

Amendment No.

CHAMBER ACTION

Senate

House

.

Representatives Ross, Reagan, and Brown offered the following:

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

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "Homeowner's Bill
of Rights Act."

Section 2. Section 215.5595, Florida Statutes, is amended
to read:

215.5595 Insurance Capital Build-Up Incentive Program.--

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

(a) The losses in this state ~~Florida~~ from eight hurricanes
in 2004 and 2005 have seriously strained the resources of both
the voluntary insurance market and the public sector mechanisms

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17 of Citizens Property Insurance Corporation and the Florida
18 Hurricane Catastrophe Fund.

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

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

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

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

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45 Citizens Property Insurance Corporation since companies
46 participating in the program have removed over 199,000 policies
47 from the corporation. Companies participating in the program
48 have issued a significant number of new policies, thereby
49 keeping an estimated 480,000 new policies out of the
50 corporation.

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

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

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

69 (e)(i) Appropriating state funds to be exchanged for ~~used~~
70 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
71 under conditions requiring the insurer to contribute additional
72 private sector capital and to write a minimum level of premiums

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73 for residential hurricane coverage, is a valid and important
74 public purpose.

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

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

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

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

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100 purposes of this section, new capital must be in the form of
101 cash or cash equivalents as specified in s. 625.012(1).

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

109 (d) The insurer must commit to increase its writings of
110 residential property insurance, including the peril of wind, and
111 to meet ~~meeting~~ a minimum writing ratio of net written premium
112 to surplus of at least 1:1 for the first calendar year after
113 receiving the state funds or renegotiation of the surplus note,
114 1.5:1 for the second calendar year, and 2:1 for the remaining
115 term of the surplus note. Alternatively, the insurer must meet a
116 minimum writing ratio of gross written premium to surplus of at
117 least 3:1 for the first calendar year after receiving the state
118 funds or renegotiation of the surplus note, 4.5:1 for the second
119 calendar year, and 6:1 for the remaining term of the surplus
120 note. The writing ratios, ~~which~~ shall be determined by the
121 Office of Insurance Regulation and certified quarterly to the
122 board. For this purpose, the term "premium" ~~"net written~~
123 premium" means ~~net written~~ premium for residential property
124 insurance in this state Florida, including the peril of wind,
125 and "surplus" means the new capital and surplus note ~~refers to~~
126 the ~~entire surplus~~ of the insurer. An insurer that makes an
127 initial application after July 1, 2008, must also commit to

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128 writing at least 15 percent of its net or gross written premium
129 for new policies, not including renewal premiums, for policies
130 taken out of Citizens Property Insurance Corporation, during
131 each of the first 3 years after receiving the state funds in
132 exchange for the surplus note, which shall be determined by the
133 Office of Insurance Regulation and certified annually to the
134 board. The insurer must also commit to maintaining a level of
135 surplus and reinsurance sufficient to cover in excess of its 1-
136 in-100 year probable maximum loss, as determined by a hurricane
137 loss model accepted by the Florida Commission on Hurricane Loss
138 Projection Methodology, which shall be determined by the Office
139 of Insurance Regulation and certified annually to the board. If
140 the board determines that the insurer has failed to meet any of
141 the requirements of this paragraph ~~required ratio is not~~
142 ~~maintained~~ during the term of the surplus note, the board may
143 increase the interest rate, accelerate the repayment of interest
144 and principal, or shorten the term of the surplus note, subject
145 to approval by the Commissioner of Insurance of payments by the
146 insurer of principal and interest as provided in paragraph (f).

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

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155 contract with independent financial and insurance consultants in
156 making this determination.

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

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

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183 priority shall be given to the insurer writing the highest
184 percentage of its policies covering manufactured housing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

252 Section 3. Subsection (6) is added to section, 624.3161,
253 Florida Statutes, to read:

254 624.3161 Market conduct examinations.--

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

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267 policies, guidelines, rules, protocols, standard operating
268 procedures, instructions, or directives that govern or guide how
269 and the manner in which an insured's claims for benefits under
270 any policy will be processed.

271 Section 4. Subsections (2) and (3) of section 624.4211,
272 Florida Statutes, are amended to read:

273 624.4211 Administrative fine in lieu of suspension or
274 revocation.--

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

293 (3) With respect to any knowing and willful violation of a
294 lawful order or rule of the office or commission or a provision
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295 of this code, the office may impose a fine upon the insurer in
296 an amount not to exceed \$40,000 ~~\$20,000~~ for each such violation.
297 In no event shall such fine exceed an aggregate amount of
298 \$200,000 ~~\$100,000~~ for all knowing and willful violations arising
299 out of the same action. In addition to such fines, the such
300 insurer shall make restitution when due in accordance with ~~the~~
301 ~~provisions of~~ subsection (2).

302 Section 5. Section 624.4213, Florida Statutes, is created
303 to read:

304 624.4213 Trade secret documents.--

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

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

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

320 (c) In submitting a notice of trade secret to the office
321 or department, the submitting party must include an affidavit
322 certifying under oath to the truth of the following statements

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323 concerning all documents or information that are claimed to be
324 trade secrets:

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

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

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

336 4. The information is not publicly available elsewhere.

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

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

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

356 Section 6. Section 624.4305, Florida Statutes, is created
357 to read:

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

368 Section 7. Subsection (2) of section 626.9521, Florida
369 Statutes, is amended to read:

370 626.9521 Unfair methods of competition and unfair or
371 deceptive acts or practices prohibited; penalties.--

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

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378 violations arising out of the same action or an aggregate amount
379 of \$200,000 ~~\$100,000~~ for all willful violations arising out of
380 the same action. The fines authorized by this subsection may be
381 imposed in addition to any other applicable penalty.

382 Section 8. Paragraph (i) of subsection (1) of section
383 626.9541, Florida Statutes, is amended to read:

384 626.9541 Unfair methods of competition and unfair or
385 deceptive acts or practices defined.--

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

389 (i) Unfair claim settlement practices.--

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

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

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

403 a. Failing to adopt and implement standards for the proper
404 investigation of claims;

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- 405 b. Misrepresenting pertinent facts or insurance policy
406 provisions relating to coverages at issue;
- 407 c. Failing to acknowledge and act promptly upon
408 communications with respect to claims;
- 409 d. Denying claims without conducting reasonable
410 investigations based upon available information;
- 411 e. Failing to affirm or deny full or partial coverage of
412 claims, and, as to partial coverage, the dollar amount or extent
413 of coverage, or failing to provide a written statement that the
414 claim is being investigated, upon the written request of the
415 insured within 30 days after proof-of-loss statements have been
416 completed;
- 417 f. Failing to promptly provide a reasonable explanation in
418 writing to the insured of the basis in the insurance policy, in
419 relation to the facts or applicable law, for denial of a claim
420 or for the offer of a compromise settlement;
- 421 g. Failing to promptly notify the insured of any
422 additional information necessary for the processing of a claim;
423 or
- 424 h. Failing to clearly explain the nature of the requested
425 information and the reasons why such information is necessary.
- 426 4. Failing to pay undisputed amounts of partial or full
427 benefits owed under first-party property insurance policies
428 within 90 days after an insurer receives notice of a residential
429 property insurance claim, determines the amounts of partial or
430 full benefits, and agrees to coverage, unless payment of the
431 undisputed benefits is prevented by an act of God, prevented by
432 the impossibility of performance, or due to actions by the

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433 insured or claimant that constitute fraud, lack of cooperation,
434 or intentional misrepresentation regarding the claim for which
435 benefits are owed.

436 Section 9. Section 627.0612, Florida Statutes, is amended
437 to read:

438 627.0612 Administrative proceedings in rating
439 determinations.--

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

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

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

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

459 (c) Whether the cost of reinsurance is reasonable or
460 excessive.

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

469 Section 10. Paragraphs (a), (b), and (g) of subsection
470 (2), subsection (6), and paragraph (a) of subsection (9) of
471 section 627.062, Florida Statutes, are amended to read:

472 627.062 Rate standards.--

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

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

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

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

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

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

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

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

519 1. Past and prospective loss experience within and without
520 this state.

521 2. Past and prospective expenses.

522 3. The degree of competition among insurers for the risk
523 insured.

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

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

539 5. The reasonableness of the judgment reflected in the
540 filing.

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

544 7. The adequacy of loss reserves.

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

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

552 10. Conflagration and catastrophe hazards, if applicable.

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

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

564 ~~13.12.~~ The cost of medical services, if applicable.

565 ~~14.13.~~ Other relevant factors which impact upon the
566 frequency or severity of claims or upon expenses.

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

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

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

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

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

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

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

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

654 (9) (a) ~~Effective March 1, 2007, The chief executive~~
655 ~~officer or chief financial officer of a property insurer and the~~
656 ~~chief actuary of a property insurer must certify under oath and~~
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657 subject to the penalty of perjury, on a form approved by the
658 commission, the following information, which must accompany a
659 rate filing:

660 1. The signing officer and actuary have reviewed the rate
661 filing;

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

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

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

677 Section 11. Paragraph (c) of subsection (1) and subsection
678 (3) of section 627.0628, Florida Statutes, are amended, and
679 paragraph (e) is added to subsection (1) of that section, to
680 read:

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

684 (1) LEGISLATIVE FINDINGS AND INTENT.--

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

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

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

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

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

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

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

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

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HOUSE AMENDMENT

Bill No. CS/CS/SB 2860

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

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

756 (f)~~(e)~~1. A trade secret, as defined in s. 812.081, that is
757 used in designing and constructing a hurricane loss model and
758 that is provided pursuant to this section, by a private company,
759 to the commission, office, or consumer advocate appointed
760 pursuant to s. 627.0613, is confidential and exempt from s.
761 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

767 3. This paragraph is subject to the Open Government Sunset
768 Review Act of 1995 in accordance with s. 119.15, and shall stand
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769 repealed on October 2, 2010, unless reviewed and saved from
770 repeal through reenactment by the Legislature.

771 Section 12. Subsection (1) of section 627.0629, Florida
772 Statutes, is amended to read:

773 627.0629 Residential property insurance; rate filings.--

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

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

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

832 Section 13. Subsection (2) and paragraphs (a), (b), (c),
833 (m), (p), (w), (dd), (ee), and (ff) of subsection (6) of section
834 627.351, Florida Statutes, are amended to read:

835 627.351 Insurance risk apportionment plans.--

836 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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992 determination was based. Notwithstanding any other provision of
993 law, each member insurer and each underwriting association
994 created pursuant to this section shall collect emergency
995 assessments from its policyholders without such obligation being
996 affected by any credit, limitation, exemption, or deferment. The
997 emergency assessments so collected shall be transferred directly
998 to the association on a periodic basis as determined by the
999 association. The aggregate amount of emergency assessments
1000 levied under this sub-sub-subparagraph in any calendar year may
1001 not exceed the greater of 10 percent of the amount needed to
1002 cover the original deficit, plus interest, fees, commissions,
1003 required reserves, and other costs associated with financing of
1004 the original deficit, or 10 percent of the aggregate statewide
1005 direct written premium for property insurance written by member
1006 insurers and underwriting associations for the prior year, plus
1007 interest, fees, commissions, required reserves, and other costs
1008 associated with financing the original deficit. The board may
1009 pledge the proceeds of the emergency assessments under this sub-
1010 sub-subparagraph as the source of revenue for bonds, to retire
1011 any other debt incurred as a result of the deficit or events
1012 giving rise to the deficit, or in any other way that the board
1013 determines will efficiently recover the deficit. The emergency
1014 assessments under this sub-sub-subparagraph shall continue as
1015 long as any bonds issued or other indebtedness incurred with
1016 respect to a deficit for which the assessment was imposed remain
1017 outstanding, unless adequate provision has been made for the
1018 payment of such bonds or other indebtedness pursuant to the
1019 document governing such bonds or other indebtedness. Emergency

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1020 assessments collected under this sub-sub-subparagraph are not
1021 part of an insurer's rates, are not premium, and are not subject
1022 to premium tax, fees, or commissions; however, failure to pay
1023 the emergency assessment shall be treated as failure to pay
1024 premium.

1025 (IV) Each member insurer's share of the total regular
1026 assessments under sub-sub-subparagraph (I) or sub-sub-
1027 subparagraph (II) shall be in the proportion that the insurer's
1028 net direct premium for property insurance in this state, for the
1029 year preceding the assessment bears to the aggregate statewide
1030 net direct premium for property insurance of all member
1031 insurers, as reduced by any credits for voluntary writings for
1032 that year.

