

Amendment No.

CHAMBER ACTION

Senate

House

.
. .
. . .

1 Representatives Ross and Reagan offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5
6 Section 1. Section 215.5595, Florida Statutes, is amended
7 to read:

8 215.5595 Insurance Capital Build-Up Incentive Program.--

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

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

439287
4/29/2008 7:16 AM

Amendment No.

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

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

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

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

439287

4/29/2008 7:16 AM

Amendment No.

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

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

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

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

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

439287

4/29/2008 7:16 AM

Amendment No.

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

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

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

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

439287
4/29/2008 7:16 AM

Amendment No.

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

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

439287

4/29/2008 7:16 AM

Amendment No.

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

150 (e) If the requirements of this section are met, the board
151 may approve an application by an insurer for funds in exchange
152 for issuance of a surplus note, unless the board determines that
153 the financial condition of the insurer and its business plan for
154 writing residential property insurance in Florida places an

439287

4/29/2008 7:16 AM

Amendment No.

155 unreasonably high level of financial risk to the state of
156 nonpayment in full of the interest and principal. The board
157 shall consult with the Office of Insurance Regulation and may
158 contract with independent financial and insurance consultants in
159 making this determination.

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

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

439287

4/29/2008 7:16 AM

Amendment No.

183 insurance in the state, and the effect on competition in the
184 residential property insurance market. Between insurers writing
185 residential property insurance covering manufactured housing,
186 priority shall be given to the insurer writing the highest
187 percentage of its policies covering manufactured housing.

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

192 ~~(i)~~ Notwithstanding paragraph (d), a newly formed
193 manufactured housing insurer that is eligible for a surplus note
194 under this section shall meet the premium to surplus ratio
195 provisions of s. 624.4095.

196 ~~(j)~~ As used in this section, "an insurer writing only
197 manufactured housing policies" includes:

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

207 2. A Florida domiciled insurer that writes at least 40
208 percent of its policies covering manufactured housing in
209 Florida.

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

439287

4/29/2008 7:16 AM

Amendment No.

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

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

214 (4) The state funds provided to the insurer in exchange
215 for the A surplus note provided to an insurer pursuant to this
216 section are ~~is~~ considered borrowed surplus ~~an asset~~ of the
217 insurer pursuant to s. 628.401 ~~s. 625.012~~.

218 (5) If an insurer that receives funds in exchange for
219 issuance of a surplus note pursuant to this section is rendered
220 insolvent, the state is a ~~class 3~~ creditor pursuant to s.
221 631.271 for the unpaid principal and interest on the surplus
222 note.

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

230 (7) The board shall invest and reinvest the funds
231 appropriated for the program in accordance with s. 215.47 and
232 consistent with board policy.

233 (8) Costs and fees incurred by the board in administering
234 this program, including fees for investment services, shall be
235 paid from funds appropriated by the Legislature for this
236 program, but are limited to 1 percent of the amount
237 appropriated.

Amendment No.

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

242 (10) The amendments to this section enacted in 2008 do not
243 affect the terms or conditions of the surplus notes that were
244 approved prior to January 1, 2008. However, the board may
245 renegotiate the terms of any surplus note issued by an insurer
246 prior to January 2008 under this program upon the agreement of
247 the insurer and the board and consistent with the requirements
248 of this section as amended in 2008.

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

251 624.3161 Market conduct examinations.--

252 (6) Based on the findings of a market conduct examination
253 that an insurer has exhibited a pattern or practice of willful
254 violations of an unfair insurance trade practice related to
255 claims-handling which caused harm to policyholders, as
256 prohibited by s. 626.9541(1)(i), the office, after a proceeding
257 under ss. 120.569 and 120.57(1), may require an insurer to file
258 its claims-handling practices and procedures related to that
259 line of insurance with the office for review and inspection, to
260 be held by the office for the following 36-month period. Such
261 claims-handling practices and procedures are public records and
262 are not trade secrets or otherwise exempt from the provisions of
263 s. 119.07(1). As used in this section, "claims-handling
264 practices and procedures" are any policies, guidelines, rules,
265 protocols, standard operating procedures, instructions, or

439287

4/29/2008 7:16 AM

Amendment No.

266 directives that govern or guide how and the manner in which an
267 insured's claims for benefits under any policy will be
268 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

439287

4/29/2008 7:16 AM

Amendment No.

294 an amount not to exceed \$40,000 ~~\$20,000~~ for each such violation.
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

Amendment No.

321 concerning all documents or information that are claimed to be
322 trade secrets:

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

439287

4/29/2008 7:16 AM

Amendment No.

348 constitutes a waiver of any claim of confidentiality and the
349 office or department shall release the document as requested.

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

439287

4/29/2008 7:16 AM

Amendment No.

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

380 Section 7. Section 627.0612, Florida Statutes, is amended
381 to read:

382 627.0612 Administrative proceedings in rating
383 determinations.--

384 (1) In any proceeding to determine whether rates, rating
385 plans, or other matters governed by this part comply with the
386 law, the appellate court shall set aside a final order of the
387 office if the office has violated s. 120.57(1)(k) by
388 substituting its findings of fact for findings of an
389 administrative law judge which were supported by competent
390 substantial evidence.

391 (2) In an administrative hearing to determine whether an
392 insurer's rates, rating schedules, rating manuals, premium
393 credits, discount schedules, surcharge schedules, or changes
394 thereto, for property insurance comply with the law, in addition
395 to any other findings of fact, findings on the following matters
396 shall be considered findings of fact:

397 (a) Whether a factor or factors used in a rate filing or
398 applied by the office is consistent with standard actuarial
399 techniques or practices or are otherwise based on reasonable
400 actuarial judgment.

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

439287
4/29/2008 7:16 AM

Amendment No.

403 (c) Whether the cost of reinsurance is reasonable or
404 excessive.

405 (d) Whether a factor or factors used in a rate filing or
406 applied by the office demonstrate that a rate is excessive,
407 inadequate or unfairly discriminatory.

408 (3) In an administrative hearing to determine whether an
409 insurer's rates, rating schedules, rating manuals, premium
410 credits, discount schedules, surcharge schedules, or changes
411 thereto, for property insurance comply with the law, an order
412 may be entered that approves, modifies, or rejects the requested
413 change. An order modifying the requested rate change shall
414 recommend such change as is supported by the record in the case.

415 Section 8. Paragraphs (a), (b), and (g) of subsection
416 (2), subsection (6), and paragraph (a) of subsection (9) of
417 section 627.062, Florida Statutes, are amended to read:

418 627.062 Rate standards.--

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

420 (a) Insurers or rating organizations shall establish and
421 use rates, rating schedules, or rating manuals to allow the
422 insurer a reasonable rate of return on such classes of insurance
423 written in this state. A copy of rates, rating schedules, rating
424 manuals, premium credits or discount schedules, and surcharge
425 schedules, and changes thereto, shall be filed with the office
426 under one of the following procedures except as provided in
427 subparagraph 3.:

428 1. If the filing is made at least 90 days before the
429 proposed effective date and the filing is not implemented during
430 the office's review of the filing and any proceeding and

439287

4/29/2008 7:16 AM

Amendment No.

431 judicial review, then such filing shall be considered a "file
432 and use" filing. In such case, the office shall finalize its
433 review by issuance of a notice of intent to approve or a notice
434 of intent to disapprove within 90 days after receipt of the
435 filing. The notice of intent to approve and the notice of intent
436 to disapprove constitute agency action for purposes of the
437 Administrative Procedure Act. Requests for supporting
438 information, requests for mathematical or mechanical
439 corrections, or notification to the insurer by the office of its
440 preliminary findings shall not toll the 90-day period during any
441 such proceedings and subsequent judicial review. The rate shall
442 be deemed approved if the office does not issue a notice of
443 intent to approve or a notice of intent to disapprove within 90
444 days after receipt of the filing.

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

452 3. For all filings made or submitted after January 25,
453 2007, but before December 31, 2008, an insurer seeking a rate
454 that is greater than the rate most recently approved by the
455 office shall make a "file and use" filing. This subparagraph
456 applies to property insurance only. For purposes of this
457 subparagraph, motor vehicle collision and comprehensive
458 coverages are not considered to be property coverages.

439287

4/29/2008 7:16 AM

Amendment No.

459 (b) Upon receiving a rate filing, the office shall review
460 the rate filing to determine if a rate is excessive, inadequate,
461 or unfairly discriminatory. In making that determination, the
462 office shall, in accordance with generally accepted and
463 reasonable actuarial techniques, consider the following factors:

464 1. Past and prospective loss experience within and without
465 this state.

466 2. Past and prospective expenses.

467 3. The degree of competition among insurers for the risk
468 insured.

469 4. Investment income reasonably expected by the insurer,
470 consistent with the insurer's investment practices, from
471 investable premiums anticipated in the filing, plus any other
472 expected income from currently invested assets representing the
473 amount expected on unearned premium reserves and loss reserves.
474 The commission may adopt rules using ~~utilizing~~ reasonable
475 techniques of actuarial science and economics to specify the
476 manner in which insurers shall calculate investment income
477 attributable to such classes of insurance written in this state
478 and the manner in which such investment income shall be used to
479 calculate ~~in the calculation of~~ insurance rates. Such manner
480 shall contemplate allowances for an underwriting profit factor
481 and full consideration of investment income which produce a
482 reasonable rate of return; however, investment income from
483 invested surplus may ~~shall~~ not be considered.

484 5. The reasonableness of the judgment reflected in the
485 filing.

439287
4/29/2008 7:16 AM

Amendment No.

486 6. Dividends, savings, or unabsorbed premium deposits
487 allowed or returned to Florida policyholders, members, or
488 subscribers.

489 7. The adequacy of loss reserves.

490 8. The cost of reinsurance. The office shall not
491 disapprove a rate as excessive solely due to the insurer having
492 obtained catastrophic reinsurance to cover the insurer's
493 estimated 250-year probable maximum loss or any lower level of
494 loss.

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

497 10. Conflagration and catastrophe hazards, if applicable.

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

502 ~~12.11. A reasonable margin for underwriting profit and~~
503 ~~contingencies. For that portion of the rate covering the risk of~~
504 ~~hurricanes and other catastrophic losses for which the insurer~~
505 ~~has not purchased reinsurance and has exposed its capital and~~
506 ~~surplus to such risk, the office must approve a rating factor~~
507 ~~that provides the insurer a reasonable rate of return that is~~
508 ~~commensurate with such risk.~~

509 ~~13.12. The cost of medical services, if applicable.~~

510 ~~14.13. Other relevant factors which impact upon the~~
511 ~~frequency or severity of claims or upon expenses.~~

512 (g) The office may at any time review a rate, rating
513 schedule, rating manual, or rate change; the pertinent records

439287

4/29/2008 7:16 AM

Amendment No.

514 of the insurer; and market conditions. If the office finds on a
515 preliminary basis that a rate may be excessive, inadequate, or
516 unfairly discriminatory, the office shall initiate proceedings
517 to disapprove the rate and shall so notify the insurer. However,
518 the office may not disapprove as excessive any rate for which it
519 has given final approval or which has been deemed approved for a
520 period of 1 year after the effective date of the filing unless
521 the office finds that a material misrepresentation or material
522 error was made by the insurer or was contained in the filing.
523 Upon being so notified, the insurer or rating organization
524 shall, within 60 days, file with the office all information
525 which, in the belief of the insurer or organization, proves the
526 reasonableness, adequacy, and fairness of the rate or rate
527 change. The office shall issue a notice of intent to approve or
528 a notice of intent to disapprove pursuant to the procedures of
529 paragraph (a) within 90 days after receipt of the insurer's
530 initial response. In such instances and in any administrative
531 proceeding relating to the legality of the rate, the insurer or
532 rating organization shall carry the burden of proof by a
533 preponderance of the evidence to show that the rate is not
534 excessive, inadequate, or unfairly discriminatory. After the
535 office notifies an insurer that a rate may be excessive,
536 inadequate, or unfairly discriminatory, unless the office
537 withdraws the notification, the insurer shall not alter the rate
538 except to conform with the office's notice until the earlier of
539 120 days after the date the notification was provided or 180
540 days after the date of the implementation of the rate. The
541 office may, subject to chapter 120, disapprove without the 60-

439287

4/29/2008 7:16 AM

Amendment No.

542 day notification any rate increase filed by an insurer within
543 the prohibited time period or during the time that the legality
544 of the increased rate is being contested.

545
546 The provisions of this subsection shall not apply to workers'
547 compensation and employer's liability insurance and to motor
548 vehicle insurance.

549 (6) (a) If an insurer requests an administrative hearing
550 pursuant to s. 120.57 related to a rate filing under this
551 section, the director of the Division of Administrative Hearings
552 shall expedite the hearing and assign an administrative law
553 judge who shall commence the hearing within 30 days after the
554 receipt of the formal request and shall enter a recommended
555 order within 30 days after the hearing or within 30 days after
556 receipt of the hearing transcript by the administrative law
557 judge, whichever is later. Each party shall be allowed 10 days
558 in which to submit written exceptions to the recommended order.
559 The office shall enter a final order within 30 days after the
560 entry of the recommended order. The provisions of this paragraph
561 may be waived upon stipulation of all parties.

562 (b) Upon entry of a final order, the insurer may request a
563 expedited appellate review pursuant to the Florida Rules of
564 Appellate Procedure. It is the intent of the Legislature that
565 the First District Court of Appeal grant an insurer's request
566 for an expedited appellate review.

567 (c) ~~(a)~~ After any action with respect to a rate filing that
568 constitutes agency action for purposes of the Administrative
569 Procedure Act, except for a rate filing for medical malpractice,
439287

4/29/2008 7:16 AM

Amendment No.

570 an insurer may, in lieu of demanding a hearing under s. 120.57,
571 require arbitration of the rate filing. However, the arbitration
572 option provision in this subsection does not apply to a rate
573 filing that is made on or after the effective date of this act
574 until January 1, 2010 ~~2009~~. Arbitration shall be conducted by a
575 board of arbitrators consisting of an arbitrator selected by the
576 office, an arbitrator selected by the insurer, and an arbitrator
577 selected jointly by the other two arbitrators. Each arbitrator
578 must be certified by the American Arbitration Association. A
579 decision is valid only upon the affirmative vote of at least two
580 of the arbitrators. No arbitrator may be an employee of any
581 insurance regulator or regulatory body or of any insurer,
582 regardless of whether or not the employing insurer does business
583 in this state. The office and the insurer must treat the
584 decision of the arbitrators as the final approval of a rate
585 filing. Costs of arbitration shall be paid by the insurer.

586 (d) ~~(b)~~ Arbitration under this subsection shall be
587 conducted pursuant to the procedures specified in ss. 682.06-
588 682.10. Either party may apply to the circuit court to vacate or
589 modify the decision pursuant to s. 682.13 or s. 682.14. The
590 commission shall adopt rules for arbitration under this
591 subsection, which rules may not be inconsistent with the
592 arbitration rules of the American Arbitration Association as of
593 January 1, 1996.

594 (e) ~~(e)~~ Upon initiation of the arbitration process, the
595 insurer waives all rights to challenge the action of the office
596 under the Administrative Procedure Act or any other provision of
597 law; however, such rights are restored to the insurer if the

439287

4/29/2008 7:16 AM

Amendment No.

598 arbitrators fail to render a decision within 90 days after
599 initiation of the arbitration process.

600 (9) (a) ~~Effective March 1, 2007,~~ The chief executive
601 officer or chief financial officer of a property insurer and the
602 chief actuary of a property insurer must certify under oath and
603 subject to the penalty of perjury, on a form approved by the
604 commission, the following information, which must accompany a
605 rate filing:

606 1. The signing officer and actuary have reviewed the rate
607 filing;

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

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

618 4. Based on the signing officer's and actuary's knowledge,
619 the rate filing reflects all premium savings that are reasonably
620 expected to result from legislative enactments and are in
621 accordance with generally accepted and reasonable actuarial
622 techniques.

