurisdiction of the department or
3050 office.

3051 Section 24. Subsections (1) and (2) of section 627.712,
3052 Florida Statutes, are amended to read:

3053 627.712 Residential windstorm coverage required;
3054 availability of exclusions for windstorm or contents.--

3055 (1) An insurer issuing a residential property insurance
3056 policy must provide windstorm coverage. Except as provided in
3057 paragraph (2)(c), this section subsection does not apply with
3058 respect to risks that are eligible for wind-only coverage from
3059 Citizens Property Insurance Corporation under s. 627.351(6).

3060 (2) A property insurer must make available, at the option
3061 of the policyholder, an exclusion of windstorm coverage.

3062 (a) The coverage may be excluded only if:

3063 ~~(a)~~1. When the policyholder is a natural person, the
3064 policyholder personally writes and provides to the insurer the
3065 following statement in his or her own handwriting and signs his
3066 or her name, which must also be signed by every other named
3067 insured on the policy, and dated: "I do not want the insurance
3068 on my (home/mobile home/condominium unit) to pay for damage from
3069 windstorms. I will pay those costs. My insurance will not."

3070 2. When the policyholder is other than a natural person,
3071 the policyholder provides to the insurer on the policyholder's
3072 letterhead the following statement that must be signed by the
3073 policyholder's authorized representative and dated: " (Name of
3074 entity) does not want the insurance on its (type of
3075 structure) to pay for damage from windstorms. (Name of

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3076 entity) will be responsible for these costs. (Name of
3077 entity's) insurance will not."

3078 (b) If the structure insured by the policy is subject to a
3079 mortgage or lien, the policyholder must provide the insurer with
3080 a written statement from the mortgageholder or lienholder
3081 indicating that the mortgageholder or lienholder approves the
3082 policyholder electing to exclude windstorm coverage or hurricane
3083 coverage from his or her or its property insurance policy.

3084 (c) If the residential structure is eligible for wind-only
3085 coverage from Citizens Property Insurance Corporation, an
3086 insurer nonrenewing a policy and issuing a replacement policy,
3087 or issuing a new policy, that does not provide wind coverage
3088 shall provide a notice to the mortgageholder or lienholder
3089 indicating the policyholder has elected coverage that does not
3090 cover wind.

3091 Section 25. The provisions of this act shall supersede and
3092 control over any conflicting provisions adopted in House Bill
3093 5057, 2008 Regular Session, to the extent of such conflict, if
3094 that bill becomes a law.

3095 Section 26. Except as otherwise expressly provided in this
3096 act, this act shall take effect July 1, 2008.

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HOUSE AMENDMENT

Bill No. CS/CS/SB 2860

Amendment No.

3104 Remove the entire title and insert:
3105 A bill to be entitled
3106 An act relating to insurance; amending s. 215.5595, F.S.;
3107 revising legislative findings; providing for an appropriation of
3108 state funds in exchange for surplus notes issued by residential
3109 property insurers under the program; revising the conditions and
3110 requirements for providing funds to insurers under the program;
3111 requiring a commitment by the insurer to meet minimum premium-
3112 to-surplus writing ratios for residential property insurance and
3113 for taking policies out of Citizens Property Insurance
3114 Corporation; requiring insurers to commit to maintaining certain
3115 levels of surplus and reinsurance; authorizing the State Board
3116 of Administration to charge a fee for late payments; providing
3117 for payment of costs and fees incurred by the board in
3118 administering the program from funds appropriated to the
3119 program, subject to a specified limit; requiring the board to
3120 submit an annual report to the Legislature on the program and
3121 insurer compliance with certain requirements; providing that
3122 amendments made by the act do not affect the terms of surplus
3123 notes approved prior to a specified date; authorizing the State
3124 Board of Administration and an insurer to renegotiate such terms
3125 consistent with such amendments; requiring the State Board of
3126 Administration to transfer to Citizens Property Insurance
3127 Corporation certain uncommitted or unreserved funds; amending s.
3128 624.3161, F.S.; authorizing the Office of Insurance Regulation
3129 to require an insurer to file its claims handling practices and
3130 procedures as a public record based on findings of a market
3131 conduct examination; amending s. 624.4211, F.S.; increasing the
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3132 maximum amounts of administrative fines that may be imposed upon
3133 an insurer by the Office of Insurance Regulation for nonwillful
3134 and willful violations of an order or rule of the office or any
3135 provision of the Florida Insurance Code; creating s. 624.4213,
3136 F.S.; specifying requirements for submission of a document or
3137 information to the Office of Insurance Regulation or the
3138 Department of Financial Services in order for a person to claim
3139 that the document is a trade secret; requiring each page or
3140 portion to be labeled as a trade secret and be separated from
3141 non-trade secret material; requiring the submitting party to
3142 include an affidavit certifying certain information about the
3143 documents claimed to be trade secrets; requiring the office or
3144 department to notify persons who submit trade secret documents
3145 of any public-records request and the opportunity to file a
3146 court action to bar disclosure; specifying conditions for the
3147 office to retain or release such documents; creating s.
3148 624.4305, F.S.; requiring that an insurer planning to nonrenew
3149 more than a specified number of residential property insurance
3150 policies notify the Office of Insurance Regulation and obtain
3151 approval for such nonrenewals; specifying procedures for
3152 issuance of such notice; amending s. 626.9521, F.S.; increasing
3153 the maximum fines that may be imposed by the office or
3154 department for nonwillful and willful violations of state law
3155 regarding unfair methods of competition and unfair or deceptive
3156 acts or practices related to insurance; amending s. 626.9541,
3157 F.S.; specifying an additional unfair claims settlement
3158 practice; amending s. 627.0612, F.S.; providing criteria for
3159 administrative hearings to determine whether an insurer's