1033 (V) If regular deficit assessments are made under sub-sub-
1034 subparagraph (I) or sub-sub-subparagraph (II), or by the
1035 Residential Property and Casualty Joint Underwriting Association
1036 under sub-subparagraph (6)(b)3.a. or sub-subparagraph
1037 (6)(b)3.b., the association shall levy upon the association's
1038 policyholders, as part of its next rate filing, or by a separate
1039 rate filing solely for this purpose, a market equalization
1040 surcharge in a percentage equal to the total amount of such
1041 regular assessments divided by the aggregate statewide direct
1042 written premium for property insurance for member insurers for
1043 the prior calendar year. Market equalization surcharges under
1044 this sub-sub-subparagraph are not considered premium and are not
1045 subject to commissions, fees, or premium taxes; however, failure
1046 to pay a market equalization surcharge shall be treated as
1047 failure to pay premium.

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1048 e. The governing body of any unit of local government, any
1049 residents of which are insured under the plan, may issue bonds
1050 as defined in s. 125.013 or s. 166.101 to fund an assistance
1051 program, in conjunction with the association, for the purpose of
1052 defraying deficits of the association. In order to avoid
1053 needless and indiscriminate proliferation, duplication, and
1054 fragmentation of such assistance programs, any unit of local
1055 government, any residents of which are insured by the
1056 association, may provide for the payment of losses, regardless
1057 of whether or not the losses occurred within or outside of the
1058 territorial jurisdiction of the local government. Revenue bonds
1059 may not be issued until validated pursuant to chapter 75, unless
1060 a state of emergency is declared by executive order or
1061 proclamation of the Governor pursuant to s. 252.36 making such
1062 findings as are necessary to determine that it is in the best
1063 interests of, and necessary for, the protection of the public
1064 health, safety, and general welfare of residents of this state
1065 and the protection and preservation of the economic stability of
1066 insurers operating in this state, and declaring it an essential
1067 public purpose to permit certain municipalities or counties to
1068 issue bonds as will provide relief to claimants and
1069 policyholders of the association and insurers responsible for
1070 apportionment of plan losses. Any such unit of local government
1071 may enter into such contracts with the association and with any
1072 other entity created pursuant to this subsection as are
1073 necessary to carry out this paragraph. Any bonds issued under
1074 this sub-subparagraph shall be payable from and secured by
1075 moneys received by the association from assessments under this
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1076 subparagraph, and assigned and pledged to or on behalf of the
1077 unit of local government for the benefit of the holders of such
1078 bonds. The funds, credit, property, and taxing power of the
1079 state or of the unit of local government shall not be pledged
1080 for the payment of such bonds. If any of the bonds remain unsold
1081 60 days after issuance, the department shall require all
1082 insurers subject to assessment to purchase the bonds, which
1083 shall be treated as admitted assets; each insurer shall be
1084 required to purchase that percentage of the unsold portion of
1085 the bond issue that equals the insurer's relative share of
1086 assessment liability under this subsection. An insurer shall not
1087 be required to purchase the bonds to the extent that the
1088 department determines that the purchase would endanger or impair
1089 the solvency of the insurer. The authority granted by this sub-
1090 subparagraph is additional to any bonding authority granted by
1091 subparagraph 6.

1092 3. The plan shall also provide that any member with a
1093 surplus as to policyholders of \$20 million or less writing 25
1094 percent or more of its total countrywide property insurance
1095 premiums in this state may petition the department, within the
1096 first 90 days of each calendar year, to qualify as a limited
1097 apportionment company. The apportionment of such a member
1098 company in any calendar year for which it is qualified shall not
1099 exceed its gross participation, which shall not be affected by
1100 the formula for voluntary writings. In no event shall a limited
1101 apportionment company be required to participate in any
1102 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1103 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
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1104 \$50 million after payment of available plan funds in any
1105 calendar year. However, a limited apportionment company shall
1106 collect from its policyholders any emergency assessment imposed
1107 under sub-sub-subparagraph 2.d.(III). The plan shall provide
1108 that, if the department determines that any regular assessment
1109 will result in an impairment of the surplus of a limited
1110 apportionment company, the department may direct that all or
1111 part of such assessment be deferred. However, there shall be no
1112 limitation or deferment of an emergency assessment to be
1113 collected from policyholders under sub-sub-subparagraph
1114 2.d.(III).

1115 4. The plan shall provide for the deferment, in whole or
1116 in part, of a regular assessment of a member insurer under sub-
1117 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
1118 not for an emergency assessment collected from policyholders
1119 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1120 commissioner, payment of such regular assessment would endanger
1121 or impair the solvency of the member insurer. In the event a
1122 regular assessment against a member insurer is deferred in whole
1123 or in part, the amount by which such assessment is deferred may
1124 be assessed against the other member insurers in a manner
1125 consistent with the basis for assessments set forth in sub-sub-
1126 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1127 5.a. The plan of operation may include deductibles and
1128 rules for classification of risks and rate modifications
1129 consistent with the objective of providing and maintaining funds
1130 sufficient to pay catastrophe losses.

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1131 b. ~~The association may require arbitration of a rate~~
1132 ~~filing under s. 627.062(6).~~ It is the intent of the Legislature
1133 that the rates for coverage provided by the association be
1134 actuarially sound and not competitive with approved rates
1135 charged in the admitted voluntary market such that the
1136 association functions as a residual market mechanism to provide
1137 insurance only when the insurance cannot be procured in the
1138 voluntary market. The plan of operation shall provide a
1139 mechanism to assure that, beginning no later than January 1,
1140 1999, the rates charged by the association for each line of
1141 business are reflective of approved rates in the voluntary
1142 market for hurricane coverage for each line of business in the
1143 various areas eligible for association coverage.

1144 c. The association shall provide for windstorm coverage on
1145 residential properties in limits up to \$10 million for
1146 commercial lines residential risks and up to \$1 million for
1147 personal lines residential risks. If coverage with the
1148 association is sought for a residential risk valued in excess of
1149 these limits, coverage shall be available to the risk up to the
1150 replacement cost or actual cash value of the property, at the
1151 option of the insured, if coverage for the risk cannot be
1152 located in the authorized market. The association must accept a
1153 commercial lines residential risk with limits above \$10 million
1154 or a personal lines residential risk with limits above \$1
1155 million if coverage is not available in the authorized market.
1156 The association may write coverage above the limits specified in
1157 this subparagraph with or without facultative or other
1158 reinsurance coverage, as the association determines appropriate.

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1159 d. The plan of operation must provide objective criteria
1160 and procedures, approved by the department, to be uniformly
1161 applied for all applicants in determining whether an individual
1162 risk is so hazardous as to be uninsurable. In making this
1163 determination and in establishing the criteria and procedures,
1164 the following shall be considered:

1165 (I) Whether the likelihood of a loss for the individual
1166 risk is substantially higher than for other risks of the same
1167 class; and

1168 (II) Whether the uncertainty associated with the
1169 individual risk is such that an appropriate premium cannot be
1170 determined.

1171
1172 The acceptance or rejection of a risk by the association
1173 pursuant to such criteria and procedures must be construed as
1174 the private placement of insurance, and the provisions of
1175 chapter 120 do not apply.

1176 e. If the risk accepts an offer of coverage through the
1177 market assistance program or through a mechanism established by
1178 the association, either before the policy is issued by the
1179 association or during the first 30 days of coverage by the
1180 association, and the producing agent who submitted the
1181 application to the association is not currently appointed by the
1182 insurer, the insurer shall:

1183 (I) Pay to the producing agent of record of the policy,
1184 for the first year, an amount that is the greater of the
1185 insurer's usual and customary commission for the type of policy

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1186 written or a fee equal to the usual and customary commission of
1187 the association; or

1188 (II) Offer to allow the producing agent of record of the
1189 policy to continue servicing the policy for a period of not less
1190 than 1 year and offer to pay the agent the greater of the
1191 insurer's or the association's usual and customary commission
1192 for the type of policy written.

1193

1194 If the producing agent is unwilling or unable to accept
1195 appointment, the new insurer shall pay the agent in accordance
1196 with sub-sub-subparagraph (I). Subject to the provisions of s.
1197 627.3517, the policies issued by the association must provide
1198 that if the association obtains an offer from an authorized
1199 insurer to cover the risk at its approved rates under either a
1200 standard policy including wind coverage or, if consistent with
1201 the insurer's underwriting rules as filed with the department, a
1202 basic policy including wind coverage, the risk is no longer
1203 eligible for coverage through the association. Upon termination
1204 of eligibility, the association shall provide written notice to
1205 the policyholder and agent of record stating that the
1206 association policy must be canceled as of 60 days after the date
1207 of the notice because of the offer of coverage from an
1208 authorized insurer. Other provisions of the insurance code
1209 relating to cancellation and notice of cancellation do not apply
1210 to actions under this sub-subparagraph.

1211 f. When the association enters into a contractual
1212 agreement for a take-out plan, the producing agent of record of

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1213 the association policy is entitled to retain any unearned
1214 commission on the policy, and the insurer shall:

1215 (I) Pay to the producing agent of record of the
1216 association policy, for the first year, an amount that is the
1217 greater of the insurer's usual and customary commission for the
1218 type of policy written or a fee equal to the usual and customary
1219 commission of the association; or

1220 (II) Offer to allow the producing agent of record of the
1221 association policy to continue servicing the policy for a period
1222 of not less than 1 year and offer to pay the agent the greater
1223 of the insurer's or the association's usual and customary
1224 commission for the type of policy written.

1225

1226 If the producing agent is unwilling or unable to accept
1227 appointment, the new insurer shall pay the agent in accordance
1228 with sub-sub-subparagraph (I).

1229 6.a. The plan of operation may authorize the formation of
1230 a private nonprofit corporation, a private nonprofit
1231 unincorporated association, a partnership, a trust, a limited
1232 liability company, or a nonprofit mutual company which may be
1233 empowered, among other things, to borrow money by issuing bonds
1234 or by incurring other indebtedness and to accumulate reserves or
1235 funds to be used for the payment of insured catastrophe losses.
1236 The plan may authorize all actions necessary to facilitate the
1237 issuance of bonds, including the pledging of assessments or
1238 other revenues.

1239 b. Any entity created under this subsection, or any entity
1240 formed for the purposes of this subsection, may sue and be sued,
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1241 may borrow money; issue bonds, notes, or debt instruments;
1242 pledge or sell assessments, market equalization surcharges and
1243 other surcharges, rights, premiums, contractual rights,
1244 projected recoveries from the Florida Hurricane Catastrophe
1245 Fund, other reinsurance recoverables, and other assets as
1246 security for such bonds, notes, or debt instruments; enter into
1247 any contracts or agreements necessary or proper to accomplish
1248 such borrowings; and take other actions necessary to carry out
1249 the purposes of this subsection. The association may issue bonds
1250 or incur other indebtedness, or have bonds issued on its behalf
1251 by a unit of local government pursuant to subparagraph (6)(p)2.,
1252 in the absence of a hurricane or other weather-related event,
1253 upon a determination by the association subject to approval by
1254 the department that such action would enable it to efficiently
1255 meet the financial obligations of the association and that such
1256 financings are reasonably necessary to effectuate the
1257 requirements of this subsection. Any such entity may accumulate
1258 reserves and retain surpluses as of the end of any association
1259 year to provide for the payment of losses incurred by the
1260 association during that year or any future year. The association
1261 shall incorporate and continue the plan of operation and
1262 articles of agreement in effect on the effective date of chapter
1263 76-96, Laws of Florida, to the extent that it is not
1264 inconsistent with chapter 76-96, and as subsequently modified
1265 consistent with chapter 76-96. The board of directors and
1266 officers currently serving shall continue to serve until their
1267 successors are duly qualified as provided under the plan. The
1268 assets and obligations of the plan in effect immediately prior

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1269 to the effective date of chapter 76-96 shall be construed to be
1270 the assets and obligations of the successor plan created herein.

1271 c. In recognition of s. 10, Art. I of the State
1272 Constitution, prohibiting the impairment of obligations of
1273 contracts, it is the intent of the Legislature that no action be
1274 taken whose purpose is to impair any bond indenture or financing
1275 agreement or any revenue source committed by contract to such
1276 bond or other indebtedness issued or incurred by the association
1277 or any other entity created under this subsection.

1278 7. On such coverage, an agent's remuneration shall be that
1279 amount of money payable to the agent by the terms of his or her
1280 contract with the company with which the business is placed.
1281 However, no commission will be paid on that portion of the
1282 premium which is in excess of the standard premium of that
1283 company.