623 Section 9. Paragraph (c) of subsection (1) and paragraph
624 (c) of subsection (3) of section 627.0628, Florida Statutes, are

Amendment No.

625 amended, and paragraph (e) is added to subsection (1) of that
626 section, to read:

627 627.0628 Florida Commission on Hurricane Loss Projection
628 Methodology; public records exemption; public meetings
629 exemption.--

630 (1) LEGISLATIVE FINDINGS AND INTENT.--

631 (c) It is the intent of the Legislature to create the
632 Florida Commission on Hurricane Loss Projection Methodology as a
633 panel of experts to provide the most actuarially sophisticated
634 guidelines and standards for projection of hurricane losses
635 possible, given the current state of actuarial science. It is
636 the further intent of the Legislature that such standards and
637 guidelines must be used by the State Board of Administration in
638 developing reimbursement premium rates for the Florida Hurricane
639 Catastrophe Fund, and, subject to paragraph (3)(c), must ~~may~~ be
640 used by insurers in rate filings under s. 627.062 unless the way
641 in which such standards and guidelines were applied by the
642 insurer was erroneous, as shown by a preponderance of the
643 evidence.

644 (e) The Legislature finds that the authority to take final
645 agency action with respect to insurance ratemaking is vested in
646 the Office of Insurance Regulation and the Financial Services
647 Commission, and that the processes, standards, and guidelines of
648 the Florida Commission on Hurricane Loss Projection Methodology
649 do not constitute final agency action or statements of general
650 applicability that implement, interpret, or prescribe law or
651 policy; accordingly, chapter 120 does not apply to the

439287

4/29/2008 7:16 AM

Amendment No.

652 processes, standards, and guidelines of the Florida Commission
653 on Hurricane Loss Projection Methodology.

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

655 (c) With respect to a rate filing under s. 627.062, an
656 insurer must ~~may~~ employ and may not modify or adjust actuarial
657 methods, principles, standards, models, or output ranges found
658 by the commission to be accurate or reliable in determining ~~to~~
659 ~~determine~~ hurricane loss factors for use in a rate filing and in
660 determining probable maximum loss levels for reinsurance costs
661 included in a rate filing under s. 627.062; except as provided
662 in s. 627.062(2)(b)12., the use of any other model is reasonable
663 if the insurer provides justification that establishes by a
664 preponderance of the evidence that such use is reasonable and
665 consistent with actuarial standards of practice. ~~Such findings~~
666 ~~and factors are admissible and relevant in consideration of a~~
667 ~~rate filing by the office or in any arbitration or~~
668 ~~administrative or judicial review only if the office and the~~
669 ~~consumer advocate appointed pursuant to s. 627.0613 have access~~
670 ~~to all of the assumptions and factors that were used in~~
671 ~~developing the actuarial methods, principles, standards, models,~~
672 ~~or output ranges, and are not precluded from disclosing such~~
673 ~~information in a rate proceeding. In any rate hearing under s.~~
674 ~~120.57 or in any arbitration proceeding under s. 627.062(6), the~~
675 ~~hearing officer, judge, or arbitration panel may determine~~
676 ~~whether the office and the consumer advocate were provided with~~
677 ~~access to all of the assumptions and factors that were used in~~
678 ~~developing the actuarial methods, principles, standards, models,~~
679 ~~or output ranges and to determine their admissibility.~~

439287

4/29/2008 7:16 AM

Amendment No.

680 Section 10. Subsection (1) of section 627.0629, Florida
681 Statutes, is amended to read:

682 627.0629 Residential property insurance; rate filings.--

683 (1) (a) It is the intent of the Legislature that insurers
684 must provide savings to consumers who install or implement
685 windstorm damage mitigation techniques, alterations, or
686 solutions to their properties to prevent windstorm losses. A
687 rate filing for residential property insurance must include
688 actuarially reasonable discounts, credits, or other rate
689 differentials, or appropriate reductions in deductibles, for
690 properties on which fixtures or construction techniques
691 demonstrated to reduce the amount of loss in a windstorm have
692 been installed or implemented. The fixtures or construction
693 techniques shall include, but not be limited to, fixtures or
694 construction techniques which enhance roof strength, roof
695 covering performance, roof-to-wall strength, wall-to-floor-to-
696 foundation strength, opening protection, and window, door, and
697 skylight strength. Credits, discounts, or other rate
698 differentials, or appropriate reductions in deductibles, for
699 fixtures and construction techniques which meet the minimum
700 requirements of the Florida Building Code must be included in
701 the rate filing. All insurance companies must make a rate filing
702 which includes the credits, discounts, or other rate
703 differentials or reductions in deductibles by February 28, 2003.
704 By July 1, 2007, the office shall reevaluate the discounts,
705 credits, other rate differentials, and appropriate reductions in
706 deductibles for fixtures and construction techniques that meet
707 the minimum requirements of the Florida Building Code, based

439287

4/29/2008 7:16 AM

Amendment No.

708 upon actual experience or any other loss relativity studies
709 available to the office. The office shall determine the
710 discounts, credits, other rate differentials, and appropriate
711 reductions in deductibles that reflect the full actuarial value
712 of such revaluation, which may be used by insurers in rate
713 filings.

714 (b) By February 1, 2011, the Office of Insurance
715 Regulation, in consultation with the Department of Financial
716 Services and the Department of Community Affairs, shall develop
717 and make publicly available a proposed method for insurers to
718 establish discounts, credits, or other rate differentials for
719 hurricane mitigation measures which directly correlate to the
720 numerical rating assigned to a structure pursuant to the uniform
721 home grading scale adopted by the Financial Services Commission
722 pursuant to s. 215.55865, including any proposed changes to the
723 uniform home grading scale. By October 1, 2011, the commission
724 shall adopt rules requiring insurers to make rate filings for
725 residential property insurance which revise insurers' discounts,
726 credits, or other rate differentials for hurricane mitigation
727 measures so that such rate differentials correlate directly to
728 the uniform home grading scale. The rules may include such
729 changes to the uniform home grading scale as the commission
730 determines are necessary, and may specify the minimum required
731 discounts, credits, or other rate differentials. Such rate
732 differentials must be consistent with generally accepted
733 actuarial principles and wind-loss mitigation studies. The rules
734 shall allow a period of at least 2 years after the effective
735 date of the revised mitigation discounts, credits, or other rate

439287

4/29/2008 7:16 AM

Amendment No.

736 differentials for a property owner to obtain an inspection or
737 otherwise qualify for the revised credit, during which time the
738 insurer shall continue to apply the mitigation credit that was
739 applied immediately prior to the effective date of the revised
740 credit.

741 Section 11. Paragraphs (a), (b), (c), (m), (p), (w), (dd),
742 and (ee) of subsection (6) of section 627.351, Florida Statutes,
743 are amended, and a new paragraph (ff) is added to that
744 subsection, to read:

745 627.351 Insurance risk apportionment plans.--

746 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

747 (a)1. It is the public purpose of this subsection to
748 ensure the existence of an orderly market for property insurance
749 for Floridians and Florida businesses. The Legislature finds
750 that private insurers are unwilling or unable to provide
751 affordable property insurance coverage in this state to the
752 extent sought and needed. The absence of affordable property
753 insurance threatens the public health, safety, and welfare and
754 likewise threatens the economic health of the state. The state
755 therefore has a compelling public interest and a public purpose
756 to assist in assuring that property in the state is insured and
757 that it is insured at affordable rates so as to facilitate the
758 remediation, reconstruction, and replacement of damaged or
759 destroyed property in order to reduce or avoid the negative
760 effects otherwise resulting to the public health, safety, and
761 welfare, to the economy of the state, and to the revenues of the
762 state and local governments which are needed to provide for the
763 public welfare. It is necessary, therefore, to provide

439287

4/29/2008 7:16 AM

Amendment No.

764 affordable property insurance to applicants who are in good
765 faith entitled to procure insurance through the voluntary market
766 but are unable to do so. The Legislature intends by this
767 subsection that affordable property insurance be provided and
768 that it continue to be provided, as long as necessary, through
769 Citizens Property Insurance Corporation, a government entity
770 that is an integral part of the state, and that is not a private
771 insurance company. To that end, Citizens Property Insurance
772 Corporation shall strive to increase the availability of
773 affordable property insurance in this state, while achieving
774 efficiencies and economies, and while providing service to
775 policyholders, applicants, and agents which is no less than the
776 quality generally provided in the voluntary market, for the
777 achievement of the foregoing public purposes. Because it is
778 essential for this government entity to have the maximum
779 financial resources to pay claims following a catastrophic
780 hurricane, it is the intent of the Legislature that Citizens
781 Property Insurance Corporation continue to be an integral part
782 of the state and that the income of the corporation be exempt
783 from federal income taxation and that interest on the debt
784 obligations issued by the corporation be exempt from federal
785 income taxation.

786 2. The Residential Property and Casualty Joint
787 Underwriting Association originally created by this statute
788 shall be known, as of July 1, 2002, as the Citizens Property
789 Insurance Corporation. The corporation shall provide insurance
790 for residential and commercial property, for applicants who are
791 in good faith entitled, but are unable, to procure insurance

439287

4/29/2008 7:16 AM

Amendment No.

792 through the voluntary market. The corporation shall operate
793 pursuant to a plan of operation approved by order of the
794 Financial Services Commission. The plan is subject to continuous
795 review by the commission. The commission may, by order, withdraw
796 approval of all or part of a plan if the commission determines
797 that conditions have changed since approval was granted and that
798 the purposes of the plan require changes in the plan. The
799 corporation shall continue to operate pursuant to the plan of
800 operation approved by the Office of Insurance Regulation until
801 October 1, 2006. For the purposes of this subsection,
802 residential coverage includes both personal lines residential
803 coverage, which consists of the type of coverage provided by
804 homeowner's, mobile home owner's, dwelling, tenant's,
805 condominium unit owner's, and similar policies, and commercial
806 lines residential coverage, which consists of the type of
807 coverage provided by condominium association, apartment
808 building, and similar policies.

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

811 ~~a. Property that has been granted a homestead exemption~~
812 ~~under chapter 196,~~

813 ~~b. Property for which the owner has a current, written~~
814 ~~lease with a renter for a term of at least 7 months and for~~
815 ~~which the dwelling is insured by the corporation for \$200,000 or~~
816 ~~less,~~

817 ~~e. An owner occupied mobile home or manufactured home, as~~
818 ~~defined in s. 320.01, which is permanently affixed to real~~
819 ~~property, is owned by a Florida resident, and has been granted a~~

439287

4/29/2008 7:16 AM

Amendment No.

820 ~~homestead exemption under chapter 196 or, if the owner does not~~
821 ~~own the real property, the owner certifies that the mobile home~~
822 ~~or manufactured home is his or her principal place of residence;~~
823 ~~d. Tenant's coverage;~~
824 ~~e. Commercial lines residential property; or~~
825 ~~f. Any county, district, or municipal hospital; a hospital~~
826 ~~licensed by any not for profit corporation qualified under s.~~
827 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
828 ~~continuing care retirement community that is certified under~~
829 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
830 ~~under chapter 196.~~

831 ~~4. For the purposes of this subsection, the term~~
832 ~~"nonhomestead property" means property that is not homestead~~
833 ~~property.~~

834 ~~3.5.~~ Effective January 1, 2009, a personal lines
835 residential structure that has a dwelling replacement cost of \$2
836 ~~\$1~~ million or more, or a single condominium unit that has a
837 combined dwelling and content replacement cost of \$2 ~~\$1~~ million
838 or more is not eligible for coverage by the corporation. Such
839 dwellings insured by the corporation on December 31, 2008, may
840 continue to be covered by the corporation until the end of the
841 policy term. However, such dwellings that are insured by the
842 corporation and become ineligible for coverage due to the
843 provisions of this subparagraph may reapply and obtain coverage
844 ~~in the high risk account and be considered "nonhomestead~~
845 ~~property"~~ if the property owner provides the corporation with a
846 sworn affidavit from one or more insurance agents, on a form
847 provided by the corporation, stating that the agents have made

439287

4/29/2008 7:16 AM

Amendment No.

848 their best efforts to obtain coverage and that the property has
849 been rejected for coverage by at least one authorized insurer
850 and at least three surplus lines insurers. If such conditions
851 are met, the dwelling may be insured by the corporation for up
852 to 3 years, after which time the dwelling is ineligible for
853 coverage. The office shall approve the method used by the
854 corporation for valuing the dwelling replacement cost for the
855 purposes of this subparagraph. If a policyholder is insured by
856 the corporation prior to being determined to be ineligible
857 pursuant to this subparagraph and such policyholder files a
858 lawsuit challenging the determination, the policyholder may
859 remain insured by the corporation until the conclusion of the
860 litigation.

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

867 4.7. It is the intent of the Legislature that
868 policyholders, applicants, and agents of the corporation receive
869 service and treatment of the highest possible level but never
870 less than that generally provided in the voluntary market. It
871 also is intended that the corporation be held to service
872 standards no less than those applied to insurers in the
873 voluntary market by the office with respect to responsiveness,
874 timeliness, customer courtesy, and overall dealings with
875 policyholders, applicants, or agents of the corporation.

439287

4/29/2008 7:16 AM

Amendment No.

876 ~~5.8~~ Effective January 1, 2009, a personal lines
877 residential structure that is located in the "wind-borne debris
878 region," as defined in s. 1609.2, International Building Code
879 (2006), and that has an insured value on the structure of
880 \$750,000 or more is not eligible for coverage by the corporation
881 unless the structure has opening protections as required under
882 the Florida Building Code for a newly constructed residential
883 structure in that area. A residential structure shall be deemed
884 to comply with the requirements of this subparagraph if it has
885 shutters or opening protections on all openings and if such
886 opening protections complied with the Florida Building Code at
887 the time they were installed.

888 (b)1. All insurers authorized to write one or more subject
889 lines of business in this state are subject to assessment by the
890 corporation and, for the purposes of this subsection, are
891 referred to collectively as "assessable insurers." Insurers
892 writing one or more subject lines of business in this state
893 pursuant to part VIII of chapter 626 are not assessable
894 insurers, but insureds who procure one or more subject lines of
895 business in this state pursuant to part VIII of chapter 626 are
896 subject to assessment by the corporation and are referred to
897 collectively as "assessable insureds." An authorized insurer's
898 assessment liability shall begin on the first day of the
899 calendar year following the year in which the insurer was issued
900 a certificate of authority to transact insurance for subject
901 lines of business in this state and shall terminate 1 year after
902 the end of the first calendar year during which the insurer no

439287
4/29/2008 7:16 AM

Amendment No.

903 longer holds a certificate of authority to transact insurance
904 for subject lines of business in this state.

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

908 (I) A personal lines account for personal residential
909 policies issued by the corporation or issued by the Residential
910 Property and Casualty Joint Underwriting Association and renewed
911 by the corporation that provide comprehensive, multiperil
912 coverage on risks that are not located in areas eligible for
913 coverage in the Florida Windstorm Underwriting Association as
914 those areas were defined on January 1, 2002, and for such
915 policies that do not provide coverage for the peril of wind on
916 risks that are located in such areas;

917 (II) A commercial lines account for commercial residential
918 and commercial nonresidential policies issued by the corporation
919 or issued by the Residential Property and Casualty Joint
920 Underwriting Association and renewed by the corporation that
921 provide coverage for basic property perils on risks that are not
922 located in areas eligible for coverage in the Florida Windstorm
923 Underwriting Association as those areas were defined on January
924 1, 2002, and for such policies that do not provide coverage for
925 the peril of wind on risks that are located in such areas; and

926 (III) A high-risk account for personal residential
927 policies and commercial residential and commercial
928 nonresidential property policies issued by the corporation or
929 transferred to the corporation that provide coverage for the
930 peril of wind on risks that are located in areas eligible for

439287

4/29/2008 7:16 AM

Amendment No.