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3160 property insurance rates, rating manuals, premium credits,
3161 discount schedules, and surcharge schedules comply with the law;
3162 providing for entry of certain orders; amending s. 627.062,
3163 F.S.; requiring that an insurer seeking a rate for property
3164 insurance that is greater than the rate most recently approved
3165 by the Office of Insurance Regulation make a "file and use"
3166 filing for all such rate filings made after a specified date;
3167 revising the factors the office must consider in reviewing a
3168 rate filing; prohibiting the Office of Insurance Regulation from
3169 disapproving as excessive a rate solely because the insurer
3170 obtained reinsurance covering a specified probably maximum loss;
3171 allowing the office to disapprove a rate as excessive within 1
3172 year after the rate has been approved under certain conditions
3173 related to nonrenewal of policies by the insurer; requiring the
3174 Division of Administrative Hearings to expedite a hearing
3175 request by an insurer and for the administrative law judge to
3176 commence the hearing within a specified time; authorizing an
3177 insurer to request an expedited appellate review pursuant to the
3178 Florida Rules of Appellate Procedure; expressing legislative
3179 intent for an expedited appellate review; revising provisions
3180 relating to the submission of a disputed rate filing, other than
3181 a rate filing for medical malpractice insurance, to an
3182 arbitration panel in lieu of an administrative hearing if the
3183 rate is filed before a specified date; deleting provisions
3184 relating to mandatory arbitration in lieu of certain hearings;
3185 amending s. 627.0628, F.S.; providing legislative findings
3186 relating to final agency action for insurance ratemaking;
3187 requiring the Financial Services Commission to consider and

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HOUSE AMENDMENT

Bill No. CS/CS/SB 2860

Amendment No.

3188 adopt findings relating to certain actuarial models, principles,
3189 standards, or models for certain maximum loss level
3190 calculations; requiring that with respect to rate filings,
3191 insurers must use actuarial methods or models found to be
3192 accurate or reliable by the Florida Commission on Hurricane Loss
3193 Projection Methodology; deleting the requirement for the Office
3194 of Insurance Regulation and the Consumer Advocate to have access
3195 to all assumptions of a hurricane loss model in order for a
3196 model that has been found to be accurate and reliable by the
3197 Florida Commission on Hurricane Loss Projection Methodology to
3198 be admissible in a rate proceeding; deleting cross-references to
3199 conform to changes made by the act; amending s. 627.0629, F.S.;
3200 requiring that the Office of Insurance Regulation develop and
3201 make publicly available before a specified deadline a proposed
3202 method for insurers to establish windstorm mitigation premium
3203 discounts that correlate to the uniform home rating scale;
3204 requiring that the Financial Services Commission adopt rules
3205 before a specified deadline; requiring insurers to make rate
3206 filings pursuant to such method; authorizing the commission to
3207 make changes by rule to the uniform home grading scale and
3208 specify by rule the minimum required discounts, credits, or
3209 other rate differentials; requiring that such rate differentials
3210 be consistent with generally accepted actuarial principles and
3211 wind loss mitigation studies; amending s. 627.351, F.S.,
3212 relating to Citizens Property Insurance Corporation; deleting a
3213 provision to conform to changes made in the act; deleting
3214 provisions defining the terms "homestead property" and
3215 "nonhomestead property"; increasing threshold replacement costs