1284 8. Subject to approval by the department, the association
1285 may establish different eligibility requirements and operational
1286 procedures for any line or type of coverage for any specified
1287 eligible area or portion of an eligible area if the board
1288 determines that such changes to the eligibility requirements and
1289 operational procedures are justified due to the voluntary market
1290 being sufficiently stable and competitive in such area or for
1291 such line or type of coverage and that consumers who, in good
1292 faith, are unable to obtain insurance through the voluntary
1293 market through ordinary methods would continue to have access to
1294 coverage from the association. When coverage is sought in
1295 connection with a real property transfer, such requirements and
1296 procedures shall not provide for an effective date of coverage

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1297 later than the date of the closing of the transfer as
1298 established by the transferor, the transferee, and, if
1299 applicable, the lender.

1300 9. Notwithstanding any other provision of law:

1301 a. The pledge or sale of, the lien upon, and the security
1302 interest in any rights, revenues, or other assets of the
1303 association created or purported to be created pursuant to any
1304 financing documents to secure any bonds or other indebtedness of
1305 the association shall be and remain valid and enforceable,
1306 notwithstanding the commencement of and during the continuation
1307 of, and after, any rehabilitation, insolvency, liquidation,
1308 bankruptcy, receivership, conservatorship, reorganization, or
1309 similar proceeding against the association under the laws of
1310 this state or any other applicable laws.

1311 b. No such proceeding shall relieve the association of its
1312 obligation, or otherwise affect its ability to perform its
1313 obligation, to continue to collect, or levy and collect,
1314 assessments, market equalization or other surcharges, projected
1315 recoveries from the Florida Hurricane Catastrophe Fund,
1316 reinsurance recoverables, or any other rights, revenues, or
1317 other assets of the association pledged.

1318 c. Each such pledge or sale of, lien upon, and security
1319 interest in, including the priority of such pledge, lien, or
1320 security interest, any such assessments, emergency assessments,
1321 market equalization or renewal surcharges, projected recoveries
1322 from the Florida Hurricane Catastrophe Fund, reinsurance
1323 recoverables, or other rights, revenues, or other assets which
1324 are collected, or levied and collected, after the commencement

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1325 of and during the pendency of or after any such proceeding shall
1326 continue unaffected by such proceeding.

1327 d. As used in this subsection, the term "financing
1328 documents" means any agreement, instrument, or other document
1329 now existing or hereafter created evidencing any bonds or other
1330 indebtedness of the association or pursuant to which any such
1331 bonds or other indebtedness has been or may be issued and
1332 pursuant to which any rights, revenues, or other assets of the
1333 association are pledged or sold to secure the repayment of such
1334 bonds or indebtedness, together with the payment of interest on
1335 such bonds or such indebtedness, or the payment of any other
1336 obligation of the association related to such bonds or
1337 indebtedness.

1338 e. Any such pledge or sale of assessments, revenues,
1339 contract rights or other rights or assets of the association
1340 shall constitute a lien and security interest, or sale, as the
1341 case may be, that is immediately effective and attaches to such
1342 assessments, revenues, contract, or other rights or assets,
1343 whether or not imposed or collected at the time the pledge or
1344 sale is made. Any such pledge or sale is effective, valid,
1345 binding, and enforceable against the association or other entity
1346 making such pledge or sale, and valid and binding against and
1347 superior to any competing claims or obligations owed to any
1348 other person or entity, including policyholders in this state,
1349 asserting rights in any such assessments, revenues, contract, or
1350 other rights or assets to the extent set forth in and in
1351 accordance with the terms of the pledge or sale contained in the
1352 applicable financing documents, whether or not any such person

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1353 or entity has notice of such pledge or sale and without the need
1354 for any physical delivery, recordation, filing, or other action.

1355 f. There shall be no liability on the part of, and no
1356 cause of action of any nature shall arise against, any member
1357 insurer or its agents or employees, agents or employees of the
1358 association, members of the board of directors of the
1359 association, or the department or its representatives, for any
1360 action taken by them in the performance of their duties or
1361 responsibilities under this subsection. Such immunity does not
1362 apply to actions for breach of any contract or agreement
1363 pertaining to insurance, or any willful tort.

1364 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1365 (a)1. It is the public purpose of this subsection to
1366 ensure the existence of an orderly market for property insurance
1367 for Floridians and Florida businesses. The Legislature finds
1368 that private insurers are unwilling or unable to provide
1369 affordable property insurance coverage in this state to the
1370 extent sought and needed. The absence of affordable property
1371 insurance threatens the public health, safety, and welfare and
1372 likewise threatens the economic health of the state. The state
1373 therefore has a compelling public interest and a public purpose
1374 to assist in assuring that property in the state is insured and
1375 that it is insured at affordable rates so as to facilitate the
1376 remediation, reconstruction, and replacement of damaged or
1377 destroyed property in order to reduce or avoid the negative
1378 effects otherwise resulting to the public health, safety, and
1379 welfare, to the economy of the state, and to the revenues of the
1380 state and local governments which are needed to provide for the

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1381 public welfare. It is necessary, therefore, to provide
1382 affordable property insurance to applicants who are in good
1383 faith entitled to procure insurance through the voluntary market
1384 but are unable to do so. The Legislature intends by this
1385 subsection that affordable property insurance be provided and
1386 that it continue to be provided, as long as necessary, through
1387 Citizens Property Insurance Corporation, a government entity
1388 that is an integral part of the state, and that is not a private
1389 insurance company. To that end, Citizens Property Insurance
1390 Corporation shall strive to increase the availability of
1391 affordable property insurance in this state, while achieving
1392 efficiencies and economies, and while providing service to
1393 policyholders, applicants, and agents which is no less than the
1394 quality generally provided in the voluntary market, for the
1395 achievement of the foregoing public purposes. Because it is
1396 essential for this government entity to have the maximum
1397 financial resources to pay claims following a catastrophic
1398 hurricane, it is the intent of the Legislature that Citizens
1399 Property Insurance Corporation continue to be an integral part
1400 of the state and that the income of the corporation be exempt
1401 from federal income taxation and that interest on the debt
1402 obligations issued by the corporation be exempt from federal
1403 income taxation.

1404 2. The Residential Property and Casualty Joint
1405 Underwriting Association originally created by this statute
1406 shall be known, as of July 1, 2002, as the Citizens Property
1407 Insurance Corporation. The corporation shall provide insurance
1408 for residential and commercial property, for applicants who are

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1409 in good faith entitled, but are unable, to procure insurance
1410 through the voluntary market. The corporation shall operate
1411 pursuant to a plan of operation approved by order of the
1412 Financial Services Commission. The plan is subject to continuous
1413 review by the commission. The commission may, by order, withdraw
1414 approval of all or part of a plan if the commission determines
1415 that conditions have changed since approval was granted and that
1416 the purposes of the plan require changes in the plan. The
1417 corporation shall continue to operate pursuant to the plan of
1418 operation approved by the Office of Insurance Regulation until
1419 October 1, 2006. For the purposes of this subsection,
1420 residential coverage includes both personal lines residential
1421 coverage, which consists of the type of coverage provided by
1422 homeowner's, mobile home owner's, dwelling, tenant's,
1423 condominium unit owner's, and similar policies, and commercial
1424 lines residential coverage, which consists of the type of
1425 coverage provided by condominium association, apartment
1426 building, and similar policies.

1427 ~~3. For the purposes of this subsection, the term~~
1428 ~~"homestead property" means:~~

1429 ~~a. Property that has been granted a homestead exemption~~
1430 ~~under chapter 196;~~

1431 ~~b. Property for which the owner has a current, written~~
1432 ~~lease with a renter for a term of at least 7 months and for~~
1433 ~~which the dwelling is insured by the corporation for \$200,000 or~~
1434 ~~less;~~

1435 ~~c. An owner-occupied mobile home or manufactured home, as~~
1436 ~~defined in s. 320.01, which is permanently affixed to real~~

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1437 ~~property, is owned by a Florida resident, and has been granted a~~
1438 ~~homestead exemption under chapter 196 or, if the owner does not~~
1439 ~~own the real property, the owner certifies that the mobile home~~
1440 ~~or manufactured home is his or her principal place of residence;~~

1441 ~~d. Tenant's coverage;~~

1442 ~~e. Commercial lines residential property; or~~

1443 ~~f. Any county, district, or municipal hospital; a hospital~~
1444 ~~licensed by any not for profit corporation qualified under s.~~
1445 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
1446 ~~continuing care retirement community that is certified under~~
1447 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1448 ~~under chapter 196.~~

1449 ~~4. For the purposes of this subsection, the term~~
1450 ~~"nonhomestead property" means property that is not homestead~~
1451 ~~property.~~

1452 ~~3.5.~~ Effective January 1, 2009, a personal lines
1453 residential structure that has a dwelling replacement cost of \$2
1454 ~~\$1~~ million or more, or a single condominium unit that has a
1455 combined dwelling and content replacement cost of \$2 ~~\$1~~ million
1456 or more is not eligible for coverage by the corporation. Such
1457 dwellings insured by the corporation on December 31, 2008, may
1458 continue to be covered by the corporation until the end of the
1459 policy term. However, such dwellings that are insured by the
1460 corporation and become ineligible for coverage due to the
1461 provisions of this subparagraph may reapply and obtain coverage
1462 ~~in the high risk account and be considered "nonhomestead~~
1463 ~~property"~~ if the property owner provides the corporation with a
1464 sworn affidavit from one or more insurance agents, on a form

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1465 provided by the corporation, stating that the agents have made
1466 their best efforts to obtain coverage and that the property has
1467 been rejected for coverage by at least one authorized insurer
1468 and at least three surplus lines insurers. If such conditions
1469 are met, the dwelling may be insured by the corporation for up
1470 to 3 years, after which time the dwelling is ineligible for
1471 coverage. The office shall approve the method used by the
1472 corporation for valuing the dwelling replacement cost for the
1473 purposes of this subparagraph. If a policyholder is insured by
1474 the corporation prior to being determined to be ineligible
1475 pursuant to this subparagraph and such policyholder files a
1476 lawsuit challenging the determination, the policyholder may
1477 remain insured by the corporation until the conclusion of the
1478 litigation.

1479 ~~6. For properties constructed on or after January 1, 2009,~~
1480 ~~the corporation may not insure any property located within 2,500~~
1481 ~~feet landward of the coastal construction control line created~~
1482 ~~pursuant to s. 161.053 unless the property meets the~~
1483 ~~requirements of the code plus building standards developed by~~
1484 ~~the Florida Building Commission.~~

1485 4.7. It is the intent of the Legislature that
1486 policyholders, applicants, and agents of the corporation receive
1487 service and treatment of the highest possible level but never
1488 less than that generally provided in the voluntary market. It
1489 also is intended that the corporation be held to service
1490 standards no less than those applied to insurers in the
1491 voluntary market by the office with respect to responsiveness,

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1492 timeliness, customer courtesy, and overall dealings with
1493 policyholders, applicants, or agents of the corporation.

1494 ~~5.8-~~ Effective January 1, 2009, a personal lines
1495 residential structure that is located in the "wind-borne debris
1496 region," as defined in s. 1609.2, International Building Code
1497 (2006), and that has an insured value on the structure of
1498 \$750,000 or more is not eligible for coverage by the corporation
1499 unless the structure has opening protections as required under
1500 the Florida Building Code for a newly constructed residential
1501 structure in that area. A residential structure shall be deemed
1502 to comply with the requirements of this subparagraph if it has
1503 shutters or opening protections on all openings and if such
1504 opening protections complied with the Florida Building Code at
1505 the time they were installed. Effective January 1, 2010, for
1506 personal lines residential property insured by the corporation
1507 that is located in the wind-borne debris region and has an
1508 insured value on the structure of \$500,000 or more, a
1509 prospective purchaser of any such residential property must be
1510 provided by the seller a written disclosure that contains the
1511 structure's windstorm mitigation rating based on the uniform
1512 home grading scale adopted under s. 215.55865. Such rating shall
1513 be provided to the purchaser at or before the time the purchaser
1514 executes a contract for sale and purchase.

1515 (b)1. All insurers authorized to write one or more subject
1516 lines of business in this state are subject to assessment by the
1517 corporation and, for the purposes of this subsection, are
1518 referred to collectively as "assessable insurers." Insurers
1519 writing one or more subject lines of business in this state

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1520 pursuant to part VIII of chapter 626 are not assessable
1521 insurers, but insureds who procure one or more subject lines of
1522 business in this state pursuant to part VIII of chapter 626 are
1523 subject to assessment by the corporation and are referred to
1524 collectively as "assessable insureds." An authorized insurer's
1525 assessment liability shall begin on the first day of the
1526 calendar year following the year in which the insurer was issued
1527 a certificate of authority to transact insurance for subject
1528 lines of business in this state and shall terminate 1 year after
1529 the end of the first calendar year during which the insurer no
1530 longer holds a certificate of authority to transact insurance
1531 for subject lines of business in this state.