931 coverage in the Florida Windstorm Underwriting Association as
932 those areas were defined on January 1, 2002. ~~Subject to the~~
933 ~~approval of a business plan by the Financial Services Commission~~
934 ~~and Legislative Budget Commission as provided in this sub sub~~
935 ~~subparagraph, but no earlier than March 31, 2007,~~ The
936 corporation may offer policies that provide multiperil coverage
937 and the corporation shall continue to offer policies that
938 provide coverage only for the peril of wind for risks located in
939 areas eligible for coverage in the high-risk account. In issuing
940 multiperil coverage, the corporation may use its approved policy
941 forms and rates for the personal lines account. An applicant or
942 insured who is eligible to purchase a multiperil policy from the
943 corporation may purchase a multiperil policy from an authorized
944 insurer without prejudice to the applicant's or insured's
945 eligibility to prospectively purchase a policy that provides
946 coverage only for the peril of wind from the corporation. An
947 applicant or insured who is eligible for a corporation policy
948 that provides coverage only for the peril of wind may elect to
949 purchase or retain such policy and also purchase or retain
950 coverage excluding wind from an authorized insurer without
951 prejudice to the applicant's or insured's eligibility to
952 prospectively purchase a policy that provides multiperil
953 coverage from the corporation. It is the goal of the Legislature
954 that there would be an overall average savings of 10 percent or
955 more for a policyholder who currently has a wind-only policy
956 with the corporation, and an ex-wind policy with a voluntary
957 insurer or the corporation, and who then obtains a multiperil
958 policy from the corporation. It is the intent of the Legislature

439287

4/29/2008 7:16 AM

Amendment No.

959 that the offer of multiperil coverage in the high-risk account
960 be made and implemented in a manner that does not adversely
961 affect the tax-exempt status of the corporation or
962 creditworthiness of or security for currently outstanding
963 financing obligations or credit facilities of the high-risk
964 account, the personal lines account, or the commercial lines
965 account. ~~By March 1, 2007, the corporation shall prepare and~~
966 ~~submit for approval by the Financial Services Commission and~~
967 ~~Legislative Budget Commission a report detailing the~~
968 ~~corporation's business plan for issuing multiperil coverage in~~
969 ~~the high risk account. The business plan shall be approved or~~
970 ~~disapproved within 30 days after receipt, as submitted or~~
971 ~~modified and resubmitted by the corporation. The business plan~~
972 ~~must include: the impact of such multiperil coverage on the~~
973 ~~corporation's financial resources, the impact of such multiperil~~
974 ~~coverage on the corporation's tax exempt status, the manner in~~
975 ~~which the corporation plans to implement the processing of~~
976 ~~applications and policy forms for new and existing~~
977 ~~policyholders, the impact of such multiperil coverage on the~~
978 ~~corporation's ability to deliver customer service at the high~~
979 ~~level required by this subsection, the ability of the~~
980 ~~corporation to process claims, the ability of the corporation to~~
981 ~~quote and issue policies, the impact of such multiperil coverage~~
982 ~~on the corporation's agents, the impact of such multiperil~~
983 ~~coverage on the corporation's existing policyholders, and the~~
984 ~~impact of such multiperil coverage on rates and premium. The~~
985 high-risk account must also include quota share primary
986 insurance under subparagraph (c)2. The area eligible for

439287

4/29/2008 7:16 AM

Amendment No.

987 coverage under the high-risk account also includes the area
988 within Port Canaveral, which is bordered on the south by the
989 City of Cape Canaveral, bordered on the west by the Banana
990 River, and bordered on the north by Federal Government property.

991 b. The three separate accounts must be maintained as long
992 as financing obligations entered into by the Florida Windstorm
993 Underwriting Association or Residential Property and Casualty
994 Joint Underwriting Association are outstanding, in accordance
995 with the terms of the corresponding financing documents. When
996 the financing obligations are no longer outstanding, in
997 accordance with the terms of the corresponding financing
998 documents, the corporation may use a single account for all
999 revenues, assets, liabilities, losses, and expenses of the
1000 corporation. Consistent with the requirement of this
1001 subparagraph and prudent investment policies that minimize the
1002 cost of carrying debt, the board shall exercise its best efforts
1003 to retire existing debt or to obtain approval of necessary
1004 parties to amend the terms of existing debt, so as to structure
1005 the most efficient plan to consolidate the three separate
1006 accounts into a single account. By February 1, 2007, the board
1007 shall submit a report to the Financial Services Commission, the
1008 President of the Senate, and the Speaker of the House of
1009 Representatives which includes an analysis of consolidating the
1010 accounts, the actions the board has taken to minimize the cost
1011 of carrying debt, and its recommendations for executing the most
1012 efficient plan.

1013 c. Creditors of the Residential Property and Casualty
1014 Joint Underwriting Association and of the accounts specified in
439287

4/29/2008 7:16 AM

Amendment No.

1015 sub-sub-subparagraphs a.(I) and (II) may have a claim against,
1016 and recourse to, the accounts referred to in sub-sub-
1017 subparagraphs a.(I) and (II) and shall have no claim against, or
1018 recourse to, the account referred to in sub-sub-subparagraph
1019 a.(III). Creditors of the Florida Windstorm Underwriting
1020 Association shall have a claim against, and recourse to, the
1021 account referred to in sub-sub-subparagraph a.(III) and shall
1022 have no claim against, or recourse to, the accounts referred to
1023 in sub-sub-subparagraphs a.(I) and (II).

1024 d. Revenues, assets, liabilities, losses, and expenses not
1025 attributable to particular accounts shall be prorated among the
1026 accounts.

1027 e. The Legislature finds that the revenues of the
1028 corporation are revenues that are necessary to meet the
1029 requirements set forth in documents authorizing the issuance of
1030 bonds under this subsection.

1031 f. No part of the income of the corporation may inure to
1032 the benefit of any private person.

1033 3. With respect to a deficit in an account:

1034 a. After accounting for the Citizens policyholder
1035 surcharge imposed under sub-subparagraph i., when the remaining
1036 projected deficit incurred in a particular calendar year is not
1037 greater than ~~6~~ 10 percent of the aggregate statewide direct
1038 written premium for the subject lines of business for the prior
1039 calendar year, the entire deficit shall be recovered through
1040 regular assessments of assessable insurers under paragraph (p)
1041 and assessable insureds.

439287

4/29/2008 7:16 AM

Amendment No.

1042 b. After accounting for the Citizens policyholder
1043 surcharge imposed under sub-subparagraph i., when the remaining
1044 projected deficit incurred in a particular calendar year exceeds
1045 6 10 percent of the aggregate statewide direct written premium
1046 for the subject lines of business for the prior calendar year,
1047 the corporation shall levy regular assessments on assessable
1048 insurers under paragraph (p) and on assessable insureds in an
1049 amount equal to the greater of 6 10 percent of the deficit or 6
1050 10 percent of the aggregate statewide direct written premium for
1051 the subject lines of business for the prior calendar year. Any
1052 remaining deficit shall be recovered through emergency
1053 assessments under sub-subparagraph d.

1054 c. Each assessable insurer's share of the amount being
1055 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1056 be in the proportion that the assessable insurer's direct
1057 written premium for the subject lines of business for the year
1058 preceding the assessment bears to the aggregate statewide direct
1059 written premium for the subject lines of business for that year.
1060 The assessment percentage applicable to each assessable insured
1061 is the ratio of the amount being assessed under sub-subparagraph
1062 a. or sub-subparagraph b. to the aggregate statewide direct
1063 written premium for the subject lines of business for the prior
1064 year. Assessments levied by the corporation on assessable
1065 insurers under sub-subparagraphs a. and b. shall be paid as
1066 required by the corporation's plan of operation and paragraph
1067 (p). ~~notwithstanding any other provision of this subsection, the~~
1068 ~~aggregate amount of a regular assessment for a deficit incurred~~
1069 ~~in a particular calendar year shall be reduced by the estimated~~

439287

4/29/2008 7:16 AM

Amendment No.

1070 ~~amount to be received by the corporation from the Citizens~~
1071 ~~policyholder surcharge under subparagraph (c)10. and the amount~~
1072 ~~collected or estimated to be collected from the assessment on~~
1073 ~~Citizens policyholders pursuant to sub-subparagraph i.~~
1074 Assessments levied by the corporation on assessable insureds
1075 under sub-subparagraphs a. and b. shall be collected by the
1076 surplus lines agent at the time the surplus lines agent collects
1077 the surplus lines tax required by s. 626.932 and shall be paid
1078 to the Florida Surplus Lines Service Office at the time the
1079 surplus lines agent pays the surplus lines tax to the Florida
1080 Surplus Lines Service Office. Upon receipt of regular
1081 assessments from surplus lines agents, the Florida Surplus Lines
1082 Service Office shall transfer the assessments directly to the
1083 corporation as determined by the corporation.

1084 d. Upon a determination by the board of governors that a
1085 deficit in an account exceeds the amount that will be recovered
1086 through regular assessments under sub-subparagraph a. or sub-
1087 subparagraph b., plus the amount that is expected to be
1088 recovered through surcharges under sub-subparagraph i., as to
1089 the remaining projected deficit the board shall levy, after
1090 verification by the office, emergency assessments, for as many
1091 years as necessary to cover the deficits, to be collected by
1092 assessable insurers and the corporation and collected from
1093 assessable insureds upon issuance or renewal of policies for
1094 subject lines of business, excluding National Flood Insurance
1095 policies. The amount of the emergency assessment collected in a
1096 particular year shall be a uniform percentage of that year's
1097 direct written premium for subject lines of business and all

439287

4/29/2008 7:16 AM

Amendment No.

1098 accounts of the corporation, excluding National Flood Insurance
1099 Program policy premiums, as annually determined by the board and
1100 verified by the office. The office shall verify the arithmetic
1101 calculations involved in the board's determination within 30
1102 days after receipt of the information on which the determination
1103 was based. Notwithstanding any other provision of law, the
1104 corporation and each assessable insurer that writes subject
1105 lines of business shall collect emergency assessments from its
1106 policyholders without such obligation being affected by any
1107 credit, limitation, exemption, or deferment. Emergency
1108 assessments levied by the corporation on assessable insureds
1109 shall be collected by the surplus lines agent at the time the
1110 surplus lines agent collects the surplus lines tax required by
1111 s. 626.932 and shall be paid to the Florida Surplus Lines
1112 Service Office at the time the surplus lines agent pays the
1113 surplus lines tax to the Florida Surplus Lines Service Office.
1114 The emergency assessments so collected shall be transferred
1115 directly to the corporation on a periodic basis as determined by
1116 the corporation and shall be held by the corporation solely in
1117 the applicable account. The aggregate amount of emergency
1118 assessments levied for an account under this sub-subparagraph in
1119 any calendar year may, at the discretion of the board of
1120 governors, be less than but may not exceed the greater of 10
1121 percent of the amount needed to cover the ~~original~~ deficit, plus
1122 interest, fees, commissions, required reserves, and other costs
1123 associated with financing of the original deficit, or 10 percent
1124 of the aggregate statewide direct written premium for subject
1125 lines of business and for all accounts of the corporation for

439287

4/29/2008 7:16 AM

Amendment No.

1126 the prior year, plus interest, fees, commissions, required
1127 reserves, and other costs associated with financing the ~~original~~
1128 deficit.

1129 e. The corporation may pledge the proceeds of assessments,
1130 projected recoveries from the Florida Hurricane Catastrophe
1131 Fund, other insurance and reinsurance recoverables, policyholder
1132 surcharges and other surcharges, and other funds available to
1133 the corporation as the source of revenue for and to secure bonds
1134 issued under paragraph (p), bonds or other indebtedness issued
1135 under subparagraph (c)3., or lines of credit or other financing
1136 mechanisms issued or created under this subsection, or to retire
1137 any other debt incurred as a result of deficits or events giving
1138 rise to deficits, or in any other way that the board determines
1139 will efficiently recover such deficits. The purpose of the lines
1140 of credit or other financing mechanisms is to provide additional
1141 resources to assist the corporation in covering claims and
1142 expenses attributable to a catastrophe. As used in this
1143 subsection, the term "assessments" includes regular assessments
1144 under sub-subparagraph a., sub-subparagraph b., or subparagraph
1145 (p)1. and emergency assessments under sub-subparagraph d.
1146 Emergency assessments collected under sub-subparagraph d. are
1147 not part of an insurer's rates, are not premium, and are not
1148 subject to premium tax, fees, or commissions; however, failure
1149 to pay the emergency assessment shall be treated as failure to
1150 pay premium. The emergency assessments under sub-subparagraph d.
1151 shall continue as long as any bonds issued or other indebtedness
1152 incurred with respect to a deficit for which the assessment was
1153 imposed remain outstanding, unless adequate provision has been

439287

4/29/2008 7:16 AM

Amendment No.

1154 made for the payment of such bonds or other indebtedness
1155 pursuant to the documents governing such bonds or other
1156 indebtedness.

1157 f. As used in this subsection for purposes of any deficit
1158 incurred on or after January 25, 2007, the term "subject lines
1159 of business" means insurance written by assessable insurers or
1160 procured by assessable insureds for all property and casualty
1161 lines of business in this state, but not including workers'
1162 compensation or medical malpractice. As used in the sub-
1163 subparagraph, the term "property and casualty lines of business"
1164 includes all lines of business identified on Form 2, Exhibit of
1165 Premiums and Losses, in the annual statement required of
1166 authorized insurers by s. 624.424 and any rule adopted under
1167 this section, except for those lines identified as accident and
1168 health insurance and except for policies written under the
1169 National Flood Insurance Program or the Federal Crop Insurance
1170 Program. For purposes of this sub-subparagraph, the term
1171 "workers' compensation" includes both workers' compensation
1172 insurance and excess workers' compensation insurance.

1173 g. The Florida Surplus Lines Service Office shall
1174 determine annually the aggregate statewide written premium in
1175 subject lines of business procured by assessable insureds and
1176 shall report that information to the corporation in a form and
1177 at a time the corporation specifies to ensure that the
1178 corporation can meet the requirements of this subsection and the
1179 corporation's financing obligations.

1180 h. The Florida Surplus Lines Service Office shall verify
1181 the proper application by surplus lines agents of assessment

439287

4/29/2008 7:16 AM

Amendment No.

1182 percentages for regular assessments and emergency assessments
1183 levied under this subparagraph on assessable insureds and shall
1184 assist the corporation in ensuring the accurate, timely
1185 collection and payment of assessments by surplus lines agents as
1186 required by the corporation.

1187 i. If a deficit is incurred in any account in 2008 or
1188 thereafter, the board of governors shall levy a Citizens
1189 policyholder surcharge ~~an immediate assessment against the~~
1190 ~~premium of each nonhomestead property policyholder in all~~
1191 ~~accounts of the corporation, as a uniform percentage of the~~
1192 ~~premium of the policy of up to 10 percent of such premium, which~~
1193 ~~funds shall be used to offset the deficit. If this assessment is~~
1194 ~~insufficient to eliminate the deficit, the board of governors~~
1195 ~~shall levy an additional assessment against all policyholders of~~
1196 the corporation for a 12-month period, which shall be collected
1197 at the time of issuance or renewal of a policy, as a uniform
1198 percentage of the premium for the policy of up to 15 ~~10~~ percent
1199 of such premium, which funds shall be used to ~~further~~ offset the
1200 deficit. Citizens policyholder surcharges under this sub-
1201 subparagraph are not considered premium and are not subject to
1202 commissions, fees, or premium taxes. However, failure to pay
1203 such surcharges shall be treated as failure to pay premium.