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3216 of certain structures for eligibility for coverage by the
3217 corporation; deleting requirements for certain properties to
3218 meeting building code plus requirements as a condition of
3219 eligibility for coverage by the corporation; decreasing the
3220 value at which certain structures are eligible for coverage;
3221 requiring written disclosure of windstorm mitigation ratings for
3222 certain structures; deleting outdated provisions requiring the
3223 corporation to submit a report for approval of offering
3224 multiperil coverage; revising threshold amounts of deficits
3225 incurred in a calendar year on which the decision to levy
3226 assessments and the types of such assessments are based;
3227 revising the formula used to calculate shares of assessments
3228 owed by certain assessable insureds; requiring that the board of
3229 governors make certain determinations before levying emergency
3230 assessments; providing the board of governors with discretion to
3231 set the amount of an emergency assessment within specified
3232 limits; requiring the board of governors to levy a Citizens
3233 policyholder surcharge under certain conditions; increasing the
3234 amount of the surcharge; deleting a provision requiring the levy
3235 of an immediate assessment against certain policyholders under
3236 such conditions; requiring that funds collected from the levy of
3237 such surcharges be used for certain purposes; providing that
3238 such surcharges are not considered premium and are not subject
3239 to commissions, fees, or premium taxes; requiring that the
3240 failure to pay such surcharges be treated as failure to pay
3241 premium; requiring that the amount of any assessment or
3242 surcharge which exceeds the amount of deficits be remitted to
3243 and used by the corporation for specified purposes; deleting

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3244 provisions requiring that the plan of operation of the
3245 corporation provide for the levy of a Citizens policyholder
3246 surcharge if regular deficit assessments are levied as a result
3247 of deficits in certain accounts; deleting provisions related to
3248 the calculation, classification, and nonpayment of such
3249 surcharge; requiring that the corporation make an annual filing
3250 for each personal or commercial line of business it writes,
3251 beginning on a specified date; deleting a provision requiring an
3252 insurer to purchase bonds that remain unsold; deleting
3253 provisions requiring the corporation to make certain
3254 confidential underwriting and claims files available to agents
3255 to conform to changes made by the act relating to ineligibility
3256 of certain dwellings; clarifying the right of certain parties to
3257 discover underwriting and claims file records; authorizing the
3258 corporation to release such records as it deems necessary;
3259 amending s. 627.4133, F.S.; requiring insurers to provide
3260 written notice of certain cancellations, nonrenewals, or
3261 terminations; creating s. 689.262, F.S.; requiring a purchaser
3262 of residential property in wind-borne debris regions to be
3263 presented with the windstorm mitigation rating of the structure;
3264 authorizing the Financial Services Commission to adopt rules;
3265 requiring Citizens Property Insurance Corporation to transfer
3266 funds to the General Revenue Fund if the losses due to a
3267 hurricane do not exceed a specified amount; requiring the board
3268 of governors of Citizens Property Insurance Corporation to make
3269 a reasonable estimate of such losses by a certain date;
3270 requiring the board to make quarterly transfers of funds to the
3271 corporation under certain circumstances; requiring the

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HOUSE AMENDMENT

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Amendment No.

3272 corporation to credit certain accounts for funds removed to make
3273 certain transfers; requiring the State Board of Administration
3274 to transfer to Citizens Property Insurance Corporation certain
3275 uncommitted or unreserved funds under certain circumstances;
3276 prohibiting Citizens Property Insurance Corporation from using
3277 certain statutory changes or authorized transfers of funds as
3278 justification or cause to seek any rate or assessment increase;
3279 amending s. 627.06281, F.S.; providing for residential property
3280 insurers to have access to and use a public hurricane loss
3281 projection model; requiring the office to establish a fee
3282 schedule for such model access and use; amending s. 627.0655,
3283 F.S.; expanding application of policyholder loss or expense-
3284 related premium discounts; creating the Citizens Property
3285 Insurance Corporation Mission Review Task Force; providing
3286 purposes; requiring a report; providing report requirements;
3287 providing for appointment of members; providing
3288 responsibilities; specifying service without compensation;
3289 providing for reimbursement of per diem and travel expenses;
3290 providing meeting requirements; requiring the corporation to
3291 assist the task force; providing for the expiration of the task
3292 force; requiring the Chief Financial Officer to provide a report
3293 on the economic impact on the state of certain hurricanes;
3294 providing report requirements; creating s. 627.0621, F.S.;
3295 providing requirements for transparency in rate regulation;
3296 providing definitions; providing for a website for public access
3297 to rate filing information; providing requirements; providing
3298 for application of public meeting requirements; specifying
3299 nonapplication of attorney-client or work-product privileges to
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3300 certain communications in certain administrative or judicial
3301 proceedings under certain circumstances; specifying criteria;
3302 amending s. 215.555, F.S.; extending for an additional year the
3303 offer of reimbursement coverage for specified insurers; revising
3304 the qualifying criteria for such insurers; revising provisions
3305 to conform; amending s. 627.0613, F.S.; deleting cross-
3306 references to conform to changes made by the act; amending s.
3307 627.712, F.S.; requiring insurers to provide notice to
3308 mortgageholders or lienholders of certain policies not providing
3309 wind coverage for certain structures; providing for provisions
3310 of the act to supersede and control over conflicting provisions
3311 of House Bill 5057; providing effective dates.

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