1532 2.a. All revenues, assets, liabilities, losses, and
1533 expenses of the corporation shall be divided into three separate
1534 accounts as follows:

1535 (I) A personal lines account for personal residential
1536 policies issued by the corporation or issued by the Residential
1537 Property and Casualty Joint Underwriting Association and renewed
1538 by the corporation that provide comprehensive, multiperil
1539 coverage on risks that are not located in areas eligible for
1540 coverage in the Florida Windstorm Underwriting Association as
1541 those areas were defined on January 1, 2002, and for such
1542 policies that do not provide coverage for the peril of wind on
1543 risks that are located in such areas;

1544 (II) A commercial lines account for commercial residential
1545 and commercial nonresidential policies issued by the corporation
1546 or issued by the Residential Property and Casualty Joint
1547 Underwriting Association and renewed by the corporation that

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1548 provide coverage for basic property perils on risks that are not
1549 located in areas eligible for coverage in the Florida Windstorm
1550 Underwriting Association as those areas were defined on January
1551 1, 2002, and for such policies that do not provide coverage for
1552 the peril of wind on risks that are located in such areas; and

1553 (III) A high-risk account for personal residential
1554 policies and commercial residential and commercial
1555 nonresidential property policies issued by the corporation or
1556 transferred to the corporation that provide coverage for the
1557 peril of wind on risks that are located in areas eligible for
1558 coverage in the Florida Windstorm Underwriting Association as
1559 those areas were defined on January 1, 2002. ~~Subject to the~~
1560 ~~approval of a business plan by the Financial Services Commission~~
1561 ~~and Legislative Budget Commission as provided in this sub sub~~
1562 ~~subparagraph, but no earlier than March 31, 2007,~~ The
1563 corporation may offer policies that provide multiperil coverage
1564 and the corporation shall continue to offer policies that
1565 provide coverage only for the peril of wind for risks located in
1566 areas eligible for coverage in the high-risk account. In issuing
1567 multiperil coverage, the corporation may use its approved policy
1568 forms and rates for the personal lines account. An applicant or
1569 insured who is eligible to purchase a multiperil policy from the
1570 corporation may purchase a multiperil policy from an authorized
1571 insurer without prejudice to the applicant's or insured's
1572 eligibility to prospectively purchase a policy that provides
1573 coverage only for the peril of wind from the corporation. An
1574 applicant or insured who is eligible for a corporation policy
1575 that provides coverage only for the peril of wind may elect to

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1576 purchase or retain such policy and also purchase or retain
1577 coverage excluding wind from an authorized insurer without
1578 prejudice to the applicant's or insured's eligibility to
1579 prospectively purchase a policy that provides multiperil
1580 coverage from the corporation. It is the goal of the Legislature
1581 that there would be an overall average savings of 10 percent or
1582 more for a policyholder who currently has a wind-only policy
1583 with the corporation, and an ex-wind policy with a voluntary
1584 insurer or the corporation, and who then obtains a multiperil
1585 policy from the corporation. It is the intent of the Legislature
1586 that the offer of multiperil coverage in the high-risk account
1587 be made and implemented in a manner that does not adversely
1588 affect the tax-exempt status of the corporation or
1589 creditworthiness of or security for currently outstanding
1590 financing obligations or credit facilities of the high-risk
1591 account, the personal lines account, or the commercial lines
1592 account. ~~By March 1, 2007, the corporation shall prepare and~~
1593 ~~submit for approval by the Financial Services Commission and~~
1594 ~~Legislative Budget Commission a report detailing the~~
1595 ~~corporation's business plan for issuing multiperil coverage in~~
1596 ~~the high risk account. The business plan shall be approved or~~
1597 ~~disapproved within 30 days after receipt, as submitted or~~
1598 ~~modified and resubmitted by the corporation. The business plan~~
1599 ~~must include: the impact of such multiperil coverage on the~~
1600 ~~corporation's financial resources, the impact of such multiperil~~
1601 ~~coverage on the corporation's tax exempt status, the manner in~~
1602 ~~which the corporation plans to implement the processing of~~
1603 ~~applications and policy forms for new and existing~~

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1604 ~~policyholders, the impact of such multiperil coverage on the~~
1605 ~~corporation's ability to deliver customer service at the high~~
1606 ~~level required by this subsection, the ability of the~~
1607 ~~corporation to process claims, the ability of the corporation to~~
1608 ~~quote and issue policies, the impact of such multiperil coverage~~
1609 ~~on the corporation's agents, the impact of such multiperil~~
1610 ~~coverage on the corporation's existing policyholders, and the~~
1611 ~~impact of such multiperil coverage on rates and premium. The~~
1612 high-risk account must also include quota share primary
1613 insurance under subparagraph (c)2. The area eligible for
1614 coverage under the high-risk account also includes the area
1615 within Port Canaveral, which is bordered on the south by the
1616 City of Cape Canaveral, bordered on the west by the Banana
1617 River, and bordered on the north by Federal Government property.

1618 b. The three separate accounts must be maintained as long
1619 as financing obligations entered into by the Florida Windstorm
1620 Underwriting Association or Residential Property and Casualty
1621 Joint Underwriting Association are outstanding, in accordance
1622 with the terms of the corresponding financing documents. When
1623 the financing obligations are no longer outstanding, in
1624 accordance with the terms of the corresponding financing
1625 documents, the corporation may use a single account for all
1626 revenues, assets, liabilities, losses, and expenses of the
1627 corporation. Consistent with the requirement of this
1628 subparagraph and prudent investment policies that minimize the
1629 cost of carrying debt, the board shall exercise its best efforts
1630 to retire existing debt or to obtain approval of necessary
1631 parties to amend the terms of existing debt, so as to structure

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1632 the most efficient plan to consolidate the three separate
1633 accounts into a single account. By February 1, 2007, the board
1634 shall submit a report to the Financial Services Commission, the
1635 President of the Senate, and the Speaker of the House of
1636 Representatives which includes an analysis of consolidating the
1637 accounts, the actions the board has taken to minimize the cost
1638 of carrying debt, and its recommendations for executing the most
1639 efficient plan.

1640 c. Creditors of the Residential Property and Casualty
1641 Joint Underwriting Association and of the accounts specified in
1642 sub-sub-subparagraphs a.(I) and (II) may have a claim against,
1643 and recourse to, the accounts referred to in sub-sub-
1644 subparagraphs a.(I) and (II) and shall have no claim against, or
1645 recourse to, the account referred to in sub-sub-subparagraph
1646 a.(III). Creditors of the Florida Windstorm Underwriting
1647 Association shall have a claim against, and recourse to, the
1648 account referred to in sub-sub-subparagraph a.(III) and shall
1649 have no claim against, or recourse to, the accounts referred to
1650 in sub-sub-subparagraphs a.(I) and (II).

1651 d. Revenues, assets, liabilities, losses, and expenses not
1652 attributable to particular accounts shall be prorated among the
1653 accounts.

1654 e. The Legislature finds that the revenues of the
1655 corporation are revenues that are necessary to meet the
1656 requirements set forth in documents authorizing the issuance of
1657 bonds under this subsection.

1658 f. No part of the income of the corporation may inure to
1659 the benefit of any private person.

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1660 3. With respect to a deficit in an account:

1661 a. After accounting for the Citizens policyholder
1662 surcharge imposed under sub-subparagraph i., when the remaining
1663 projected deficit incurred in a particular calendar year is not
1664 greater than 6 ~~10~~ percent of the aggregate statewide direct
1665 written premium for the subject lines of business for the prior
1666 calendar year, the entire deficit shall be recovered through
1667 regular assessments of assessable insurers under paragraph (p)
1668 and assessable insureds.

1669 b. After accounting for the Citizens policyholder
1670 surcharge imposed under sub-subparagraph i., when the remaining
1671 projected deficit incurred in a particular calendar year exceeds
1672 6 ~~10~~ percent of the aggregate statewide direct written premium
1673 for the subject lines of business for the prior calendar year,
1674 the corporation shall levy regular assessments on assessable
1675 insurers under paragraph (p) and on assessable insureds in an
1676 amount equal to the greater of 6 ~~10~~ percent of the deficit or 6
1677 ~~10~~ percent of the aggregate statewide direct written premium for
1678 the subject lines of business for the prior calendar year. Any
1679 remaining deficit shall be recovered through emergency
1680 assessments under sub-subparagraph d.

1681 c. Each assessable insurer's share of the amount being
1682 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1683 be in the proportion that the assessable insurer's direct
1684 written premium for the subject lines of business for the year
1685 preceding the assessment bears to the aggregate statewide direct
1686 written premium for the subject lines of business for that year.
1687 The assessment percentage applicable to each assessable insured

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1688 is the ratio of the amount being assessed under sub-subparagraph
1689 a. or sub-subparagraph b. to the aggregate statewide direct
1690 written premium for the subject lines of business for the prior
1691 year. Assessments levied by the corporation on assessable
1692 insurers under sub-subparagraphs a. and b. shall be paid as
1693 required by the corporation's plan of operation and paragraph
1694 (p). ~~notwithstanding any other provision of this subsection, the~~
1695 ~~aggregate amount of a regular assessment for a deficit incurred~~
1696 ~~in a particular calendar year shall be reduced by the estimated~~
1697 ~~amount to be received by the corporation from the Citizens~~
1698 ~~policyholder surcharge under subparagraph (c)10. and the amount~~
1699 ~~collected or estimated to be collected from the assessment on~~
1700 ~~Citizens policyholders pursuant to sub-subparagraph i.~~

1701 Assessments levied by the corporation on assessable insureds
1702 under sub-subparagraphs a. and b. shall be collected by the
1703 surplus lines agent at the time the surplus lines agent collects
1704 the surplus lines tax required by s. 626.932 and shall be paid
1705 to the Florida Surplus Lines Service Office at the time the
1706 surplus lines agent pays the surplus lines tax to the Florida
1707 Surplus Lines Service Office. Upon receipt of regular
1708 assessments from surplus lines agents, the Florida Surplus Lines
1709 Service Office shall transfer the assessments directly to the
1710 corporation as determined by the corporation.

1711 d. Upon a determination by the board of governors that a
1712 deficit in an account exceeds the amount that will be recovered
1713 through regular assessments under sub-subparagraph a. or sub-
1714 subparagraph b., plus the amount that is expected to be
1715 recovered through surcharges under sub-subparagraph i., as to

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1716 | the remaining projected deficit the board shall levy, after
1717 | verification by the office, emergency assessments, for as many
1718 | years as necessary to cover the deficits, to be collected by
1719 | assessable insurers and the corporation and collected from
1720 | assessable insureds upon issuance or renewal of policies for
1721 | subject lines of business, excluding National Flood Insurance
1722 | policies. The amount of the emergency assessment collected in a
1723 | particular year shall be a uniform percentage of that year's
1724 | direct written premium for subject lines of business and all
1725 | accounts of the corporation, excluding National Flood Insurance
1726 | Program policy premiums, as annually determined by the board and
1727 | verified by the office. The office shall verify the arithmetic
1728 | calculations involved in the board's determination within 30
1729 | days after receipt of the information on which the determination
1730 | was based. Notwithstanding any other provision of law, the
1731 | corporation and each assessable insurer that writes subject
1732 | lines of business shall collect emergency assessments from its
1733 | policyholders without such obligation being affected by any
1734 | credit, limitation, exemption, or deferment. Emergency
1735 | assessments levied by the corporation on assessable insureds
1736 | shall be collected by the surplus lines agent at the time the
1737 | surplus lines agent collects the surplus lines tax required by
1738 | s. 626.932 and shall be paid to the Florida Surplus Lines
1739 | Service Office at the time the surplus lines agent pays the
1740 | surplus lines tax to the Florida Surplus Lines Service Office.
1741 | The emergency assessments so collected shall be transferred
1742 | directly to the corporation on a periodic basis as determined by
1743 | the corporation and shall be held by the corporation solely in

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1744 the applicable account. The aggregate amount of emergency
1745 assessments levied for an account under this sub-subparagraph in
1746 any calendar year may, at the discretion of the board of
1747 governors, be less than but may not exceed the greater of 10
1748 percent of the amount needed to cover the ~~original~~ deficit, plus
1749 interest, fees, commissions, required reserves, and other costs
1750 associated with financing of the original deficit, or 10 percent
1751 of the aggregate statewide direct written premium for subject
1752 lines of business and for all accounts of the corporation for
1753 the prior year, plus interest, fees, commissions, required
1754 reserves, and other costs associated with financing the ~~original~~
1755 deficit.