1204 j. If the amount of any assessments or surcharges
1205 collected from corporation policyholders, assessable insurers or
1206 their policyholders, or assessable insureds exceeds the amount
1207 of the deficits, such excess amounts shall be remitted to and
1208 retained by the corporation in a reserve to be used by the
1209 corporation, as determined by the board of governors and

439287

4/29/2008 7:16 AM

Amendment No.

1210 approved by the office, to pay claims or reduce any past,
1211 present, or future plan-year deficits or to reduce outstanding
1212 debt. The board of governors shall maintain separate accounting
1213 records that consolidate data for nonhomestead properties,
1214 including, but not limited to, number of policies, insured
1215 values, premiums written, and losses. The board of governors
1216 shall annually report to the office and the Legislature a
1217 summary of such data.

1218 (c) The plan of operation of the corporation:

1219 1. Must provide for adoption of residential property and
1220 casualty insurance policy forms and commercial residential and
1221 nonresidential property insurance forms, which forms must be
1222 approved by the office prior to use. The corporation shall adopt
1223 the following policy forms:

1224 a. Standard personal lines policy forms that are
1225 comprehensive multiperil policies providing full coverage of a
1226 residential property equivalent to the coverage provided in the
1227 private insurance market under an HO-3, HO-4, or HO-6 policy.

1228 b. Basic personal lines policy forms that are policies
1229 similar to an HO-8 policy or a dwelling fire policy that provide
1230 coverage meeting the requirements of the secondary mortgage
1231 market, but which coverage is more limited than the coverage
1232 under a standard policy.

1233 c. Commercial lines residential and nonresidential policy
1234 forms that are generally similar to the basic perils of full
1235 coverage obtainable for commercial residential structures and
1236 commercial nonresidential structures in the admitted voluntary
1237 market.

439287

4/29/2008 7:16 AM

Amendment No.

1238 d. Personal lines and commercial lines residential
1239 property insurance forms that cover the peril of wind only. The
1240 forms are applicable only to residential properties located in
1241 areas eligible for coverage under the high-risk account referred
1242 to in sub-subparagraph (b)2.a.

1243 e. Commercial lines nonresidential property insurance
1244 forms that cover the peril of wind only. The forms are
1245 applicable only to nonresidential properties located in areas
1246 eligible for coverage under the high-risk account referred to in
1247 sub-subparagraph (b)2.a.

1248 f. The corporation may adopt variations of the policy
1249 forms listed in sub-subparagraphs a.-e. that contain more
1250 restrictive coverage.

1251 2.a. Must provide that the corporation adopt a program in
1252 which the corporation and authorized insurers enter into quota
1253 share primary insurance agreements for hurricane coverage, as
1254 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1255 property insurance forms for eligible risks which cover the
1256 peril of wind only. As used in this subsection, the term:

1257 (I) "Quota share primary insurance" means an arrangement
1258 in which the primary hurricane coverage of an eligible risk is
1259 provided in specified percentages by the corporation and an
1260 authorized insurer. The corporation and authorized insurer are
1261 each solely responsible for a specified percentage of hurricane
1262 coverage of an eligible risk as set forth in a quota share
1263 primary insurance agreement between the corporation and an
1264 authorized insurer and the insurance contract. The
1265 responsibility of the corporation or authorized insurer to pay

439287

4/29/2008 7:16 AM

Amendment No.

1266 its specified percentage of hurricane losses of an eligible
1267 risk, as set forth in the quota share primary insurance
1268 agreement, may not be altered by the inability of the other
1269 party to the agreement to pay its specified percentage of
1270 hurricane losses. Eligible risks that are provided hurricane
1271 coverage through a quota share primary insurance arrangement
1272 must be provided policy forms that set forth the obligations of
1273 the corporation and authorized insurer under the arrangement,
1274 clearly specify the percentages of quota share primary insurance
1275 provided by the corporation and authorized insurer, and
1276 conspicuously and clearly state that neither the authorized
1277 insurer nor the corporation may be held responsible beyond its
1278 specified percentage of coverage of hurricane losses.

1279 (II) "Eligible risks" means personal lines residential and
1280 commercial lines residential risks that meet the underwriting
1281 criteria of the corporation and are located in areas that were
1282 eligible for coverage by the Florida Windstorm Underwriting
1283 Association on January 1, 2002.

1284 b. The corporation may enter into quota share primary
1285 insurance agreements with authorized insurers at corporation
1286 coverage levels of 90 percent and 50 percent.

1287 c. If the corporation determines that additional coverage
1288 levels are necessary to maximize participation in quota share
1289 primary insurance agreements by authorized insurers, the
1290 corporation may establish additional coverage levels. However,
1291 the corporation's quota share primary insurance coverage level
1292 may not exceed 90 percent.

439287

4/29/2008 7:16 AM

Amendment No.

1293 d. Any quota share primary insurance agreement entered
1294 into between an authorized insurer and the corporation must
1295 provide for a uniform specified percentage of coverage of
1296 hurricane losses, by county or territory as set forth by the
1297 corporation board, for all eligible risks of the authorized
1298 insurer covered under the quota share primary insurance
1299 agreement.

1300 e. Any quota share primary insurance agreement entered
1301 into between an authorized insurer and the corporation is
1302 subject to review and approval by the office. However, such
1303 agreement shall be authorized only as to insurance contracts
1304 entered into between an authorized insurer and an insured who is
1305 already insured by the corporation for wind coverage.

1306 f. For all eligible risks covered under quota share
1307 primary insurance agreements, the exposure and coverage levels
1308 for both the corporation and authorized insurers shall be
1309 reported by the corporation to the Florida Hurricane Catastrophe
1310 Fund. For all policies of eligible risks covered under quota
1311 share primary insurance agreements, the corporation and the
1312 authorized insurer shall maintain complete and accurate records
1313 for the purpose of exposure and loss reimbursement audits as
1314 required by Florida Hurricane Catastrophe Fund rules. The
1315 corporation and the authorized insurer shall each maintain
1316 duplicate copies of policy declaration pages and supporting
1317 claims documents.

1318 g. The corporation board shall establish in its plan of
1319 operation standards for quota share agreements which ensure that
1320 there is no discriminatory application among insurers as to the

439287

4/29/2008 7:16 AM

Amendment No.

1321 terms of quota share agreements, pricing of quota share
1322 agreements, incentive provisions if any, and consideration paid
1323 for servicing policies or adjusting claims.

1324 h. The quota share primary insurance agreement between the
1325 corporation and an authorized insurer must set forth the
1326 specific terms under which coverage is provided, including, but
1327 not limited to, the sale and servicing of policies issued under
1328 the agreement by the insurance agent of the authorized insurer
1329 producing the business, the reporting of information concerning
1330 eligible risks, the payment of premium to the corporation, and
1331 arrangements for the adjustment and payment of hurricane claims
1332 incurred on eligible risks by the claims adjuster and personnel
1333 of the authorized insurer. Entering into a quota sharing
1334 insurance agreement between the corporation and an authorized
1335 insurer shall be voluntary and at the discretion of the
1336 authorized insurer.

1337 3. May provide that the corporation may employ or
1338 otherwise contract with individuals or other entities to provide
1339 administrative or professional services that may be appropriate
1340 to effectuate the plan. The corporation shall have the power to
1341 borrow funds, by issuing bonds or by incurring other
1342 indebtedness, and shall have other powers reasonably necessary
1343 to effectuate the requirements of this subsection, including,
1344 without limitation, the power to issue bonds and incur other
1345 indebtedness in order to refinance outstanding bonds or other
1346 indebtedness. The corporation may, but is not required to, seek
1347 judicial validation of its bonds or other indebtedness under
1348 chapter 75. The corporation may issue bonds or incur other

439287

4/29/2008 7:16 AM

Amendment No.

1349 indebtedness, or have bonds issued on its behalf by a unit of
1350 local government pursuant to subparagraph (p)2., in the absence
1351 of a hurricane or other weather-related event, upon a
1352 determination by the corporation, subject to approval by the
1353 office, that such action would enable it to efficiently meet the
1354 financial obligations of the corporation and that such
1355 financings are reasonably necessary to effectuate the
1356 requirements of this subsection. The corporation is authorized
1357 to take all actions needed to facilitate tax-free status for any
1358 such bonds or indebtedness, including formation of trusts or
1359 other affiliated entities. The corporation shall have the
1360 authority to pledge assessments, projected recoveries from the
1361 Florida Hurricane Catastrophe Fund, other reinsurance
1362 recoverables, market equalization and other surcharges, and
1363 other funds available to the corporation as security for bonds
1364 or other indebtedness. In recognition of s. 10, Art. I of the
1365 State Constitution, prohibiting the impairment of obligations of
1366 contracts, it is the intent of the Legislature that no action be
1367 taken whose purpose is to impair any bond indenture or financing
1368 agreement or any revenue source committed by contract to such
1369 bond or other indebtedness.

1370 4.a. Must require that the corporation operate subject to
1371 the supervision and approval of a board of governors consisting
1372 of eight individuals who are residents of this state, from
1373 different geographical areas of this state. The Governor, the
1374 Chief Financial Officer, the President of the Senate, and the
1375 Speaker of the House of Representatives shall each appoint two
1376 members of the board. At least one of the two members appointed

439287

4/29/2008 7:16 AM

Amendment No.

1377 by each appointing officer must have demonstrated expertise in
1378 insurance. The Chief Financial Officer shall designate one of
1379 the appointees as chair. All board members serve at the pleasure
1380 of the appointing officer. All members of the board of governors
1381 are subject to removal at will by the officers who appointed
1382 them. All board members, including the chair, must be appointed
1383 to serve for 3-year terms beginning annually on a date
1384 designated by the plan. Any board vacancy shall be filled for
1385 the unexpired term by the appointing officer. The Chief
1386 Financial Officer shall appoint a technical advisory group to
1387 provide information and advice to the board of governors in
1388 connection with the board's duties under this subsection. The
1389 executive director and senior managers of the corporation shall
1390 be engaged by the board and serve at the pleasure of the board.
1391 Any executive director appointed on or after July 1, 2006, is
1392 subject to confirmation by the Senate. The executive director is
1393 responsible for employing other staff as the corporation may
1394 require, subject to review and concurrence by the board.

1395 b. The board shall create a Market Accountability Advisory
1396 Committee to assist the corporation in developing awareness of
1397 its rates and its customer and agent service levels in
1398 relationship to the voluntary market insurers writing similar
1399 coverage. The members of the advisory committee shall consist of
1400 the following 11 persons, one of whom must be elected chair by
1401 the members of the committee: four representatives, one
1402 appointed by the Florida Association of Insurance Agents, one by
1403 the Florida Association of Insurance and Financial Advisors, one
1404 by the Professional Insurance Agents of Florida, and one by the

439287

4/29/2008 7:16 AM

Amendment No.

1405 Latin American Association of Insurance Agencies; three
1406 representatives appointed by the insurers with the three highest
1407 voluntary market share of residential property insurance
1408 business in the state; one representative from the Office of
1409 Insurance Regulation; one consumer appointed by the board who is
1410 insured by the corporation at the time of appointment to the
1411 committee; one representative appointed by the Florida
1412 Association of Realtors; and one representative appointed by the
1413 Florida Bankers Association. All members must serve for 3-year
1414 terms and may serve for consecutive terms. The committee shall
1415 report to the corporation at each board meeting on insurance
1416 market issues which may include rates and rate competition with
1417 the voluntary market; service, including policy issuance, claims
1418 processing, and general responsiveness to policyholders,
1419 applicants, and agents; and matters relating to depopulation.

1420 5. Must provide a procedure for determining the
1421 eligibility of a risk for coverage, as follows:

1422 a. Subject to the provisions of s. 627.3517, with respect
1423 to personal lines residential risks, if the risk is offered
1424 coverage from an authorized insurer at the insurer's approved
1425 rate under either a standard policy including wind coverage or,
1426 if consistent with the insurer's underwriting rules as filed
1427 with the office, a basic policy including wind coverage, for a
1428 new application to the corporation for coverage, the risk is not
1429 eligible for any policy issued by the corporation unless the
1430 premium for coverage from the authorized insurer is more than 15
1431 percent greater than the premium for comparable coverage from
1432 the corporation. If the risk is not able to obtain any such

439287

4/29/2008 7:16 AM

Amendment No.

1433 offer, the risk is eligible for either a standard policy
1434 including wind coverage or a basic policy including wind
1435 coverage issued by the corporation; however, if the risk could
1436 not be insured under a standard policy including wind coverage
1437 regardless of market conditions, the risk shall be eligible for
1438 a basic policy including wind coverage unless rejected under
1439 subparagraph 9. However, with regard to a policyholder of the
1440 corporation or a policyholder removed from the corporation
1441 through an assumption agreement until the end of the assumption
1442 period, the policyholder remains eligible for coverage from the
1443 corporation regardless of any offer of coverage from an
1444 authorized insurer or surplus lines insurer. The corporation
1445 shall determine the type of policy to be provided on the basis
1446 of objective standards specified in the underwriting manual and
1447 based on generally accepted underwriting practices.

1448 (I) If the risk accepts an offer of coverage through the
1449 market assistance plan or an offer of coverage through a
1450 mechanism established by the corporation before a policy is
1451 issued to the risk by the corporation or during the first 30
1452 days of coverage by the corporation, and the producing agent who
1453 submitted the application to the plan or to the corporation is
1454 not currently appointed by the insurer, the insurer shall:

1455 (A) Pay to the producing agent of record of the policy,
1456 for the first year, an amount that is the greater of the
1457 insurer's usual and customary commission for the type of policy
1458 written or a fee equal to the usual and customary commission of
1459 the corporation; or

439287

4/29/2008 7:16 AM

Amendment No.

1460 (B) Offer to allow the producing agent of record of the
1461 policy to continue servicing the policy for a period of not less
1462 than 1 year and offer to pay the agent the greater of the
1463 insurer's or the corporation's usual and customary commission
1464 for the type of policy written.

1465
1466 If the producing agent is unwilling or unable to accept
1467 appointment, the new insurer shall pay the agent in accordance
1468 with sub-sub-sub-subparagraph (A).

1469 (II) When the corporation enters into a contractual
1470 agreement for a take-out plan, the producing agent of record of
1471 the corporation policy is entitled to retain any unearned
1472 commission on the policy, and the insurer shall:

1473 (A) Pay to the producing agent of record of the
1474 corporation policy, for the first year, an amount that is the
1475 greater of the insurer's usual and customary commission for the
1476 type of policy written or a fee equal to the usual and customary
1477 commission of the corporation; or

1478 (B) Offer to allow the producing agent of record of the
1479 corporation policy to continue servicing the policy for a period
1480 of not less than 1 year and offer to pay the agent the greater
1481 of the insurer's or the corporation's usual and customary
1482 commission for the type of policy written.

1483
1484 If the producing agent is unwilling or unable to accept
1485 appointment, the new insurer shall pay the agent in accordance
1486 with sub-sub-sub-subparagraph (A).

439287
4/29/2008 7:16 AM

Amendment No.

1487 b. With respect to commercial lines residential risks, for
1488 a new application to the corporation for coverage, if the risk
1489 is offered coverage under a policy including wind coverage from
1490 an authorized insurer at its approved rate, the risk is not
1491 eligible for any policy issued by the corporation unless the
1492 premium for coverage from the authorized insurer is more than 15
1493 percent greater than the premium for comparable coverage from
1494 the corporation. If the risk is not able to obtain any such
1495 offer, the risk is eligible for a policy including wind coverage
1496 issued by the corporation. However, with regard to a
1497 policyholder of the corporation or a policyholder removed from
1498 the corporation through an assumption agreement until the end of
1499 the assumption period, the policyholder remains eligible for
1500 coverage from the corporation regardless of any offer of
1501 coverage from an authorized insurer or surplus lines insurer.

1502 (I) If the risk accepts an offer of coverage through the
1503 market assistance plan or an offer of coverage through a
1504 mechanism established by the corporation before a policy is
1505 issued to the risk by the corporation or during the first 30
1506 days of coverage by the corporation, and the producing agent who
1507 submitted the application to the plan or the corporation is not
1508 currently appointed by the insurer, the insurer shall:

1509 (A) Pay to the producing agent of record of the policy,
1510 for the first year, an amount that is the greater of the
1511 insurer's usual and customary commission for the type of policy
1512 written or a fee equal to the usual and customary commission of
1513 the corporation; or

439287
4/29/2008 7:16 AM

Amendment No.

1514 (B) Offer to allow the producing agent of record of the
1515 policy to continue servicing the policy for a period of not less
1516 than 1 year and offer to pay the agent the greater of the
1517 insurer's or the corporation's usual and customary commission
1518 for the type of policy written.

1519
1520 If the producing agent is unwilling or unable to accept
1521 appointment, the new insurer shall pay the agent in accordance
1522 with sub-sub-sub-subparagraph (A).

1523 (II) When the corporation enters into a contractual
1524 agreement for a take-out plan, the producing agent of record of
1525 the corporation policy is entitled to retain any unearned
1526 commission on the policy, and the insurer shall:

1527 (A) Pay to the producing agent of record of the
1528 corporation policy, for the first year, an amount that is the
1529 greater of the insurer's usual and customary commission for the
1530 type of policy written or a fee equal to the usual and customary
1531 commission of the corporation; or

1532 (B) Offer to allow the producing agent of record of the
1533 corporation policy to continue servicing the policy for a period
1534 of not less than 1 year and offer to pay the agent the greater
1535 of the insurer's or the corporation's usual and customary
1536 commission for the type of policy written.

1537
1538 If the producing agent is unwilling or unable to accept
1539 appointment, the new insurer shall pay the agent in accordance
1540 with sub-sub-sub-subparagraph (A).

439287
4/29/2008 7:16 AM

Amendment No.

1541 c. For purposes of determining comparable coverage under
1542 sub-subparagraphs a. and b., the comparison shall be based on
1543 those forms and coverages that are reasonably comparable. The
1544 corporation may rely on a determination of comparable coverage
1545 and premium made by the producing agent who submits the
1546 application to the corporation, made in the agent's capacity as
1547 the corporation's agent. A comparison may be made solely of the
1548 premium with respect to the main building or structure only on
1549 the following basis: the same coverage A or other building
1550 limits; the same percentage hurricane deductible that applies on
1551 an annual basis or that applies to each hurricane for commercial
1552 residential property; the same percentage of ordinance and law
1553 coverage, if the same limit is offered by both the corporation
1554 and the authorized insurer; the same mitigation credits, to the
1555 extent the same types of credits are offered both by the
1556 corporation and the authorized insurer; the same method for loss
1557 payment, such as replacement cost or actual cash value, if the
1558 same method is offered both by the corporation and the
1559 authorized insurer in accordance with underwriting rules; and
1560 any other form or coverage that is reasonably comparable as
1561 determined by the board. If an application is submitted to the
1562 corporation for wind-only coverage in the high-risk account, the
1563 premium for the corporation's wind-only policy plus the premium
1564 for the ex-wind policy that is offered by an authorized insurer
1565 to the applicant shall be compared to the premium for multiperil
1566 coverage offered by an authorized insurer, subject to the
1567 standards for comparison specified in this subparagraph. If the
1568 corporation or the applicant requests from the authorized

439287

4/29/2008 7:16 AM

Amendment No.

1569 insurer a breakdown of the premium of the offer by types of
1570 coverage so that a comparison may be made by the corporation or
1571 its agent and the authorized insurer refuses or is unable to
1572 provide such information, the corporation may treat the offer as
1573 not being an offer of coverage from an authorized insurer at the
1574 insurer's approved rate.

1575 6. Must include rules for classifications of risks and
1576 rates therefor.

1577 7. Must provide that if premium and investment income for
1578 an account attributable to a particular calendar year are in
1579 excess of projected losses and expenses for the account
1580 attributable to that year, such excess shall be held in surplus
1581 in the account. Such surplus shall be available to defray
1582 deficits in that account as to future years and shall be used
1583 for that purpose prior to assessing assessable insurers and
1584 assessable insureds as to any calendar year.

1585 8. Must provide objective criteria and procedures to be
1586 uniformly applied for all applicants in determining whether an
1587 individual risk is so hazardous as to be uninsurable. In making
1588 this determination and in establishing the criteria and
1589 procedures, the following shall be considered:

1590 a. Whether the likelihood of a loss for the individual
1591 risk is substantially higher than for other risks of the same
1592 class; and

1593 b. Whether the uncertainty associated with the individual
1594 risk is such that an appropriate premium cannot be determined.

1595

439287
4/29/2008 7:16 AM

Amendment No.

1596 The acceptance or rejection of a risk by the corporation shall
1597 be construed as the private placement of insurance, and the
1598 provisions of chapter 120 shall not apply.

1599 9. Must provide that the corporation shall make its best
1600 efforts to procure catastrophe reinsurance at reasonable rates,
1601 to cover its projected 100-year probable maximum loss as
1602 determined by the board of governors.

1603 ~~10. Must provide that in the event of regular deficit~~
1604 ~~assessments under sub subparagraph (b)3.a. or sub subparagraph~~
1605 ~~(b)3.b., in the personal lines account, the commercial lines~~
1606 ~~residential account, or the high risk account, the corporation~~
1607 ~~shall levy upon corporation policyholders in its next rate~~
1608 ~~filing, or by a separate rate filing solely for this purpose, a~~
1609 ~~Citizens policyholder surcharge arising from a regular~~
1610 ~~assessment in such account in a percentage equal to the total~~
1611 ~~amount of such regular assessments divided by the aggregate~~
1612 ~~statewide direct written premium for subject lines of business~~
1613 ~~for the prior calendar year. For purposes of calculating the~~
1614 ~~Citizens policyholder surcharge to be levied under this~~
1615 ~~subparagraph, the total amount of the regular assessment to~~
1616 ~~which this surcharge is related shall be determined as set forth~~
1617 ~~in subparagraph (b)3., without deducting the estimated Citizens~~
1618 ~~policyholder surcharge. Citizens policyholder surcharges under~~
1619 ~~this subparagraph are not considered premium and are not subject~~
1620 ~~to commissions, fees, or premium taxes; however, failure to pay~~
1621 ~~a market equalization surcharge shall be treated as failure to~~
1622 ~~pay premium.~~

439287

4/29/2008 7:16 AM

Amendment No.

1623 ~~10.11.~~ The policies issued by the corporation must provide
1624 that, if the corporation or the market assistance plan obtains
1625 an offer from an authorized insurer to cover the risk at its
1626 approved rates, the risk is no longer eligible for renewal
1627 through the corporation, except as otherwise provided in this
1628 subsection.

1629 ~~11.12.~~ Corporation policies and applications must include
1630 a notice that the corporation policy could, under this section,
1631 be replaced with a policy issued by an authorized insurer that
1632 does not provide coverage identical to the coverage provided by
1633 the corporation. The notice shall also specify that acceptance
1634 of corporation coverage creates a conclusive presumption that
1635 the applicant or policyholder is aware of this potential.

1636 ~~12.13.~~ May establish, subject to approval by the office,
1637 different eligibility requirements and operational procedures
1638 for any line or type of coverage for any specified county or
1639 area if the board determines that such changes to the
1640 eligibility requirements and operational procedures are
1641 justified due to the voluntary market being sufficiently stable
1642 and competitive in such area or for such line or type of
1643 coverage and that consumers who, in good faith, are unable to
1644 obtain insurance through the voluntary market through ordinary
1645 methods would continue to have access to coverage from the
1646 corporation. When coverage is sought in connection with a real
1647 property transfer, such requirements and procedures shall not
1648 provide for an effective date of coverage later than the date of
1649 the closing of the transfer as established by the transferor,
1650 the transferee, and, if applicable, the lender.

439287

4/29/2008 7:16 AM

Amendment No.

1651 ~~13.14.~~ Must provide that, with respect to the high-risk
1652 account, any assessable insurer with a surplus as to
1653 policyholders of \$25 million or less writing 25 percent or more
1654 of its total countrywide property insurance premiums in this
1655 state may petition the office, within the first 90 days of each
1656 calendar year, to qualify as a limited apportionment company. A
1657 regular assessment levied by the corporation on a limited
1658 apportionment company for a deficit incurred by the corporation
1659 for the high-risk account in 2006 or thereafter may be paid to
1660 the corporation on a monthly basis as the assessments are
1661 collected by the limited apportionment company from its insureds
1662 pursuant to s. 627.3512, but the regular assessment must be paid
1663 in full within 12 months after being levied by the corporation.
1664 A limited apportionment company shall collect from its
1665 policyholders any emergency assessment imposed under sub-
1666 subparagraph (b)3.d. The plan shall provide that, if the office
1667 determines that any regular assessment will result in an
1668 impairment of the surplus of a limited apportionment company,
1669 the office may direct that all or part of such assessment be
1670 deferred as provided in subparagraph (p)4. However, there shall
1671 be no limitation or deferment of an emergency assessment to be
1672 collected from policyholders under sub-subparagraph (b)3.d.

1673 ~~14.15.~~ Must provide that the corporation appoint as its
1674 licensed agents only those agents who also hold an appointment
1675 as defined in s. 626.015(3) with an insurer who at the time of
1676 the agent's initial appointment by the corporation is authorized
1677 to write and is actually writing personal lines residential

439287
4/29/2008 7:16 AM

Amendment No.

1678 property coverage, commercial residential property coverage, or
1679 commercial nonresidential property coverage within the state.

1680 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
1681 plan option to its policyholders which allows at a minimum for
1682 quarterly and semiannual payment of premiums. A monthly payment
1683 plan may, but is not required to, be offered.

1684 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
1685 homes built prior to 1994 to actual cash value of the dwelling
1686 rather than replacement costs of the dwelling.

1687 ~~17.18.~~ May provide such limits of coverage as the board
1688 determines, consistent with the requirements of this subsection.

1689 ~~18.19.~~ May require commercial property to meet specified
1690 hurricane mitigation construction features as a condition of
1691 eligibility for coverage.

1692 (m)1. Rates for coverage provided by the corporation shall
1693 be actuarially sound and subject to the requirements of s.
1694 627.062, except as otherwise provided in this paragraph. The
1695 corporation shall file its recommended rates with the office at
1696 least annually. The corporation shall provide any additional
1697 information regarding the rates which the office requires. The
1698 office shall consider the recommendations of the board and issue
1699 a final order establishing the rates for the corporation within
1700 45 days after the recommended rates are filed. The corporation
1701 may not pursue an administrative challenge or judicial review of
1702 the final order of the office.

1703 2. In addition to the rates otherwise determined pursuant
1704 to this paragraph, the corporation shall impose and collect an

Amendment No.

1705 amount equal to the premium tax provided for in s. 624.509 to
1706 augment the financial resources of the corporation.

1707 3. After the public hurricane loss-projection model under
1708 s. 627.06281 has been found to be accurate and reliable by the
1709 Florida Commission on Hurricane Loss Projection Methodology,
1710 that model shall serve as the minimum benchmark for determining
1711 the windstorm portion of the corporation's rates. This
1712 subparagraph does not require or allow the corporation to adopt
1713 rates lower than the rates otherwise required or allowed by this
1714 paragraph.

1715 4. The rate filings for the corporation which were
1716 approved by the office and which took effect January 1, 2007,
1717 are rescinded, except for those rates that were lowered. As soon
1718 as possible, the corporation shall begin using the lower rates
1719 that were in effect on December 31, 2006, and shall provide
1720 refunds to policyholders who have paid higher rates as a result
1721 of that rate filing. The rates in effect on December 31, 2006,
1722 shall remain in effect for the 2007 and 2008 calendar years
1723 except for any rate change that results in a lower rate. The
1724 next rate change that may increase rates shall take effect
1725 ~~January 1, 2009~~, pursuant to a new rate filing recommended by
1726 the corporation and established by the office, subject to the
1727 requirements of this paragraph.

1728 5.a. Beginning on January 15, 2009, and each year
1729 thereafter, the corporation must make a recommended actuarially
1730 sound rate filing for each personal and commercial line of
1731 business it writes, to be effective no earlier than July 1,
1732 2009.

439287

4/29/2008 7:16 AM

Amendment No.

1733 b. For the 36-month period beginning with the effective
1734 date for each of the rate filings made by the corporation on
1735 January 15, 2009, the rates established by the office for the
1736 corporation for its personal residential multiperil policies,
1737 its commercial residential multiperil policies, and its
1738 commercial nonresidential multiperil policies may not result in
1739 an overall average statewide premium increase of more than 10
1740 percent or an increase for any single policyholder of more than
1741 10 percent, during the first 12-month period, and may not result
1742 in an overall average statewide premium increase of more than 10
1743 percent, or an increase for any single policyholder of more than
1744 10 percent, during each of the two subsequent 12-month periods,
1745 excluding coverage changes and surcharges.

1746 c. For the 36-month period beginning with the effective
1747 date for the rate filings made by the corporation on January 15,
1748 2009, the rates established by the office for the corporation
1749 for its personal residential wind-only policies, its commercial
1750 residential wind-only policies, and its commercial
1751 nonresidential wind-only policies may not result in an overall
1752 average statewide premium increase of more than 10 percent, or
1753 an increase for any single policyholder of more than 10 percent,
1754 during the first 12-month period, and may not result in an
1755 overall average statewide premium increase of more than 10
1756 percent, or an increase for any single policyholder of more than
1757 10 percent, during each of the two subsequent 12-month periods,
1758 excluding coverage changes and surcharges.

1759 (p)1. The corporation shall certify to the office its
1760 needs for annual assessments as to a particular calendar year,

439287
4/29/2008 7:16 AM

Amendment No.

1761 and for any interim assessments that it deems to be necessary to
1762 sustain operations as to a particular year pending the receipt
1763 of annual assessments. Upon verification, the office shall
1764 approve such certification, and the corporation shall levy such
1765 annual or interim assessments. Such assessments shall be
1766 prorated as provided in paragraph (b). The corporation shall
1767 take all reasonable and prudent steps necessary to collect the
1768 amount of assessment due from each assessable insurer,
1769 including, if prudent, filing suit to collect such assessment.
1770 If the corporation is unable to collect an assessment from any
1771 assessable insurer, the uncollected assessments shall be levied
1772 as an additional assessment against the assessable insurers and
1773 any assessable insurer required to pay an additional assessment
1774 as a result of such failure to pay shall have a cause of action
1775 against such nonpaying assessable insurer. Assessments shall be
1776 included as an appropriate factor in the making of rates. The
1777 failure of a surplus lines agent to collect and remit any
1778 regular or emergency assessment levied by the corporation is
1779 considered to be a violation of s. 626.936 and subjects the
1780 surplus lines agent to the penalties provided in that section.

1781 2. The governing body of any unit of local government, any
1782 residents of which are insured by the corporation, may issue
1783 bonds as defined in s. 125.013 or s. 166.101 from time to time
1784 to fund an assistance program, in conjunction with the
1785 corporation, for the purpose of defraying deficits of the
1786 corporation. In order to avoid needless and indiscriminate
1787 proliferation, duplication, and fragmentation of such assistance
1788 programs, any unit of local government, any residents of which

439287

4/29/2008 7:16 AM

Amendment No.