1756 e. The corporation may pledge the proceeds of assessments,
1757 projected recoveries from the Florida Hurricane Catastrophe
1758 Fund, other insurance and reinsurance recoverables, policyholder
1759 surcharges and other surcharges, and other funds available to
1760 the corporation as the source of revenue for and to secure bonds
1761 issued under paragraph (p), bonds or other indebtedness issued
1762 under subparagraph (c)3., or lines of credit or other financing
1763 mechanisms issued or created under this subsection, or to retire
1764 any other debt incurred as a result of deficits or events giving
1765 rise to deficits, or in any other way that the board determines
1766 will efficiently recover such deficits. The purpose of the lines
1767 of credit or other financing mechanisms is to provide additional
1768 resources to assist the corporation in covering claims and
1769 expenses attributable to a catastrophe. As used in this
1770 subsection, the term "assessments" includes regular assessments
1771 under sub-subparagraph a., sub-subparagraph b., or subparagraph

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1772 (p)1. and emergency assessments under sub-subparagraph d.
1773 Emergency assessments collected under sub-subparagraph d. are
1774 not part of an insurer's rates, are not premium, and are not
1775 subject to premium tax, fees, or commissions; however, failure
1776 to pay the emergency assessment shall be treated as failure to
1777 pay premium. The emergency assessments under sub-subparagraph d.
1778 shall continue as long as any bonds issued or other indebtedness
1779 incurred with respect to a deficit for which the assessment was
1780 imposed remain outstanding, unless adequate provision has been
1781 made for the payment of such bonds or other indebtedness
1782 pursuant to the documents governing such bonds or other
1783 indebtedness.

1784 f. As used in this subsection for purposes of any deficit
1785 incurred on or after January 25, 2007, the term "subject lines
1786 of business" means insurance written by assessable insurers or
1787 procured by assessable insureds for all property and casualty
1788 lines of business in this state, but not including workers'
1789 compensation or medical malpractice. As used in the sub-
1790 subparagraph, the term "property and casualty lines of business"
1791 includes all lines of business identified on Form 2, Exhibit of
1792 Premiums and Losses, in the annual statement required of
1793 authorized insurers by s. 624.424 and any rule adopted under
1794 this section, except for those lines identified as accident and
1795 health insurance and except for policies written under the
1796 National Flood Insurance Program or the Federal Crop Insurance
1797 Program. For purposes of this sub-subparagraph, the term
1798 "workers' compensation" includes both workers' compensation
1799 insurance and excess workers' compensation insurance.

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1800 g. The Florida Surplus Lines Service Office shall
1801 determine annually the aggregate statewide written premium in
1802 subject lines of business procured by assessable insureds and
1803 shall report that information to the corporation in a form and
1804 at a time the corporation specifies to ensure that the
1805 corporation can meet the requirements of this subsection and the
1806 corporation's financing obligations.

1807 h. The Florida Surplus Lines Service Office shall verify
1808 the proper application by surplus lines agents of assessment
1809 percentages for regular assessments and emergency assessments
1810 levied under this subparagraph on assessable insureds and shall
1811 assist the corporation in ensuring the accurate, timely
1812 collection and payment of assessments by surplus lines agents as
1813 required by the corporation.

1814 i. If a deficit is incurred in any account in 2008 or
1815 thereafter, the board of governors shall levy a Citizens
1816 policyholder surcharge ~~an immediate assessment against the~~
1817 ~~premium of each nonhomestead property policyholder in all~~
1818 ~~accounts of the corporation, as a uniform percentage of the~~
1819 ~~premium of the policy of up to 10 percent of such premium, which~~
1820 ~~funds shall be used to offset the deficit. If this assessment is~~
1821 ~~insufficient to eliminate the deficit, the board of governors~~
1822 ~~shall levy an additional assessment~~ against all policyholders of
1823 the corporation for a 12-month period, which shall be collected
1824 at the time of issuance or renewal of a policy, as a uniform
1825 percentage of the premium for the policy of up to 15 ~~10~~ percent
1826 of such premium, which funds shall be used to ~~further~~ offset the
1827 deficit. Citizens policyholder surcharges under this sub-

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1828 subparagraph are not considered premium and are not subject to
1829 commissions, fees, or premium taxes. However, failure to pay
1830 such surcharges shall be treated as failure to pay premium.

1831 j. If the amount of any assessments or surcharges
1832 collected from corporation policyholders, assessable insurers or
1833 their policyholders, or assessable insureds exceeds the amount
1834 of the deficits, such excess amounts shall be remitted to and
1835 retained by the corporation in a reserve to be used by the
1836 corporation, as determined by the board of governors and
1837 approved by the office, to pay claims or reduce any past,
1838 present, or future plan-year deficits or to reduce outstanding
1839 debt. The board of governors shall maintain separate accounting
1840 records that consolidate data for nonhomestead properties,
1841 including, but not limited to, number of policies, insured
1842 values, premiums written, and losses. The board of governors
1843 shall annually report to the office and the Legislature a
1844 summary of such data.

1845 (c) The plan of operation of the corporation:

1846 1. Must provide for adoption of residential property and
1847 casualty insurance policy forms and commercial residential and
1848 nonresidential property insurance forms, which forms must be
1849 approved by the office prior to use. The corporation shall adopt
1850 the following policy forms:

1851 a. Standard personal lines policy forms that are
1852 comprehensive multiperil policies providing full coverage of a
1853 residential property equivalent to the coverage provided in the
1854 private insurance market under an HO-3, HO-4, or HO-6 policy.

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1855 b. Basic personal lines policy forms that are policies
1856 similar to an HO-8 policy or a dwelling fire policy that provide
1857 coverage meeting the requirements of the secondary mortgage
1858 market, but which coverage is more limited than the coverage
1859 under a standard policy.

1860 c. Commercial lines residential and nonresidential policy
1861 forms that are generally similar to the basic perils of full
1862 coverage obtainable for commercial residential structures and
1863 commercial nonresidential structures in the admitted voluntary
1864 market.

1865 d. Personal lines and commercial lines residential
1866 property insurance forms that cover the peril of wind only. The
1867 forms are applicable only to residential properties located in
1868 areas eligible for coverage under the high-risk account referred
1869 to in sub-subparagraph (b)2.a.

1870 e. Commercial lines nonresidential property insurance
1871 forms that cover the peril of wind only. The forms are
1872 applicable only to nonresidential properties located in areas
1873 eligible for coverage under the high-risk account referred to in
1874 sub-subparagraph (b)2.a.

1875 f. The corporation may adopt variations of the policy
1876 forms listed in sub-subparagraphs a.-e. that contain more
1877 restrictive coverage.

1878 2.a. Must provide that the corporation adopt a program in
1879 which the corporation and authorized insurers enter into quota
1880 share primary insurance agreements for hurricane coverage, as
1881 defined in s. 627.4025(2)(a), for eligible risks, and adopt

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1882 property insurance forms for eligible risks which cover the
1883 peril of wind only. As used in this subsection, the term:

1884 (I) "Quota share primary insurance" means an arrangement
1885 in which the primary hurricane coverage of an eligible risk is
1886 provided in specified percentages by the corporation and an
1887 authorized insurer. The corporation and authorized insurer are
1888 each solely responsible for a specified percentage of hurricane
1889 coverage of an eligible risk as set forth in a quota share
1890 primary insurance agreement between the corporation and an
1891 authorized insurer and the insurance contract. The
1892 responsibility of the corporation or authorized insurer to pay
1893 its specified percentage of hurricane losses of an eligible
1894 risk, as set forth in the quota share primary insurance
1895 agreement, may not be altered by the inability of the other
1896 party to the agreement to pay its specified percentage of
1897 hurricane losses. Eligible risks that are provided hurricane
1898 coverage through a quota share primary insurance arrangement
1899 must be provided policy forms that set forth the obligations of
1900 the corporation and authorized insurer under the arrangement,
1901 clearly specify the percentages of quota share primary insurance
1902 provided by the corporation and authorized insurer, and
1903 conspicuously and clearly state that neither the authorized
1904 insurer nor the corporation may be held responsible beyond its
1905 specified percentage of coverage of hurricane losses.

1906 (II) "Eligible risks" means personal lines residential and
1907 commercial lines residential risks that meet the underwriting
1908 criteria of the corporation and are located in areas that were

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1909 eligible for coverage by the Florida Windstorm Underwriting
1910 Association on January 1, 2002.

1911 b. The corporation may enter into quota share primary
1912 insurance agreements with authorized insurers at corporation
1913 coverage levels of 90 percent and 50 percent.

1914 c. If the corporation determines that additional coverage
1915 levels are necessary to maximize participation in quota share
1916 primary insurance agreements by authorized insurers, the
1917 corporation may establish additional coverage levels. However,
1918 the corporation's quota share primary insurance coverage level
1919 may not exceed 90 percent.

1920 d. Any quota share primary insurance agreement entered
1921 into between an authorized insurer and the corporation must
1922 provide for a uniform specified percentage of coverage of
1923 hurricane losses, by county or territory as set forth by the
1924 corporation board, for all eligible risks of the authorized
1925 insurer covered under the quota share primary insurance
1926 agreement.

1927 e. Any quota share primary insurance agreement entered
1928 into between an authorized insurer and the corporation is
1929 subject to review and approval by the office. However, such
1930 agreement shall be authorized only as to insurance contracts
1931 entered into between an authorized insurer and an insured who is
1932 already insured by the corporation for wind coverage.

1933 f. For all eligible risks covered under quota share
1934 primary insurance agreements, the exposure and coverage levels
1935 for both the corporation and authorized insurers shall be
1936 reported by the corporation to the Florida Hurricane Catastrophe
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1937 Fund. For all policies of eligible risks covered under quota
1938 share primary insurance agreements, the corporation and the
1939 authorized insurer shall maintain complete and accurate records
1940 for the purpose of exposure and loss reimbursement audits as
1941 required by Florida Hurricane Catastrophe Fund rules. The
1942 corporation and the authorized insurer shall each maintain
1943 duplicate copies of policy declaration pages and supporting
1944 claims documents.

1945 g. The corporation board shall establish in its plan of
1946 operation standards for quota share agreements which ensure that
1947 there is no discriminatory application among insurers as to the
1948 terms of quota share agreements, pricing of quota share
1949 agreements, incentive provisions if any, and consideration paid
1950 for servicing policies or adjusting claims.

1951 h. The quota share primary insurance agreement between the
1952 corporation and an authorized insurer must set forth the
1953 specific terms under which coverage is provided, including, but
1954 not limited to, the sale and servicing of policies issued under
1955 the agreement by the insurance agent of the authorized insurer
1956 producing the business, the reporting of information concerning
1957 eligible risks, the payment of premium to the corporation, and
1958 arrangements for the adjustment and payment of hurricane claims
1959 incurred on eligible risks by the claims adjuster and personnel
1960 of the authorized insurer. Entering into a quota sharing
1961 insurance agreement between the corporation and an authorized
1962 insurer shall be voluntary and at the discretion of the
1963 authorized insurer.

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1964 3. May provide that the corporation may employ or
1965 otherwise contract with individuals or other entities to provide
1966 administrative or professional services that may be appropriate
1967 to effectuate the plan. The corporation shall have the power to
1968 borrow funds, by issuing bonds or by incurring other
1969 indebtedness, and shall have other powers reasonably necessary
1970 to effectuate the requirements of this subsection, including,
1971 without limitation, the power to issue bonds and incur other
1972 indebtedness in order to refinance outstanding bonds or other
1973 indebtedness. The corporation may, but is not required to, seek
1974 judicial validation of its bonds or other indebtedness under
1975 chapter 75. The corporation may issue bonds or incur other
1976 indebtedness, or have bonds issued on its behalf by a unit of
1977 local government pursuant to subparagraph (p)2., in the absence
1978 of a hurricane or other weather-related event, upon a
1979 determination by the corporation, subject to approval by the
1980 office, that such action would enable it to efficiently meet the
1981 financial obligations of the corporation and that such
1982 financings are reasonably necessary to effectuate the
1983 requirements of this subsection. The corporation is authorized
1984 to take all actions needed to facilitate tax-free status for any
1985 such bonds or indebtedness, including formation of trusts or
1986 other affiliated entities. The corporation shall have the
1987 authority to pledge assessments, projected recoveries from the
1988 Florida Hurricane Catastrophe Fund, other reinsurance
1989 recoverables, market equalization and other surcharges, and
1990 other funds available to the corporation as security for bonds
1991 or other indebtedness. In recognition of s. 10, Art. I of the
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HOUSE AMENDMENT

Bill No. CS/CS/SB 2860

Amendment No.

1992 State Constitution, prohibiting the impairment of obligations of
1993 contracts, it is the intent of the Legislature that no action be
1994 taken whose purpose is to impair any bond indenture or financing
1995 agreement or any revenue source committed by contract to such
1996 bond or other indebtedness.

1997 4.a. Must require that the corporation operate subject to
1998 the supervision and approval of a board of governors consisting
1999 of eight individuals who are residents of this state, from
2000 different geographical areas of this state. The Governor, the
2001 Chief Financial Officer, the President of the Senate, and the
2002 Speaker of the House of Representatives shall each appoint two
2003 members of the board. At least one of the two members appointed
2004 by each appointing officer must have demonstrated expertise in
2005 insurance. The Chief Financial Officer shall designate one of
2006 the appointees as chair. All board members serve at the pleasure
2007 of the appointing officer. All members of the board of governors
2008 are subject to removal at will by the officers who appointed
2009 them. All board members, including the chair, must be appointed
2010 to serve for 3-year terms beginning annually on a date
2011 designated by the plan. Any board vacancy shall be filled for
2012 the unexpired term by the appointing officer. The Chief
2013 Financial Officer shall appoint a technical advisory group to
2014 provide information and advice to the board of governors in
2015 connection with the board's duties under this subsection. The
2016 executive director and senior managers of the corporation shall
2017 be engaged by the board and serve at the pleasure of the board.
2018 Any executive director appointed on or after July 1, 2006, is
2019 subject to confirmation by the Senate. The executive director is

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2020 responsible for employing other staff as the corporation may
2021 require, subject to review and concurrence by the board.

2022 b. The board shall create a Market Accountability Advisory
2023 Committee to assist the corporation in developing awareness of
2024 its rates and its customer and agent service levels in
2025 relationship to the voluntary market insurers writing similar
2026 coverage. The members of the advisory committee shall consist of
2027 the following 11 persons, one of whom must be elected chair by
2028 the members of the committee: four representatives, one
2029 appointed by the Florida Association of Insurance Agents, one by
2030 the Florida Association of Insurance and Financial Advisors, one
2031 by the Professional Insurance Agents of Florida, and one by the
2032 Latin American Association of Insurance Agencies; three
2033 representatives appointed by the insurers with the three highest
2034 voluntary market share of residential property insurance
2035 business in the state; one representative from the Office of
2036 Insurance Regulation; one consumer appointed by the board who is
2037 insured by the corporation at the time of appointment to the
2038 committee; one representative appointed by the Florida
2039 Association of Realtors; and one representative appointed by the
2040 Florida Bankers Association. All members must serve for 3-year
2041 terms and may serve for consecutive terms. The committee shall
2042 report to the corporation at each board meeting on insurance
2043 market issues which may include rates and rate competition with
2044 the voluntary market; service, including policy issuance, claims
2045 processing, and general responsiveness to policyholders,
2046 applicants, and agents; and matters relating to depopulation.

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2047 5. Must provide a procedure for determining the
2048 eligibility of a risk for coverage, as follows:

2049 a. Subject to the provisions of s. 627.3517, with respect
2050 to personal lines residential risks, if the risk is offered
2051 coverage from an authorized insurer at the insurer's approved
2052 rate under either a standard policy including wind coverage or,
2053 if consistent with the insurer's underwriting rules as filed
2054 with the office, a basic policy including wind coverage, for a
2055 new application to the corporation for coverage, the risk is not
2056 eligible for any policy issued by the corporation unless the
2057 premium for coverage from the authorized insurer is more than 15
2058 percent greater than the premium for comparable coverage from
2059 the corporation. If the risk is not able to obtain any such
2060 offer, the risk is eligible for either a standard policy
2061 including wind coverage or a basic policy including wind
2062 coverage issued by the corporation; however, if the risk could
2063 not be insured under a standard policy including wind coverage
2064 regardless of market conditions, the risk shall be eligible for
2065 a basic policy including wind coverage unless rejected under
2066 subparagraph 9. However, with regard to a policyholder of the
2067 corporation or a policyholder removed from the corporation
2068 through an assumption agreement until the end of the assumption
2069 period, the policyholder remains eligible for coverage from the
2070 corporation regardless of any offer of coverage from an
2071 authorized insurer or surplus lines insurer. The corporation
2072 shall determine the type of policy to be provided on the basis
2073 of objective standards specified in the underwriting manual and
2074 based on generally accepted underwriting practices.

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2075 (I) If the risk accepts an offer of coverage through the
2076 market assistance plan or an offer of coverage through a
2077 mechanism established by the corporation before a policy is
2078 issued to the risk by the corporation or during the first 30
2079 days of coverage by the corporation, and the producing agent who
2080 submitted the application to the plan or to the corporation is
2081 not currently appointed by the insurer, the insurer shall:

2082 (A) Pay to the producing agent of record of the policy,
2083 for the first year, an amount that is the greater of the
2084 insurer's usual and customary commission for the type of policy
2085 written or a fee equal to the usual and customary commission of
2086 the corporation; or

2087 (B) Offer to allow the producing agent of record of the
2088 policy to continue servicing the policy for a period of not less
2089 than 1 year and offer to pay the agent the greater of the
2090 insurer's or the corporation's usual and customary commission
2091 for the type of policy written.

2092
2093 If the producing agent is unwilling or unable to accept
2094 appointment, the new insurer shall pay the agent in accordance
2095 with sub-sub-sub-subparagraph (A).

2096 (II) When the corporation enters into a contractual
2097 agreement for a take-out plan, the producing agent of record of
2098 the corporation policy is entitled to retain any unearned
2099 commission on the policy, and the insurer shall:

2100 (A) Pay to the producing agent of record of the
2101 corporation policy, for the first year, an amount that is the
2102 greater of the insurer's usual and customary commission for the
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2103 type of policy written or a fee equal to the usual and customary
2104 commission of the corporation; or

2105 (B) Offer to allow the producing agent of record of the
2106 corporation policy to continue servicing the policy for a period
2107 of not less than 1 year and offer to pay the agent the greater
2108 of the insurer's or the corporation's usual and customary
2109 commission for the type of policy written.

2110

2111 If the producing agent is unwilling or unable to accept
2112 appointment, the new insurer shall pay the agent in accordance
2113 with sub-sub-sub-subparagraph (A).

2114 b. With respect to commercial lines residential risks, for
2115 a new application to the corporation for coverage, if the risk
2116 is offered coverage under a policy including wind coverage from
2117 an authorized insurer at its approved rate, the risk is not
2118 eligible for any policy issued by the corporation unless the
2119 premium for coverage from the authorized insurer is more than 15
2120 percent greater than the premium for comparable coverage from
2121 the corporation. If the risk is not able to obtain any such
2122 offer, the risk is eligible for a policy including wind coverage
2123 issued by the corporation. However, with regard to a
2124 policyholder of the corporation or a policyholder removed from
2125 the corporation through an assumption agreement until the end of
2126 the assumption period, the policyholder remains eligible for
2127 coverage from the corporation regardless of any offer of
2128 coverage from an authorized insurer or surplus lines insurer.

2129 (I) If the risk accepts an offer of coverage through the
2130 market assistance plan or an offer of coverage through a

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2131 mechanism established by the corporation before a policy is
2132 issued to the risk by the corporation or during the first 30
2133 days of coverage by the corporation, and the producing agent who
2134 submitted the application to the plan or the corporation is not
2135 currently appointed by the insurer, the insurer shall:

2136 (A) Pay to the producing agent of record of the policy,
2137 for the first year, an amount that is the greater of the
2138 insurer's usual and customary commission for the type of policy
2139 written or a fee equal to the usual and customary commission of
2140 the corporation; or

2141 (B) Offer to allow the producing agent of record of the
2142 policy to continue servicing the policy for a period of not less
2143 than 1 year and offer to pay the agent the greater of the
2144 insurer's or the corporation's usual and customary commission
2145 for the type of policy written.

2146

2147 If the producing agent is unwilling or unable to accept
2148 appointment, the new insurer shall pay the agent in accordance
2149 with sub-sub-sub-subparagraph (A).

2150 (II) When the corporation enters into a contractual
2151 agreement for a take-out plan, the producing agent of record of
2152 the corporation policy is entitled to retain any unearned
2153 commission on the policy, and the insurer shall:

2154 (A) Pay to the producing agent of record of the
2155 corporation policy, for the first year, an amount that is the
2156 greater of the insurer's usual and customary commission for the
2157 type of policy written or a fee equal to the usual and customary
2158 commission of the corporation; or

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2159 (B) Offer to allow the producing agent of record of the
2160 corporation policy to continue servicing the policy for a period
2161 of not less than 1 year and offer to pay the agent the greater
2162 of the insurer's or the corporation's usual and customary
2163 commission for the type of policy written.

2164
2165 If the producing agent is unwilling or unable to accept
2166 appointment, the new insurer shall pay the agent in accordance
2167 with sub-sub-sub-subparagraph (A).

2168 c. For purposes of determining comparable coverage under
2169 sub-subparagraphs a. and b., the comparison shall be based on
2170 those forms and coverages that are reasonably comparable. The
2171 corporation may rely on a determination of comparable coverage
2172 and premium made by the producing agent who submits the
2173 application to the corporation, made in the agent's capacity as
2174 the corporation's agent. A comparison may be made solely of the
2175 premium with respect to the main building or structure only on
2176 the following basis: the same coverage A or other building
2177 limits; the same percentage hurricane deductible that applies on
2178 an annual basis or that applies to each hurricane for commercial
2179 residential property; the same percentage of ordinance and law
2180 coverage, if the same limit is offered by both the corporation
2181 and the authorized insurer; the same mitigation credits, to the
2182 extent the same types of credits are offered both by the
2183 corporation and the authorized insurer; the same method for loss
2184 payment, such as replacement cost or actual cash value, if the
2185 same method is offered both by the corporation and the
2186 authorized insurer in accordance with underwriting rules; and

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2187 any other form or coverage that is reasonably comparable as
2188 determined by the board. If an application is submitted to the
2189 corporation for wind-only coverage in the high-risk account, the
2190 premium for the corporation's wind-only policy plus the premium
2191 for the ex-wind policy that is offered by an authorized insurer
2192 to the applicant shall be compared to the premium for multiperil
2193 coverage offered by an authorized insurer, subject to the
2194 standards for comparison specified in this subparagraph. If the
2195 corporation or the applicant requests from the authorized
2196 insurer a breakdown of the premium of the offer by types of
2197 coverage so that a comparison may be made by the corporation or
2198 its agent and the authorized insurer refuses or is unable to
2199 provide such information, the corporation may treat the offer as
2200 not being an offer of coverage from an authorized insurer at the
2201 insurer's approved rate.

2202 6. Must include rules for classifications of risks and
2203 rates therefor.

2204 7. Must provide that if premium and investment income for
2205 an account attributable to a particular calendar year are in
2206 excess of projected losses and expenses for the account
2207 attributable to that year, such excess shall be held in surplus
2208 in the account. Such surplus shall be available to defray
2209 deficits in that account as to future years and shall be used
2210 for that purpose prior to assessing assessable insurers and
2211 assessable insureds as to any calendar year.

2212 8. Must provide objective criteria and procedures to be
2213 uniformly applied for all applicants in determining whether an
2214 individual risk is so hazardous as to be uninsurable. In making

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2215 this determination and in establishing the criteria and
2216 procedures, the following shall be considered:

2217 a. Whether the likelihood of a loss for the individual
2218 risk is substantially higher than for other risks of the same
2219 class; and

2220 b. Whether the uncertainty associated with the individual
2221 risk is such that an appropriate premium cannot be determined.

2222
2223 The acceptance or rejection of a risk by the corporation shall
2224 be construed as the private placement of insurance, and the
2225 provisions of chapter 120 shall not apply.

2226 9. Must provide that the corporation shall make its best
2227 efforts to procure catastrophe reinsurance at reasonable rates,
2228 to cover its projected 100-year probable maximum loss as
2229 determined by the board of governors.

2230 ~~10. Must provide that in the event of regular deficit~~
2231 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2232 ~~(b)3.b., in the personal lines account, the commercial lines~~
2233 ~~residential account, or the high risk account, the corporation~~
2234 ~~shall levy upon corporation policyholders in its next rate~~
2235 ~~filing, or by a separate rate filing solely for this purpose, a~~
2236 ~~Citizens policyholder surcharge arising from a regular~~
2237 ~~assessment in such account in a percentage equal to the total~~
2238 ~~amount of such regular assessments divided by the aggregate~~
2239 ~~statewide direct written premium for subject lines of business~~
2240 ~~for the prior calendar year. For purposes of calculating the~~
2241 ~~Citizens policyholder surcharge to be levied under this~~
2242 ~~subparagraph, the total amount of the regular assessment to~~

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2243 ~~which this surcharge is related shall be determined as set forth~~
2244 ~~in subparagraph (b)3., without deducting the estimated Citizens~~
2245 ~~policyholder surcharge. Citizens policyholder surcharges under~~
2246 ~~this subparagraph are not considered premium and are not subject~~
2247 ~~to commissions, fees, or premium taxes; however, failure to pay~~
2248 ~~a market equalization surcharge shall be treated as failure to~~
2249 ~~pay premium.~~

2250 10.11. The policies issued by the corporation must provide
2251 that, if the corporation or the market assistance plan obtains
2252 an offer from an authorized insurer to cover the risk at its
2253 approved rates, the risk is no longer eligible for renewal
2254 through the corporation, except as otherwise provided in this
2255 subsection.