1789 are insured by the corporation, may provide for the payment of
1790 losses, regardless of whether or not the losses occurred within
1791 or outside of the territorial jurisdiction of the local
1792 government. Revenue bonds under this subparagraph may not be
1793 issued until validated pursuant to chapter 75, unless a state of
1794 emergency is declared by executive order or proclamation of the
1795 Governor pursuant to s. 252.36 making such findings as are
1796 necessary to determine that it is in the best interests of, and
1797 necessary for, the protection of the public health, safety, and
1798 general welfare of residents of this state and declaring it an
1799 essential public purpose to permit certain municipalities or
1800 counties to issue such bonds as will permit relief to claimants
1801 and policyholders of the corporation. Any such unit of local
1802 government may enter into such contracts with the corporation
1803 and with any other entity created pursuant to this subsection as
1804 are necessary to carry out this paragraph. Any bonds issued
1805 under this subparagraph shall be payable from and secured by
1806 moneys received by the corporation from emergency assessments
1807 under sub-subparagraph (b)3.d., and assigned and pledged to or
1808 on behalf of the unit of local government for the benefit of the
1809 holders of such bonds. The funds, credit, property, and taxing
1810 power of the state or of the unit of local government shall not
1811 be pledged for the payment of such bonds. ~~If any of the bonds~~
1812 ~~remain unsold 60 days after issuance, the office shall require~~
1813 ~~all insurers subject to assessment to purchase the bonds, which~~
1814 ~~shall be treated as admitted assets; each insurer shall be~~
1815 ~~required to purchase that percentage of the unsold portion of~~
1816 ~~the bond issue that equals the insurer's relative share of~~

439287

4/29/2008 7:16 AM

Amendment No.

1817 ~~assessment liability under this subsection. An insurer shall not~~
1818 ~~be required to purchase the bonds to the extent that the office~~
1819 ~~determines that the purchase would endanger or impair the~~
1820 ~~solvency of the insurer.~~

1821 3.a. The corporation shall adopt one or more programs
1822 subject to approval by the office for the reduction of both new
1823 and renewal writings in the corporation. Beginning January 1,
1824 2008, any program the corporation adopts for the payment of
1825 bonuses to an insurer for each risk the insurer removes from the
1826 corporation shall comply with s. 627.3511(2) and may not exceed
1827 the amount referenced in s. 627.3511(2) for each risk removed.
1828 The corporation may consider any prudent and not unfairly
1829 discriminatory approach to reducing corporation writings, and
1830 may adopt a credit against assessment liability or other
1831 liability that provides an incentive for insurers to take risks
1832 out of the corporation and to keep risks out of the corporation
1833 by maintaining or increasing voluntary writings in counties or
1834 areas in which corporation risks are highly concentrated and a
1835 program to provide a formula under which an insurer voluntarily
1836 taking risks out of the corporation by maintaining or increasing
1837 voluntary writings will be relieved wholly or partially from
1838 assessments under sub-subparagraphs (b)3.a. and b. However, any
1839 "take-out bonus" or payment to an insurer must be conditioned on
1840 the property being insured for at least 5 years by the insurer,
1841 unless canceled or nonrenewed by the policyholder. If the policy
1842 is canceled or nonrenewed by the policyholder before the end of
1843 the 5-year period, the amount of the take-out bonus must be
1844 prorated for the time period the policy was insured. When the

439287

4/29/2008 7:16 AM

Amendment No.

1845 corporation enters into a contractual agreement for a take-out
1846 plan, the producing agent of record of the corporation policy is
1847 entitled to retain any unearned commission on such policy, and
1848 the insurer shall either:

1849 (I) Pay to the producing agent of record of the policy,
1850 for the first year, an amount which is the greater of the
1851 insurer's usual and customary commission for the type of policy
1852 written or a policy fee equal to the usual and customary
1853 commission of the corporation; or

1854 (II) Offer to allow the producing agent of record of the
1855 policy to continue servicing the policy for a period of not less
1856 than 1 year and offer to pay the agent the insurer's usual and
1857 customary commission for the type of policy written. If the
1858 producing agent is unwilling or unable to accept appointment by
1859 the new insurer, the new insurer shall pay the agent in
1860 accordance with sub-sub-subparagraph (I).

1861 b. Any credit or exemption from regular assessments
1862 adopted under this subparagraph shall last no longer than the 3
1863 years following the cancellation or expiration of the policy by
1864 the corporation. With the approval of the office, the board may
1865 extend such credits for an additional year if the insurer
1866 guarantees an additional year of renewability for all policies
1867 removed from the corporation, or for 2 additional years if the
1868 insurer guarantees 2 additional years of renewability for all
1869 policies so removed.

1870 c. There shall be no credit, limitation, exemption, or
1871 deferment from emergency assessments to be collected from
1872 policyholders pursuant to sub-subparagraph (b)3.d.

439287

4/29/2008 7:16 AM

Amendment No.

1873 4. The plan shall provide for the deferment, in whole or
1874 in part, of the assessment of an assessable insurer, other than
1875 an emergency assessment collected from policyholders pursuant to
1876 sub-subparagraph (b)3.d., if the office finds that payment of
1877 the assessment would endanger or impair the solvency of the
1878 insurer. In the event an assessment against an assessable
1879 insurer is deferred in whole or in part, the amount by which
1880 such assessment is deferred may be assessed against the other
1881 assessable insurers in a manner consistent with the basis for
1882 assessments set forth in paragraph (b).

1883 5. Effective July 1, 2007, in order to evaluate the costs
1884 and benefits of approved take-out plans, if the corporation pays
1885 a bonus or other payment to an insurer for an approved take-out
1886 plan, it shall maintain a record of the address or such other
1887 identifying information on the property or risk removed in order
1888 to track if and when the property or risk is later insured by
1889 the corporation.

1890 6. Any policy taken out, assumed, or removed from the
1891 corporation is, as of the effective date of the take-out,
1892 assumption, or removal, direct insurance issued by the insurer
1893 and not by the corporation, even if the corporation continues to
1894 service the policies. This subparagraph applies to policies of
1895 the corporation and not policies taken out, assumed, or removed
1896 from any other entity.

1897 (w)1. The following records of the corporation are
1898 confidential and exempt from the provisions of s. 119.07(1) and
1899 s. 24(a), Art. I of the State Constitution:

439287
4/29/2008 7:16 AM

Amendment No.

1900 a. Underwriting files, except that a policyholder or an
1901 applicant shall have access to his or her own underwriting
1902 files. Confidential and exempt underwriting file records may
1903 also be released to other governmental agencies upon written
1904 request and demonstration of need; such records held by the
1905 receiving agency remain confidential and exempt as provided
1906 herein.

1907 b. Claims files, until termination of all litigation and
1908 settlement of all claims arising out of the same incident,
1909 although portions of the claims files may remain exempt, as
1910 otherwise provided by law. Confidential and exempt claims file
1911 records may be released to other governmental agencies upon
1912 written request and demonstration of need; such records held by
1913 the receiving agency remain confidential and exempt as provided
1914 ~~for~~ herein.

1915 c. Records obtained or generated by an internal auditor
1916 pursuant to a routine audit, until the audit is completed, or if
1917 the audit is conducted as part of an investigation, until the
1918 investigation is closed or ceases to be active. An investigation
1919 is considered "active" while the investigation is being
1920 conducted with a reasonable, good faith belief that it could
1921 lead to the filing of administrative, civil, or criminal
1922 proceedings.

1923 d. Matters reasonably encompassed in privileged attorney-
1924 client communications.

1925 e. Proprietary information licensed to the corporation
1926 under contract and the contract provides for the confidentiality
1927 of such proprietary information.

439287

4/29/2008 7:16 AM

Amendment No.

1928 f. All information relating to the medical condition or
1929 medical status of a corporation employee which is not relevant
1930 to the employee's capacity to perform his or her duties, except
1931 as otherwise provided in this paragraph. Information that ~~which~~
1932 is exempt shall include, but is not limited to, information
1933 relating to workers' compensation, insurance benefits, and
1934 retirement or disability benefits.

1935 g. Upon an employee's entrance into the employee
1936 assistance program, a program to assist any employee who has a
1937 behavioral or medical disorder, substance abuse problem, or
1938 emotional difficulty which affects the employee's job
1939 performance, all records relative to that participation shall be
1940 confidential and exempt from the provisions of s. 119.07(1) and
1941 s. 24(a), Art. I of the State Constitution, except as otherwise
1942 provided in s. 112.0455(11).

1943 h. Information relating to negotiations for financing,
1944 reinsurance, depopulation, or contractual services, until the
1945 conclusion of the negotiations.

1946 i. Minutes of closed meetings regarding underwriting
1947 files, and minutes of closed meetings regarding an open claims
1948 file until termination of all litigation and settlement of all
1949 claims with regard to that claim, except that information
1950 otherwise confidential or exempt by law shall ~~will~~ be redacted.

1951 2. If ~~When~~ an authorized insurer is considering
1952 underwriting a risk insured by the corporation, relevant
1953 underwriting files and confidential claims files may be released
1954 to the insurer provided the insurer agrees in writing, notarized
1955 and under oath, to maintain the confidentiality of such files.

439287

4/29/2008 7:16 AM

Amendment No.

1956 If ~~When~~ a file is transferred to an insurer that file is no
1957 longer a public record because it is not held by an agency
1958 subject to the provisions of the public records law.
1959 Underwriting files and confidential claims files may also be
1960 released to staff ~~of~~ and the board of governors of the market
1961 assistance plan established pursuant to s. 627.3515, who must
1962 retain the confidentiality of such files, except such files may
1963 be released to authorized insurers that are considering assuming
1964 the risks to which the files apply, provided the insurer agrees
1965 in writing, notarized and under oath, to maintain the
1966 confidentiality of such files. Finally, the corporation or the
1967 board or staff of the market assistance plan may make the
1968 following information obtained from underwriting files and
1969 confidential claims files available to licensed general lines
1970 insurance agents: name, address, and telephone number of the
1971 residential property owner or insured; location of the risk;
1972 rating information; loss history; and policy type. The receiving
1973 licensed general lines insurance agent must retain the
1974 confidentiality of the information received.

1975 3. A policyholder who has filed suit against the
1976 corporation has the right to discover the contents of his or her
1977 own claims file to the same extent that discovery of such
1978 contents would be available from a private insurer in litigation
1979 as provided by the Florida Rules of Civil Procedure, the Florida
1980 Evidence Code, and other applicable law. Pursuant to subpoena, a
1981 third party has the right to discover the contents of an
1982 insured's or applicant's underwriting or claims file to the same
1983 extent that discovery of such contents would be available from a

439287

4/29/2008 7:16 AM

Amendment No.

1984 private insurer by subpoena as provided by the Florida Rules of
1985 Civil Procedure, the Florida Evidence Code, and other applicable
1986 law, and subject to any confidentiality protections requested by
1987 the corporation and agreed to by the seeking party or ordered by
1988 the court. The corporation may release confidential underwriting
1989 and claims file contents and information as it deems necessary
1990 and appropriate to underwrite or service insurance policies and
1991 claims, subject to any confidentiality protections deemed
1992 necessary and appropriate by the corporation.

1993 4.2- Portions of meetings of the corporation are exempt
1994 from the provisions of s. 286.011 and s. 24(b), Art. I of the
1995 State Constitution wherein confidential underwriting files or
1996 confidential open claims files are discussed. All portions of
1997 corporation meetings which are closed to the public shall be
1998 recorded by a court reporter. The court reporter shall record
1999 the times of commencement and termination of the meeting, all
2000 discussion and proceedings, the names of all persons present at
2001 any time, and the names of all persons speaking. No portion of
2002 any closed meeting shall be off the record. Subject to the
2003 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
2004 notes of any closed meeting shall be retained by the corporation
2005 for a minimum of 5 years. A copy of the transcript, less any
2006 exempt matters, of any closed meeting wherein claims are
2007 discussed shall become public as to individual claims after
2008 settlement of the claim.

2009 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2010 ~~the risk being no longer eligible for coverage due to being~~
2011 ~~valued at \$1 million or more, the corporation shall, directly or~~

439287

4/29/2008 7:16 AM

Amendment No.

2012 ~~through the market assistance plan, make information from~~
2013 ~~confidential underwriting and claims files of policyholders~~
2014 ~~available only to licensed general lines agents who register~~
2015 ~~with the corporation to receive such information according to~~
2016 ~~the following procedures.~~

2017 ~~2. By August 1, 2006, the corporation shall provide such~~
2018 ~~policyholders who are not eligible for renewal the opportunity~~
2019 ~~to request in writing, within 30 days after the notification is~~
2020 ~~sent, that information from their confidential underwriting and~~
2021 ~~claims files not be released to licensed general lines agents~~
2022 ~~registered pursuant to this paragraph.~~

2023 ~~3. By August 1, 2006, the corporation shall make available~~
2024 ~~to licensed general lines agents the registration procedures to~~
2025 ~~be used to obtain confidential information from underwriting and~~
2026 ~~claims files for such policies not eligible for renewal. As a~~
2027 ~~condition of registration, the corporation shall require the~~
2028 ~~licensed general lines agent to attest that the agent has the~~
2029 ~~experience and relationships with authorized or surplus lines~~
2030 ~~carriers to attempt to offer replacement coverage for such~~
2031 ~~policies.~~

2032 ~~4. By September 1, 2006, the corporation shall make~~
2033 ~~available through a secured website to licensed general lines~~
2034 ~~agents registered pursuant to this paragraph application,~~
2035 ~~rating, loss history, mitigation, and policy type information~~
2036 ~~relating to such policies not eligible for renewal and for which~~
2037 ~~the policyholder has not requested the corporation withhold such~~
2038 ~~information. The registered licensed general lines agent may use~~
2039 ~~such information to contact and assist the policyholder in~~

439287

4/29/2008 7:16 AM

Amendment No.

2040 ~~securing replacement policies, and the agent may disclose to the~~
2041 ~~policyholder that such information was obtained from the~~
2042 ~~corporation.~~

2043 (dd)~~(ee)~~ The assets of the corporation may be invested and
2044 managed by the State Board of Administration.

2045 (ee)~~(ff)~~ The office may establish a pilot program to offer
2046 optional sinkhole coverage in one or more counties or other
2047 territories of the corporation for the purpose of implementing
2048 s. 627.706, as amended by s. 30, chapter 2007-1, Laws of
2049 Florida. Under the pilot program, the corporation is not
2050 required to issue a notice of nonrenewal to exclude sinkhole
2051 coverage upon the renewal of existing policies, but may exclude
2052 such coverage using a notice of coverage change.

2053 (ff) The corporation shall report claims data and
2054 histories to a consumer reporting agency, as defined by the
2055 federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., that
2056 maintains a national database of similar data for use in
2057 connection with the underwriting of insurance involving a
2058 consumer.

2059 Section 12. Paragraph (b) of subsection (2) of section
2060 627.4133, Florida Statutes, is amended to read:

2061 627.4133 Notice of cancellation, nonrenewal, or renewal
2062 premium.--

2063 (2) With respect to any personal lines or commercial
2064 residential property insurance policy, including, but not
2065 limited to, any homeowner's, mobile home owner's, farmowner's,
2066 condominium association, condominium unit owner's, apartment

Amendment No.