2256 11.12. Corporation policies and applications must include
2257 a notice that the corporation policy could, under this section,
2258 be replaced with a policy issued by an authorized insurer that
2259 does not provide coverage identical to the coverage provided by
2260 the corporation. The notice shall also specify that acceptance
2261 of corporation coverage creates a conclusive presumption that
2262 the applicant or policyholder is aware of this potential.

2263 12.13. May establish, subject to approval by the office,
2264 different eligibility requirements and operational procedures
2265 for any line or type of coverage for any specified county or
2266 area if the board determines that such changes to the
2267 eligibility requirements and operational procedures are
2268 justified due to the voluntary market being sufficiently stable
2269 and competitive in such area or for such line or type of
2270 coverage and that consumers who, in good faith, are unable to

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2271 obtain insurance through the voluntary market through ordinary
2272 methods would continue to have access to coverage from the
2273 corporation. When coverage is sought in connection with a real
2274 property transfer, such requirements and procedures shall not
2275 provide for an effective date of coverage later than the date of
2276 the closing of the transfer as established by the transferor,
2277 the transferee, and, if applicable, the lender.

2278 ~~13.14.~~ Must provide that, with respect to the high-risk
2279 account, any assessable insurer with a surplus as to
2280 policyholders of \$25 million or less writing 25 percent or more
2281 of its total countrywide property insurance premiums in this
2282 state may petition the office, within the first 90 days of each
2283 calendar year, to qualify as a limited apportionment company. A
2284 regular assessment levied by the corporation on a limited
2285 apportionment company for a deficit incurred by the corporation
2286 for the high-risk account in 2006 or thereafter may be paid to
2287 the corporation on a monthly basis as the assessments are
2288 collected by the limited apportionment company from its insureds
2289 pursuant to s. 627.3512, but the regular assessment must be paid
2290 in full within 12 months after being levied by the corporation.
2291 A limited apportionment company shall collect from its
2292 policyholders any emergency assessment imposed under sub-
2293 subparagraph (b)3.d. The plan shall provide that, if the office
2294 determines that any regular assessment will result in an
2295 impairment of the surplus of a limited apportionment company,
2296 the office may direct that all or part of such assessment be
2297 deferred as provided in subparagraph (p)4. However, there shall

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2298 be no limitation or deferment of an emergency assessment to be
2299 collected from policyholders under sub-subparagraph (b)3.d.

2300 ~~14.15.~~ Must provide that the corporation appoint as its
2301 licensed agents only those agents who also hold an appointment
2302 as defined in s. 626.015(3) with an insurer who at the time of
2303 the agent's initial appointment by the corporation is authorized
2304 to write and is actually writing personal lines residential
2305 property coverage, commercial residential property coverage, or
2306 commercial nonresidential property coverage within the state.

2307 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
2308 plan option to its policyholders which allows at a minimum for
2309 quarterly and semiannual payment of premiums. A monthly payment
2310 plan may, but is not required to, be offered.

2311 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
2312 homes built prior to 1994 to actual cash value of the dwelling
2313 rather than replacement costs of the dwelling.

2314 ~~17.18.~~ May provide such limits of coverage as the board
2315 determines, consistent with the requirements of this subsection.

2316 ~~18.19.~~ May require commercial property to meet specified
2317 hurricane mitigation construction features as a condition of
2318 eligibility for coverage.

2319 (m)1. Rates for coverage provided by the corporation shall
2320 be actuarially sound and subject to the requirements of s.
2321 627.062, except as otherwise provided in this paragraph. The
2322 corporation shall file its recommended rates with the office at
2323 least annually. The corporation shall provide any additional
2324 information regarding the rates which the office requires. The
2325 office shall consider the recommendations of the board and issue

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2326 a final order establishing the rates for the corporation within
2327 45 days after the recommended rates are filed. The corporation
2328 may not pursue an administrative challenge or judicial review of
2329 the final order of the office.

2330 2. In addition to the rates otherwise determined pursuant
2331 to this paragraph, the corporation shall impose and collect an
2332 amount equal to the premium tax provided for in s. 624.509 to
2333 augment the financial resources of the corporation.

2334 3. After the public hurricane loss-projection model under
2335 s. 627.06281 has been found to be accurate and reliable by the
2336 Florida Commission on Hurricane Loss Projection Methodology,
2337 that model shall serve as the minimum benchmark for determining
2338 the windstorm portion of the corporation's rates. This
2339 subparagraph does not require or allow the corporation to adopt
2340 rates lower than the rates otherwise required or allowed by this
2341 paragraph.

2342 4. The rate filings for the corporation which were
2343 approved by the office and which took effect January 1, 2007,
2344 are rescinded, except for those rates that were lowered. As soon
2345 as possible, the corporation shall begin using the lower rates
2346 that were in effect on December 31, 2006, and shall provide
2347 refunds to policyholders who have paid higher rates as a result
2348 of that rate filing. The rates in effect on December 31, 2006,
2349 shall remain in effect for the 2007 and 2008 calendar years
2350 except for any rate change that results in a lower rate. The
2351 next rate change that may increase rates shall take effect
2352 ~~January 1, 2009,~~ pursuant to a new rate filing recommended by

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2353 the corporation and established by the office, subject to the
2354 requirements of this paragraph.

2355 5. Beginning on July 15, 2009, and each year thereafter,
2356 the corporation must make a recommended actuarially sound rate
2357 filing for each personal and commercial line of business it
2358 writes, to be effective no earlier than January 1, 2010.

2359 (p)1. The corporation shall certify to the office its
2360 needs for annual assessments as to a particular calendar year,
2361 and for any interim assessments that it deems to be necessary to
2362 sustain operations as to a particular year pending the receipt
2363 of annual assessments. Upon verification, the office shall
2364 approve such certification, and the corporation shall levy such
2365 annual or interim assessments. Such assessments shall be
2366 prorated as provided in paragraph (b). The corporation shall
2367 take all reasonable and prudent steps necessary to collect the
2368 amount of assessment due from each assessable insurer,
2369 including, if prudent, filing suit to collect such assessment.
2370 If the corporation is unable to collect an assessment from any
2371 assessable insurer, the uncollected assessments shall be levied
2372 as an additional assessment against the assessable insurers and
2373 any assessable insurer required to pay an additional assessment
2374 as a result of such failure to pay shall have a cause of action
2375 against such nonpaying assessable insurer. Assessments shall be
2376 included as an appropriate factor in the making of rates. The
2377 failure of a surplus lines agent to collect and remit any
2378 regular or emergency assessment levied by the corporation is
2379 considered to be a violation of s. 626.936 and subjects the
2380 surplus lines agent to the penalties provided in that section.

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2381 2. The governing body of any unit of local government, any
2382 residents of which are insured by the corporation, may issue
2383 bonds as defined in s. 125.013 or s. 166.101 from time to time
2384 to fund an assistance program, in conjunction with the
2385 corporation, for the purpose of defraying deficits of the
2386 corporation. In order to avoid needless and indiscriminate
2387 proliferation, duplication, and fragmentation of such assistance
2388 programs, any unit of local government, any residents of which
2389 are insured by the corporation, may provide for the payment of
2390 losses, regardless of whether or not the losses occurred within
2391 or outside of the territorial jurisdiction of the local
2392 government. Revenue bonds under this subparagraph may not be
2393 issued until validated pursuant to chapter 75, unless a state of
2394 emergency is declared by executive order or proclamation of the
2395 Governor pursuant to s. 252.36 making such findings as are
2396 necessary to determine that it is in the best interests of, and
2397 necessary for, the protection of the public health, safety, and
2398 general welfare of residents of this state and declaring it an
2399 essential public purpose to permit certain municipalities or
2400 counties to issue such bonds as will permit relief to claimants
2401 and policyholders of the corporation. Any such unit of local
2402 government may enter into such contracts with the corporation
2403 and with any other entity created pursuant to this subsection as
2404 are necessary to carry out this paragraph. Any bonds issued
2405 under this subparagraph shall be payable from and secured by
2406 moneys received by the corporation from emergency assessments
2407 under sub-subparagraph (b)3.d., and assigned and pledged to or
2408 on behalf of the unit of local government for the benefit of the
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2409 holders of such bonds. The funds, credit, property, and taxing
2410 power of the state or of the unit of local government shall not
2411 be pledged for the payment of such bonds. ~~If any of the bonds~~
2412 ~~remain unsold 60 days after issuance, the office shall require~~
2413 ~~all insurers subject to assessment to purchase the bonds, which~~
2414 ~~shall be treated as admitted assets; each insurer shall be~~
2415 ~~required to purchase that percentage of the unsold portion of~~
2416 ~~the bond issue that equals the insurer's relative share of~~
2417 ~~assessment liability under this subsection. An insurer shall not~~
2418 ~~be required to purchase the bonds to the extent that the office~~
2419 ~~determines that the purchase would endanger or impair the~~
2420 ~~solvency of the insurer.~~

2421 3.a. The corporation shall adopt one or more programs
2422 subject to approval by the office for the reduction of both new
2423 and renewal writings in the corporation. Beginning January 1,
2424 2008, any program the corporation adopts for the payment of
2425 bonuses to an insurer for each risk the insurer removes from the
2426 corporation shall comply with s. 627.3511(2) and may not exceed
2427 the amount referenced in s. 627.3511(2) for each risk removed.
2428 The corporation may consider any prudent and not unfairly
2429 discriminatory approach to reducing corporation writings, and
2430 may adopt a credit against assessment liability or other
2431 liability that provides an incentive for insurers to take risks
2432 out of the corporation and to keep risks out of the corporation
2433 by maintaining or increasing voluntary writings in counties or
2434 areas in which corporation risks are highly concentrated and a
2435 program to provide a formula under which an insurer voluntarily
2436 taking risks out of the corporation by maintaining or increasing

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2437 voluntary writings will be relieved wholly or partially from
2438 assessments under sub-subparagraphs (b)3.a. and b. However, any
2439 "take-out bonus" or payment to an insurer must be conditioned on
2440 the property being insured for at least 5 years by the insurer,
2441 unless canceled or nonrenewed by the policyholder. If the policy
2442 is canceled or nonrenewed by the policyholder before the end of
2443 the 5-year period, the amount of the take-out bonus must be
2444 prorated for the time period the policy was insured. When the
2445 corporation enters into a contractual agreement for a take-out
2446 plan, the producing agent of record of the corporation policy is
2447 entitled to retain any unearned commission on such policy, and
2448 the insurer shall either:

2449 (I) Pay to the producing agent of record of the policy,
2450 for the first year, an amount which is the greater of the
2451 insurer's usual and customary commission for the type of policy
2452 written or a policy fee equal to the usual and customary
2453 commission of the corporation; or

2454 (II) Offer to allow the producing agent of record of the
2455 policy to continue servicing the policy for a period of not less
2456 than 1 year and offer to pay the agent the insurer's usual and
2457 customary commission for the type of policy written. If the
2458 producing agent is unwilling or unable to accept appointment by
2459 the new insurer, the new insurer shall pay the agent in
2460 accordance with sub-sub-subparagraph (I).

2461 b. Any credit or exemption from regular assessments
2462 adopted under this subparagraph shall last no longer than the 3
2463 years following the cancellation or expiration of the policy by
2464 the corporation. With the approval of the office, the board may
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2465 extend such credits for an additional year if the insurer
2466 guarantees an additional year of renewability for all policies
2467 removed from the corporation, or for 2 additional years if the
2468 insurer guarantees 2 additional years of renewability for all
2469 policies so removed.

2470 c. There shall be no credit, limitation, exemption, or
2471 deferment from emergency assessments to be collected from
2472 policyholders pursuant to sub-subparagraph (b)3.d.

2473 4. The plan shall provide for the deferment, in whole or
2474 in part, of the assessment of an assessable insurer, other than
2475 an emergency assessment collected from policyholders pursuant to
2476 sub-subparagraph (b)3.d., if the office finds that payment of
2477 the assessment would endanger or impair the solvency of the
2478 insurer. In the event an assessment against an assessable
2479 insurer is deferred in whole or in part, the amount by which
2480 such assessment is deferred may be assessed against the other
2481 assessable insurers in a manner consistent with the basis for
2482 assessments set forth in paragraph (b).