2067 building, or other policy covering a residential structure or
2068 its contents:

2069 (b) The insurer shall give the named insured written
2070 notice of nonrenewal, cancellation, or termination at least 100
2071 days prior to the effective date of the nonrenewal,
2072 cancellation, or termination. However, the insurer shall give at
2073 least 100 days' written notice, or written notice by June 1,
2074 whichever is earlier, for any nonrenewal, cancellation, or
2075 termination that would be effective between June 1 and November
2076 30. The notice must include the reason or reasons for the
2077 nonrenewal, cancellation, or termination, except that:

2078 1. The insurer shall give the named insured written notice
2079 of nonrenewal, cancellation, or termination at least 180 days
2080 prior to the effective date of the nonrenewal, cancellation, or
2081 termination for a named insured whose residential structure has
2082 been insured by that insurer or an affiliated insurer for at
2083 least a 5-year period immediately prior to date of the written
2084 notice.

2085 ~~2.1-~~ When cancellation is for nonpayment of premium, at
2086 least 10 days' written notice of cancellation accompanied by the
2087 reason therefor shall be given. As used in this subparagraph,
2088 the term "nonpayment of premium" means failure of the named
2089 insured to discharge when due any of her or his obligations in
2090 connection with the payment of premiums on a policy or any
2091 installment of such premium, whether the premium is payable
2092 directly to the insurer or its agent or indirectly under any
2093 premium finance plan or extension of credit, or failure to
2094 maintain membership in an organization if such membership is a

439287

4/29/2008 7:16 AM

Amendment No.

2095 condition precedent to insurance coverage. "Nonpayment of
2096 premium" also means the failure of a financial institution to
2097 honor an insurance applicant's check after delivery to a
2098 licensed agent for payment of a premium, even if the agent has
2099 previously delivered or transferred the premium to the insurer.
2100 If a dishonored check represents the initial premium payment,
2101 the contract and all contractual obligations shall be void ab
2102 initio unless the nonpayment is cured within the earlier of 5
2103 days after actual notice by certified mail is received by the
2104 applicant or 15 days after notice is sent to the applicant by
2105 certified mail or registered mail, and if the contract is void,
2106 any premium received by the insurer from a third party shall be
2107 refunded to that party in full.

2108 ~~3.2-~~ When such cancellation or termination occurs during
2109 the first 90 days during which the insurance is in force and the
2110 insurance is canceled or terminated for reasons other than
2111 nonpayment of premium, at least 20 days' written notice of
2112 cancellation or termination accompanied by the reason therefor
2113 shall be given except where there has been a material
2114 misstatement or misrepresentation or failure to comply with the
2115 underwriting requirements established by the insurer.

2116 ~~4.3-~~ The requirement for providing written notice of
2117 nonrenewal by June 1 of any nonrenewal that would be effective
2118 between June 1 and November 30 does not apply to the following
2119 situations, but the insurer remains subject to the requirement
2120 to provide such notice at least 100 days prior to the effective
2121 date of nonrenewal:

439287
4/29/2008 7:16 AM

Amendment No.

2122 a. A policy that is nonrenewed due to a revision in the
2123 coverage for sinkhole losses and catastrophic ground cover
2124 collapse pursuant to s. 627.730, as amended by s. 30, chapter
2125 2007-1, Laws of Florida.

2126 b. A policy that is nonrenewed by Citizens Property
2127 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2128 that has been assumed by an authorized insurer offering
2129 replacement or renewal coverage to the policyholder.

2130
2131 After the policy has been in effect for 90 days, the policy
2132 shall not be canceled by the insurer except when there has been
2133 a material misstatement, a nonpayment of premium, a failure to
2134 comply with underwriting requirements established by the insurer
2135 within 90 days of the date of effectuation of coverage, or a
2136 substantial change in the risk covered by the policy or when the
2137 cancellation is for all insureds under such policies for a given
2138 class of insureds. This paragraph does not apply to individually
2139 rated risks having a policy term of less than 90 days.

2140 Section 13. Effective January 1, 2011, section 689.262,
2141 Florida Statutes, is created to read:

2142 689.262 Sale of residential property; disclosure of
2143 windstorm mitigation rating.--A purchaser of residential
2144 property must be informed of the windstorm mitigation rating of
2145 the structure, based on the uniform home grading scale adopted
2146 pursuant to s. 215.55865. The rating must be included in the
2147 contract for sale or as a separate document attached to the
2148 contract for sale. The Financial Services Commission may adopt
2149 rules, consistent with other state laws, to administer this

439287

4/29/2008 7:16 AM

Amendment No.

2150 section, including the form of the disclosure and the
2151 requirements for the windstorm mitigation inspection or report
2152 that is required for purposes of determining the rating.

2153 Section 14. (1) By December 15, 2008, Citizens Property
2154 Insurance Corporation shall transfer \$250 million to the General
2155 Revenue Fund if the combined surplus of each account as defined
2156 in s. 627.351(6), Florida Statutes, exceeds \$1 billion. The
2157 board of governors of Citizens Property Insurance Corporation
2158 must make a reasonable estimate of such surplus on or after
2159 December 1, 2008, and no later than December 14, 2008, using
2160 generally accepted actuarial and accounting practices,
2161 recognizing that audited financial statements will not yet be
2162 available.

2163 (2) Beginning July 1, 2009, the board shall make quarterly
2164 transfers of any interest earned prior to the issuance of any
2165 surplus notes, interest paid, and principal repaid to the state
2166 for any surplus notes issued by the program after December 1,
2167 2008, to Citizens Property Insurance Corporation, provided such
2168 surplus notes were funded exclusively by an appropriation to the
2169 program by the Legislature for the 2008-2009 fiscal year. The
2170 corporation shall credit each account as defined in s.
2171 627.351(6) in a pro rata manner for the funds removed from each
2172 account to make the transfer required by subsection (11).

2173 Section 15. Citizens Property Insurance Corporation may
2174 not use any amendments made to s. 215.5595, Florida Statutes, by
2175 this act or any transfer of funds authorized by this act as
2176 justification or cause in seeking any rate or assessment
2177 increase.

439287

4/29/2008 7:16 AM

Amendment No.

2178 Section 16. Subsection (3) is added to section 627.06281,
2179 Florida Statutes, to read:

2180 627.06281 Public hurricane loss projection model;
2181 reporting of data by insurers.--

2182 (3) (a) A residential property insurer may have access to
2183 and use the public hurricane loss projection model, including
2184 all assumptions and factors and all detailed loss results, for
2185 the purpose of calculating rate indications in a rate filing and
2186 for analytical purposes, including any analysis or evaluation of
2187 the model required under actuarial standards of practice.

2188 (b) By January 1, 2009, the office shall establish by rule
2189 a fee schedule for access to and the use of the model. The fee
2190 schedule must be reasonably calculated to cover only the actual
2191 costs of providing access to and the use of the model.

2192 Section 17. Section 627.0655, Florida Statutes, is amended
2193 to read:

2194 627.0655 Policyholder loss or expense-related premium
2195 discounts.--An insurer or person authorized to engage in the
2196 business of insurance in this state may include, in the premium
2197 charged an insured for any policy, contract, or certificate of
2198 insurance, a discount based on the fact that another policy,
2199 contract, or certificate of any type has been purchased by the
2200 insured from the same insurer or insurer group, the Citizens
2201 Property Insurance Corporation created under s. 627.351(6) if
2202 the same insurance agent is servicing both policies, or an
2203 insurer that has removed the policy from the Citizens Property
2204 Insurance Corporation if the same insurance agent is servicing
2205 both policies.

439287

4/29/2008 7:16 AM

Amendment No.

2206 Section 18. (1) The Citizens Property Insurance
2207 Corporation Mission Review Task Force is created to analyze and
2208 compile available data and to develop a report setting forth the
2209 statutory and operational changes needed to return Citizens
2210 Property Insurance Corporation to its former role as a state-
2211 created, noncompetitive residual market mechanism that provides
2212 property insurance coverage to risks that are otherwise entitled
2213 but unable to obtain such coverage in the private insurance
2214 market. The task force shall submit a report to the Governor,
2215 the President of the Senate, and the Speaker of the House of
2216 Representatives by January 31, 2009. At a minimum, the task
2217 force shall analyze and evaluate relevant and applicable
2218 information and data and develop recommendations concerning:

2219 (a) The nature of Citizens Property Insurance
2220 Corporation's role in providing property insurance coverage only
2221 if such coverage is not available from private insurers.

2222 (b) The ability of the admitted market to offer policies
2223 to those consumers formerly insured through Citizens Property
2224 Insurance Corporation. This consideration shall include, but not
2225 be limited to, the availability of private market reinsurance
2226 and coverage through the Florida Hurricane Catastrophe Fund, the
2227 general adequacy of the admitted market's current rates, and the
2228 capacity of the industry to offer policies to former Citizens
2229 Property Insurance Corporation policyholders within existing
2230 writing ratio limitations.

2231 (c) The appropriate relationship of rates charged by
2232 Citizens Property Insurance Corporation to rates charged by

439287

4/29/2008 7:16 AM

Amendment No.

2233 private insurers, with due consideration for the corporation's
2234 role as a noncompetitive residual market mechanism.

2235 (d) The relationships between the exposure of Citizens
2236 Property Insurance Corporation to catastrophic hurricane losses,
2237 the corporation's history of purchasing inadequate or no
2238 reinsurance coverage, and the corporation's lack of adequate
2239 capital to meet its potential claim obligations without
2240 incurring large deficits.

2241 (e) The adverse effects on the people and the economy of
2242 this state of the large, multiyear deficit assessments by
2243 Citizens Property Insurance Corporation that may be levied on
2244 businesses and households in this state, and steps that can be
2245 taken to reduce those effects.

2246 (f) The operational implications of the variation in the
2247 number of policies in force over time in Citizens Property
2248 Insurance Corporation and the merits of outsourcing some or all
2249 of its operational responsibilities.

2250 (g) Changes in the mission and operations of Citizens
2251 Property Insurance Corporation to reduce or eliminate any
2252 adverse effect such mission and operations may be having on the
2253 promotion of sound and economic growth and development of the
2254 coastal areas of this state.

2255 (h) Appropriate and consistent geographic boundaries of
2256 the high-risk account.

2257 (2) The task force shall be composed of 19 members as
2258 follows:

2259 (a) Three members appointed by the Speaker of the House of
2260 Representatives.

439287

4/29/2008 7:16 AM

Amendment No.

2261 (b) Three members appointed by the President of the
2262 Senate.

2263 (c) Four members appointed by the Governor who are not
2264 employed by or professionally affiliated with an insurance
2265 company or a subsidiary of an insurance company, at least two of
2266 whom must be consumer advocates or members of a consumer
2267 advocacy organization or agency.

2268 (d) Nine members appointed as representatives of private
2269 insurance companies as follows:

2270 1. Two members representing two separate insurance
2271 companies that each provide at least 150,000 homeowner's
2272 insurance policies in this state at the time of the creation of
2273 the task force.

2274 2. Two members representing two separate insurance
2275 companies that each provide fewer than 150,000 homeowner's
2276 insurance policies in this state at the time of the creation of
2277 the task force.

2278 3. Two members representing two separate insurance
2279 companies among the 10 insurance companies writing the greatest
2280 amount of commercial multiperil insurance premium in this state
2281 at the time of the creation of the task force.

2282 4. Three members appointed by the Chief Financial Officer
2283 representing insurance agents in this state.

2284
2285 Of each pair of members appointed under subparagraphs 1., 2.,
2286 and 3., one shall be appointed by the President of the Senate
2287 and one by the Speaker of the House of Representatives.

439287
4/29/2008 7:16 AM

Amendment No.

2288 (3) The task force shall conduct research, hold public
2289 meetings, receive testimony, employ consultants and
2290 administrative staff, and undertake other activities determined
2291 by its members to be necessary to complete its responsibilities.
2292 Citizens Property Insurance Corporation shall have appropriate
2293 senior staff attend task force meetings, shall respond to
2294 requests for testimony and data by the task force, shall
2295 otherwise cooperate with the task force, and shall provide
2296 funding for the necessary costs of implementing the provisions
2297 of this section.

2298 (4) A member of the task force may not delegate his or her
2299 attendance or voting power to a designee.

2300 (5) Members of the task force shall serve without
2301 compensation but are entitled to receive reimbursement for
2302 travel and per diem as provided in s. 112.061, Florida Statutes.

2303 (6) The appointments to the task force must be completed
2304 within 30 calendar days after the effective date of this act,
2305 and the task force must hold its initial meeting within 1 month
2306 after appointment of all members. The task force shall expire no
2307 later than 60 calendar days after submission of the report
2308 required in subsection (1).

2309 Section 19. Section 627.0621, Florida Statutes, is created
2310 to read:

2311 627.0621 Transparency in rate regulation.--

2312 (1) DEFINITIONS.-As used in this section, the term:

2313 (a) "Rate Filing" means any original or amended rate
2314 filing required or authorized under s. 627.062, s. 627.0651, or
2315 chapter 2007-1, Laws of Florida.

439287

4/29/2008 7:16 AM

Amendment No.

2316 (b) "Recommendation" means any proposed, preliminary, or
2317 final recommendation from an office actuary reviewing a rate
2318 filing with respect to the issue of approval or disapproval of
2319 the rate filing or with respect to rate indications that the
2320 office would consider acceptable.

2321 (2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING
2322 INFORMATION.--With respect to any rate filing made on after July
2323 1, 2008, the office shall provide the following information on a
2324 publicly accessible Internet website:

2325 (a) The overall rate change requested by the insurer.

2326 (b) All assumptions made by the office's actuaries.

2327 (c) A statement describing any assumptions or methods that
2328 deviate from the actuarial standards of practice of the Casualty
2329 Actuarial Society or the American Academy of Actuaries,
2330 including an explanation of the nature, rationale, and effect of
2331 the deviation.

2332 (d) All recommendations made by any office actuary who
2333 reviewed the rate filing.

2334 (e) Certification by the office's actuary under oath and
2335 subject to the penalty of perjury that, based on the actuary's
2336 knowledge, his or her recommendations did not contain any untrue
2337 statement of a material fact or omit to state a material fact
2338 necessary to make a recommendation and, in light of the
2339 circumstances under which such recommendation was made, was not
2340 misleading.

2341 (f) The overall rate change approved by the office.

2342 (3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT.--In any
2343 administrative or judicial proceeding relating to a rate filing,

439287

4/29/2008 7:16 AM

Amendment No.

2344 attorney-client privilege and work product exemptions from
2345 disclosure do not apply to communications, including
2346 communications with office attorneys or records prepared by or
2347 at the direction of an office attorney, except when conditions
2348 of paragraphs (a) and (b) have been met:

2349 (a) The communication or record reflects a mental
2350 impression, conclusion, litigation strategy, or legal theory of
2351 the attorney or office.

2352 (b) The communication or record was prepared after the
2353 initiation of an action in a court of competent jurisdiction or
2354 after the filing of a request for a proceeding under ss. 120.569
2355 and 120.57.

2356

2357 Work product privilege claims that do not meet the conditions of
2358 paragraphs (a) and (b) shall be deemed waived.

2359 Section 20. Paragraph (b) of subsection (4) of section
2360 215.555, Florida Statutes, is amended to read:

2361 215.555 Florida Hurricane Catastrophe Fund.--

2362 (4) REIMBURSEMENT CONTRACTS.--

2363 (b)1. The contract shall contain a promise by the board to
2364 reimburse the insurer for 45 percent, 75 percent, or 90 percent
2365 of its losses from each covered event in excess of the insurer's
2366 retention, plus 5 percent of the reimbursed losses to cover loss
2367 adjustment expenses.

2368 2. The insurer must elect one of the percentage coverage
2369 levels specified in this paragraph and may, upon renewal of a
2370 reimbursement contract, elect a lower percentage coverage level
2371 if no revenue bonds issued under subsection (6) after a covered

439287

4/29/2008 7:16 AM

Amendment No.

2372 event are outstanding, or elect a higher percentage coverage
2373 level, regardless of whether or not revenue bonds are
2374 outstanding. All members of an insurer group must elect the same
2375 percentage coverage level. Any joint underwriting association,
2376 risk apportionment plan, or other entity created under s.
2377 627.351 must elect the 90-percent coverage level.

2378 3. The contract shall provide that reimbursement amounts
2379 shall not be reduced by reinsurance paid or payable to the
2380 insurer from other sources.

2381 4. Notwithstanding any other provision contained in this
2382 section, the board shall make available to insurers that
2383 purchased coverage provided by this subparagraph in 2007 ~~2006~~,
2384 insurers qualifying as limited apportionment companies under s.
2385 627.351(6)(c), and insurers that have been ~~were~~ approved to
2386 participate in ~~2006 or that are approved in 2007~~ for the
2387 Insurance Capital Build-Up Incentive Program pursuant to s.
2388 215.5595, a contract or contract addendum that provides an
2389 additional amount of reimbursement coverage of up to \$10
2390 million. The premium to be charged for this additional
2391 reimbursement coverage shall be 50 percent of the additional
2392 reimbursement coverage provided, which shall include one prepaid
2393 reinstatement. The minimum retention level that an eligible
2394 participating insurer must retain associated with this
2395 additional coverage layer is 30 percent of the insurer's surplus
2396 as of December 31, 2007 ~~2006~~. This coverage shall be in addition
2397 to all other coverage that may be provided under this section.
2398 The coverage provided by the fund under this subparagraph shall
2399 be in addition to the claims-paying capacity as defined in

439287

4/29/2008 7:16 AM

Amendment No.

2400 subparagraph (c)1., but only with respect to those insurers that
2401 select the additional coverage option and meet the requirements
2402 of this subparagraph. The claims-paying capacity with respect to
2403 all other participating insurers and limited apportionment
2404 companies that do not select the additional coverage option
2405 shall be limited to their reimbursement premium's proportionate
2406 share of the actual claims-paying capacity otherwise defined in
2407 subparagraph (c)1. and as provided for under the terms of the
2408 reimbursement contract. Coverage provided in the reimbursement
2409 contract shall ~~will~~ not be affected by the additional premiums
2410 paid by participating insurers exercising the additional
2411 coverage option allowed in this subparagraph. This subparagraph
2412 expires on May 31, 2009 ~~2008~~.

2413 Section 21. Subsections (1) and (2) of section 627.712,
2414 Florida Statutes, are amended to read:

2415 627.712 Residential windstorm coverage required;
2416 availability of exclusions for windstorm or contents.--

2417 (1) An insurer issuing a residential property insurance
2418 policy must provide windstorm coverage. Except as provided in
2419 paragraph (2)(c), this section ~~subsection~~ does not apply with
2420 respect to risks that are eligible for wind-only coverage from
2421 Citizens Property Insurance Corporation under s. 627.351(6).

2422 (2) A property insurer must make available, at the option
2423 of the policyholder, an exclusion of windstorm coverage.

2424 (a) The coverage may be excluded only if:

2425 ~~(a)~~1. When the policyholder is a natural person, the
2426 policyholder personally writes and provides to the insurer the
2427 following statement in his or her own handwriting and signs his
439287

4/29/2008 7:16 AM

Amendment No.

2428 or her name, which must also be signed by every other named
2429 insured on the policy, and dated: "I do not want the insurance
2430 on my (home/mobile home/condominium unit) to pay for damage from
2431 windstorms. I will pay those costs. My insurance will not."

2432 2. When the policyholder is other than a natural person,
2433 the policyholder provides to the insurer on the policyholder's
2434 letterhead the following statement that must be signed by the
2435 policyholder's authorized representative and dated: " (Name of
2436 entity) does not want the insurance on its (type of
2437 structure) to pay for damage from windstorms. (Name of
2438 entity) will be responsible for these costs. (Name of
2439 entity's) insurance will not."

2440 (b) If the structure insured by the policy is subject to a
2441 mortgage or lien, the policyholder must provide the insurer with
2442 a written statement from the mortgageholder or lienholder
2443 indicating that the mortgageholder or lienholder approves the
2444 policyholder electing to exclude windstorm coverage or hurricane
2445 coverage from his or her or its property insurance policy.

2446 (c) If the residential structure is eligible for wind-only
2447 coverage from Citizens Property Insurance Corporation, an
2448 insurer nonrenewing a policy and issuing a replacement policy,
2449 or issuing a new policy, that does not provide wind coverage
2450 shall provide a notice to the mortgageholder or lienholder
2451 indicating the policyholder has elected coverage that does not
2452 cover wind.

2453 Section 22. Except as otherwise expressly provided in this
2454 act, this act shall take effect July 1, 2008.

2455
439287
4/29/2008 7:16 AM

Amendment No.

2456
2457
2458
2459
2460
2461
2462
2463
2464
2465
2466
2467
2468
2469
2470
2471
2472
2473
2474
2475
2476
2477
2478
2479
2480
2481
2482
2483

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to insurance; amending s. 215.5595, F.S.;
revising legislative findings; providing for an appropriation of
state funds in exchange for surplus notes issued by residential
property insurers under the program; revising the conditions and
requirements for providing funds to insurers under the program;
requiring a commitment by the insurer to meet minimum premium-
to-surplus writing ratios for residential property insurance and
for taking policies out of Citizens Property Insurance
Corporation; requiring insurers to commit to maintaining certain
levels of surplus and reinsurance; authorizing the State Board
of Administration to charge a fee for late payments; providing
for payment of costs and fees incurred by the board in
administering the program from funds appropriated to the
program, subject to a specified limit; requiring the board to
submit an annual report to the Legislature on the program and
insurer compliance with certain requirements; providing that
amendments made by the act do not affect the terms of surplus
notes approved prior to a specified date; authorizing the State
Board of Administration and an insurer to renegotiate such terms
consistent with such amendments; amending s. 624.3161, F.S.;
authorizing the Office of Insurance Regulation to require an
insurer to file its claims handling practices and procedures as

439287

4/29/2008 7:16 AM

Amendment No.

2484 a public record based on findings of a market conduct
2485 examination; amending s. 624.4211, F.S.; increasing the maximum
2486 amounts of administrative fines that may be imposed upon an
2487 insurer by the Office of Insurance Regulation for nonwillful and
2488 willful violations of an order or rule of the office or any
2489 provision of the Florida Insurance Code; creating s. 624.4213,
2490 F.S.; specifying requirements for submission of a document or
2491 information to the Office of Insurance Regulation or the
2492 Department of Financial Services in order for a person to claim
2493 that the document is a trade secret; requiring each page or
2494 portion to be labeled as a trade secret and be separated from
2495 non-trade secret material; requiring the submitting party to
2496 include an affidavit certifying certain information about the
2497 documents claimed to be trade secrets; requiring the office or
2498 department to notify persons who submit trade secret documents
2499 of any public-records request and the opportunity to file a
2500 court action to bar disclosure; specifying conditions for the
2501 office to retain or release such documents; creating s.
2502 624.4305, F.S.; requiring that an insurer planning to nonrenew
2503 more than a specified number of residential property insurance
2504 policies notify the Office of Insurance Regulation and obtain
2505 approval for such nonrenewals; specifying procedures for
2506 issuance of such notice; amending s. 626.9521, F.S.; increasing
2507 the maximum fines that may be imposed by the office or
2508 department for nonwillful and willful violations of state law
2509 regarding unfair methods of competition and unfair or deceptive
2510 acts or practices related to insurance; amending s. 627.0612,
2511 F.S.; providing criteria for administrative hearings to

439287

4/29/2008 7:16 AM

Amendment No.

2512 determine whether an insurer's property insurance rates, rating
2513 manuals, premium credits, discount schedules, and surcharge
2514 schedules comply with the law; providing for entry of certain
2515 orders; amending s. 627.062, F.S.; revising the factors the
2516 office must consider in reviewing a rate filing; prohibiting the
2517 Office of Insurance Regulation from disapproving as excessive a
2518 rate solely because the insurer obtained reinsurance covering a
2519 specified probably maximum loss; allowing the office to
2520 disapprove a rate as excessive within 1 year after the rate has
2521 been approved under certain conditions related to nonrenewal of
2522 policies by the insurer; requiring the Division of
2523 Administrative Hearings to expedite a hearing request by an
2524 insurer and for the administrative law judge to commence the
2525 hearing within a specified time; authorizing an insurer to
2526 request an expedited appellate review pursuant to the Florida
2527 Rules of Appellate Procedure; expressing legislative intent for
2528 an expedited appellate review; revising provisions relating to
2529 the submission of a disputed rate filing, other than a rate
2530 filing for medical malpractice insurance, to an arbitration
2531 panel in lieu of an administrative hearing if the rate is filed
2532 before a specified date; amending s. 627.0628, F.S.; providing
2533 legislative findings relating to final agency action for
2534 insurance ratemaking; requiring that with respect to rate
2535 filings, insurers must use actuarial methods or models found to
2536 be accurate or reliable by the Florida Commission on Hurricane
2537 Loss Projection Methodology; providing for use of other models
2538 under certain circumstances; deleting the requirement for the
2539 Office of Insurance Regulation and the Consumer Advocate to have

439287

4/29/2008 7:16 AM

Amendment No.

2540 access to all assumptions of a hurricane loss model in order for
2541 a model that has been found to be accurate and reliable by the
2542 Florida Commission on Hurricane Loss Projection Methodology to
2543 be admissible in a rate proceeding; deleting cross-references to
2544 conform to changes made by the act; amending s. 627.0629, F.S.;
2545 requiring that the Office of Insurance Regulation develop and
2546 make publicly available before a specified deadline a proposed
2547 method for insurers to establish windstorm mitigation premium
2548 discounts that correlate to the uniform home rating scale;
2549 requiring that the Financial Services Commission adopt rules
2550 before a specified deadline; requiring insurers to make rate
2551 filings pursuant to such method; authorizing the commission to
2552 make changes by rule to the uniform home grading scale and
2553 specify by rule the minimum required discounts, credits, or
2554 other rate differentials; requiring that such rate differentials
2555 be consistent with generally accepted actuarial principles and
2556 wind loss mitigation studies; amending s. 627.351, F.S.,
2557 relating to Citizens Property Insurance Corporation; deleting
2558 provisions defining the terms "homestead property" and
2559 "nonhomestead property"; increasing threshold replacement costs
2560 of certain structures for eligibility for coverage by the
2561 corporation; deleting requirements for certain properties to
2562 meeting building code plus requirements as a condition of
2563 eligibility for coverage by the corporation; deleting outdated
2564 provisions requiring the corporation to submit a report for
2565 approval of offering multiperil coverage; revising threshold
2566 amounts of deficits incurred in a calendar year on which the
2567 decision to levy assessments and the types of such assessments

439287

4/29/2008 7:16 AM

Amendment No.

2568 are based; revising the formula used to calculate shares of
2569 assessments owed by certain assessable insureds; requiring that
2570 the board of governors make certain determinations before
2571 levying emergency assessments; providing the board of governors
2572 with discretion to set the amount of an emergency assessment
2573 within specified limits; requiring the board of governors to
2574 levy a Citizens policyholder surcharge under certain conditions;
2575 increasing the amount of the surcharge; deleting a provision
2576 requiring the levy of an immediate assessment against certain
2577 policyholders under such conditions; requiring that funds
2578 collected from the levy of such surcharges be used for certain
2579 purposes; providing that such surcharges are not considered
2580 premium and are not subject to commissions, fees, or premium
2581 taxes; requiring that the failure to pay such surcharges be
2582 treated as failure to pay premium; requiring that the amount of
2583 any assessment or surcharge which exceeds the amount of deficits
2584 be remitted to and used by the corporation for specified
2585 purposes; deleting provisions requiring that the plan of
2586 operation of the corporation provide for the levy of a Citizens
2587 policyholder surcharge if regular deficit assessments are levied
2588 as a result of deficits in certain accounts; deleting provisions
2589 related to the calculation, classification, and nonpayment of
2590 such surcharge; requiring that the corporation make an annual
2591 filing for each personal or commercial line of business it
2592 writes, beginning on a specified date; limiting the overall
2593 average statewide premium increase and the increase for an
2594 individual policyholder to a specified amount for rates
2595 established for certain policies during a specified period;

439287

4/29/2008 7:16 AM

Amendment No.

2596 deleting a provision requiring an insurer to purchase bonds that
2597 remain unsold; deleting provisions requiring the corporation to
2598 make certain confidential underwriting and claims files
2599 available to agents to conform to changes made by the act
2600 relating to ineligibility of certain dwellings; clarifying the
2601 right of certain parties to discover underwriting and claims
2602 file records; authorizing the corporation to release such
2603 records as it deems necessary; requiring the corporation to
2604 report certain information to a consumer reporting agency;
2605 amending s. 627.4133, F.S.; requiring insurers to provide
2606 written notice of certain cancellations, nonrenewals, or
2607 terminations; creating s. 689.262, F.S.; requiring a purchaser
2608 of residential property to be presented with the windstorm
2609 mitigation rating of the structure; authorizing the Financial
2610 Services Commission to adopt rules; requiring Citizens Property
2611 Insurance Corporation to transfer funds to the General Revenue
2612 Fund if the losses due to a hurricane do not exceed a specified
2613 amount; requiring the board of governors of Citizens Property
2614 Insurance Corporation to make a reasonable estimate of such
2615 losses by a certain date; requiring the board to make quarterly
2616 transfers of funds to the corporation under certain
2617 circumstances; requiring the corporation to credit certain
2618 accounts for funds removed to make certain transfers;
2619 prohibiting Citizens Property Insurance Corporation from using
2620 certain statutory changes or authorized transfers of funds as
2621 justification or cause to seek any rate or assessment increase;
2622 amending s. 627.06281, F.S.; providing for residential property
2623 insurers to have access to and use a public hurricane loss

439287

4/29/2008 7:16 AM

Amendment No.

2624 projection model; requiring the office to establish a fee
2625 schedule for such model access and use; amending s. 627.0655,
2626 F.S.; expanding application of policyholder loss or expense-
2627 related premium discounts; creating the Citizens Property
2628 Insurance Corporation Mission Review Task Force; providing
2629 purposes; requiring a report; providing report requirements;
2630 providing for appointment of members; providing
2631 responsibilities; specifying service without compensation;
2632 providing for reimbursement of per diem and travel expenses;
2633 providing meeting requirements; requiring the corporation to
2634 assist the task force; providing for the expiration of the task
2635 force; requiring the Chief Financial Officer to provide a report
2636 on the economic impact on the state of certain hurricanes;
2637 providing report requirements; creating s. 627.0621, F.S.;
2638 providing requirements for transparency in rate regulation;
2639 providing definitions; providing for a website for public access
2640 to rate filing information; providing requirements; providing
2641 for application of public meeting requirements; specifying
2642 nonapplication of attorney-client or work-product privileges to
2643 certain communications in certain administrative or judicial
2644 proceedings under certain circumstances; specifying criteria;
2645 providing for waiver of such privileges under certain
2646 circumstances; amending s. 215.555, F.S.; extending for an
2647 additional year the offer of reimbursement coverage for
2648 specified insurers; revising the qualifying criteria for such
2649 insurers; revising provisions to conform; amending s. 627.712,
2650 F.S.; requiring insurers to provide notice to mortgageholders or

439287

4/29/2008 7:16 AM

HOUSE AMENDMENT
Bill No. CS/CS/SB 2860

Amendment No.

2651 | lienholders of certain policies not providing wind coverage for
2652 | certain structures; providing effective dates.
2653 |