2483 5. Effective July 1, 2007, in order to evaluate the costs
2484 and benefits of approved take-out plans, if the corporation pays
2485 a bonus or other payment to an insurer for an approved take-out
2486 plan, it shall maintain a record of the address or such other
2487 identifying information on the property or risk removed in order
2488 to track if and when the property or risk is later insured by
2489 the corporation.

2490 6. Any policy taken out, assumed, or removed from the
2491 corporation is, as of the effective date of the take-out,
2492 assumption, or removal, direct insurance issued by the insurer

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2493 and not by the corporation, even if the corporation continues to
2494 service the policies. This subparagraph applies to policies of
2495 the corporation and not policies taken out, assumed, or removed
2496 from any other entity.

2497 (w)1. The following records of the corporation are
2498 confidential and exempt from the provisions of s. 119.07(1) and
2499 s. 24(a), Art. I of the State Constitution:

2500 a. Underwriting files, except that a policyholder or an
2501 applicant shall have access to his or her own underwriting
2502 files. Confidential and exempt underwriting file records may
2503 also be released to other governmental agencies upon written
2504 request and demonstration of need; such records held by the
2505 receiving agency remain confidential and exempt as provided
2506 herein.

2507 b. Claims files, until termination of all litigation and
2508 settlement of all claims arising out of the same incident,
2509 although portions of the claims files may remain exempt, as
2510 otherwise provided by law. Confidential and exempt claims file
2511 records may be released to other governmental agencies upon
2512 written request and demonstration of need; such records held by
2513 the receiving agency remain confidential and exempt as provided
2514 ~~for~~ herein.

2515 c. Records obtained or generated by an internal auditor
2516 pursuant to a routine audit, until the audit is completed, or if
2517 the audit is conducted as part of an investigation, until the
2518 investigation is closed or ceases to be active. An investigation
2519 is considered "active" while the investigation is being
2520 conducted with a reasonable, good faith belief that it could

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2521 | lead to the filing of administrative, civil, or criminal
2522 | proceedings.

2523 | d. Matters reasonably encompassed in privileged attorney-
2524 | client communications.

2525 | e. Proprietary information licensed to the corporation
2526 | under contract and the contract provides for the confidentiality
2527 | of such proprietary information.

2528 | f. All information relating to the medical condition or
2529 | medical status of a corporation employee which is not relevant
2530 | to the employee's capacity to perform his or her duties, except
2531 | as otherwise provided in this paragraph. Information that ~~which~~
2532 | is exempt shall include, but is not limited to, information
2533 | relating to workers' compensation, insurance benefits, and
2534 | retirement or disability benefits.

2535 | g. Upon an employee's entrance into the employee
2536 | assistance program, a program to assist any employee who has a
2537 | behavioral or medical disorder, substance abuse problem, or
2538 | emotional difficulty which affects the employee's job
2539 | performance, all records relative to that participation shall be
2540 | confidential and exempt from the provisions of s. 119.07(1) and
2541 | s. 24(a), Art. I of the State Constitution, except as otherwise
2542 | provided in s. 112.0455(11).

2543 | h. Information relating to negotiations for financing,
2544 | reinsurance, depopulation, or contractual services, until the
2545 | conclusion of the negotiations.

2546 | i. Minutes of closed meetings regarding underwriting
2547 | files, and minutes of closed meetings regarding an open claims
2548 | file until termination of all litigation and settlement of all
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2549 claims with regard to that claim, except that information
2550 otherwise confidential or exempt by law shall ~~will~~ be redacted.

2551 2. If ~~When~~ an authorized insurer is considering
2552 underwriting a risk insured by the corporation, relevant
2553 underwriting files and confidential claims files may be released
2554 to the insurer provided the insurer agrees in writing, notarized
2555 and under oath, to maintain the confidentiality of such files.

2556 If ~~When~~ a file is transferred to an insurer that file is no
2557 longer a public record because it is not held by an agency
2558 subject to the provisions of the public records law.

2559 Underwriting files and confidential claims files may also be
2560 released to staff ~~of~~ and the board of governors of the market
2561 assistance plan established pursuant to s. 627.3515, who must
2562 retain the confidentiality of such files, except such files may
2563 be released to authorized insurers that are considering assuming
2564 the risks to which the files apply, provided the insurer agrees
2565 in writing, notarized and under oath, to maintain the
2566 confidentiality of such files. Finally, the corporation or the
2567 board or staff of the market assistance plan may make the
2568 following information obtained from underwriting files and
2569 confidential claims files available to licensed general lines
2570 insurance agents: name, address, and telephone number of the
2571 residential property owner or insured; location of the risk;
2572 rating information; loss history; and policy type. The receiving
2573 licensed general lines insurance agent must retain the
2574 confidentiality of the information received.

2575 3. A policyholder who has filed suit against the
2576 corporation has the right to discover the contents of his or her

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2577 own claims file to the same extent that discovery of such
2578 contents would be available from a private insurer in litigation
2579 as provided by the Florida Rules of Civil Procedure, the Florida
2580 Evidence Code, and other applicable law. Pursuant to subpoena, a
2581 third party has the right to discover the contents of an
2582 insured's or applicant's underwriting or claims file to the same
2583 extent that discovery of such contents would be available from a
2584 private insurer by subpoena as provided by the Florida Rules of
2585 Civil Procedure, the Florida Evidence Code, and other applicable
2586 law, and subject to any confidentiality protections requested by
2587 the corporation and agreed to by the seeking party or ordered by
2588 the court. The corporation may release confidential underwriting
2589 and claims file contents and information as it deems necessary
2590 and appropriate to underwrite or service insurance policies and
2591 claims, subject to any confidentiality protections deemed
2592 necessary and appropriate by the corporation.

2593 4.2- Portions of meetings of the corporation are exempt
2594 from the provisions of s. 286.011 and s. 24(b), Art. I of the
2595 State Constitution wherein confidential underwriting files or
2596 confidential open claims files are discussed. All portions of
2597 corporation meetings which are closed to the public shall be
2598 recorded by a court reporter. The court reporter shall record
2599 the times of commencement and termination of the meeting, all
2600 discussion and proceedings, the names of all persons present at
2601 any time, and the names of all persons speaking. No portion of
2602 any closed meeting shall be off the record. Subject to the
2603 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
2604 notes of any closed meeting shall be retained by the corporation

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2605 for a minimum of 5 years. A copy of the transcript, less any
2606 exempt matters, of any closed meeting wherein claims are
2607 discussed shall become public as to individual claims after
2608 settlement of the claim.

2609 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2610 ~~the risk being no longer eligible for coverage due to being~~
2611 ~~valued at \$1 million or more, the corporation shall, directly or~~
2612 ~~through the market assistance plan, make information from~~
2613 ~~confidential underwriting and claims files of policyholders~~
2614 ~~available only to licensed general lines agents who register~~
2615 ~~with the corporation to receive such information according to~~
2616 ~~the following procedures:~~

2617 ~~2. By August 1, 2006, the corporation shall provide such~~
2618 ~~policyholders who are not eligible for renewal the opportunity~~
2619 ~~to request in writing, within 30 days after the notification is~~
2620 ~~sent, that information from their confidential underwriting and~~
2621 ~~claims files not be released to licensed general lines agents~~
2622 ~~registered pursuant to this paragraph.~~

2623 ~~3. By August 1, 2006, the corporation shall make available~~
2624 ~~to licensed general lines agents the registration procedures to~~
2625 ~~be used to obtain confidential information from underwriting and~~
2626 ~~claims files for such policies not eligible for renewal. As a~~
2627 ~~condition of registration, the corporation shall require the~~
2628 ~~licensed general lines agent to attest that the agent has the~~
2629 ~~experience and relationships with authorized or surplus lines~~
2630 ~~carriers to attempt to offer replacement coverage for such~~
2631 ~~policies.~~

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2632 ~~4. By September 1, 2006, the corporation shall make~~
2633 ~~available through a secured website to licensed general lines~~
2634 ~~agents registered pursuant to this paragraph application,~~
2635 ~~rating, loss history, mitigation, and policy type information~~
2636 ~~relating to such policies not eligible for renewal and for which~~
2637 ~~the policyholder has not requested the corporation withhold such~~
2638 ~~information. The registered licensed general lines agent may use~~
2639 ~~such information to contact and assist the policyholder in~~
2640 ~~securing replacement policies, and the agent may disclose to the~~
2641 ~~policyholder that such information was obtained from the~~
2642 ~~corporation.~~

2643 ~~(dd)~~(ee) The assets of the corporation may be invested and
2644 managed by the State Board of Administration.

2645 ~~(ee)~~(ff) The office may establish a pilot program to offer
2646 optional sinkhole coverage in one or more counties or other
2647 territories of the corporation for the purpose of implementing
2648 s. 627.706, as amended by s. 30, chapter 2007-1, Laws of
2649 Florida. Under the pilot program, the corporation is not
2650 required to issue a notice of nonrenewal to exclude sinkhole
2651 coverage upon the renewal of existing policies, but may exclude
2652 such coverage using a notice of coverage change.

2653 Section 14. Paragraph (b) of subsection (2) of section
2654 627.4133, Florida Statutes, is amended to read:

2655 627.4133 Notice of cancellation, nonrenewal, or renewal
2656 premium.--

2657 (2) With respect to any personal lines or commercial
2658 residential property insurance policy, including, but not
2659 limited to, any homeowner's, mobile home owner's, farmowner's,
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2660 condominium association, condominium unit owner's, apartment
2661 building, or other policy covering a residential structure or
2662 its contents:

2663 (b) The insurer shall give the named insured written
2664 notice of nonrenewal, cancellation, or termination at least 100
2665 days prior to the effective date of the nonrenewal,
2666 cancellation, or termination. However, the insurer shall give at
2667 least 100 days' written notice, or written notice by June 1,
2668 whichever is earlier, for any nonrenewal, cancellation, or
2669 termination that would be effective between June 1 and November
2670 30. The notice must include the reason or reasons for the
2671 nonrenewal, cancellation, or termination, except that:

2672 1. The insurer shall give the named insured written notice
2673 of nonrenewal, cancellation, or termination at least 180 days
2674 prior to the effective date of the nonrenewal, cancellation, or
2675 termination for a named insured whose residential structure has
2676 been insured by that insurer or an affiliated insurer for at
2677 least a 5-year period immediately prior to date of the written
2678 notice.

2679 ~~2.1-~~ When cancellation is for nonpayment of premium, at
2680 least 10 days' written notice of cancellation accompanied by the
2681 reason therefor shall be given. As used in this subparagraph,
2682 the term "nonpayment of premium" means failure of the named
2683 insured to discharge when due any of her or his obligations in
2684 connection with the payment of premiums on a policy or any
2685 installment of such premium, whether the premium is payable
2686 directly to the insurer or its agent or indirectly under any
2687 premium finance plan or extension of credit, or failure to

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2688 maintain membership in an organization if such membership is a
2689 condition precedent to insurance coverage. "Nonpayment of
2690 premium" also means the failure of a financial institution to
2691 honor an insurance applicant's check after delivery to a
2692 licensed agent for payment of a premium, even if the agent has
2693 previously delivered or transferred the premium to the insurer.
2694 If a dishonored check represents the initial premium payment,
2695 the contract and all contractual obligations shall be void ab
2696 initio unless the nonpayment is cured within the earlier of 5
2697 days after actual notice by certified mail is received by the
2698 applicant or 15 days after notice is sent to the applicant by
2699 certified mail or registered mail, and if the contract is void,
2700 any premium received by the insurer from a third party shall be
2701 refunded to that party in full.

2702 ~~3.2-~~ When such cancellation or termination occurs during
2703 the first 90 days during which the insurance is in force and the
2704 insurance is canceled or terminated for reasons other than
2705 nonpayment of premium, at least 20 days' written notice of
2706 cancellation or termination accompanied by the reason therefor
2707 shall be given except where there has been a material
2708 misstatement or misrepresentation or failure to comply with the
2709 underwriting requirements established by the insurer.

2710 ~~4.3-~~ The requirement for providing written notice of
2711 nonrenewal by June 1 of any nonrenewal that would be effective
2712 between June 1 and November 30 does not apply to the following
2713 situations, but the insurer remains subject to the requirement
2714 to provide such notice at least 100 days prior to the effective
2715 date of nonrenewal:

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2716 a. A policy that is nonrenewed due to a revision in the
2717 coverage for sinkhole losses and catastrophic ground cover
2718 collapse pursuant to s. 627.730, as amended by s. 30, chapter
2719 2007-1, Laws of Florida.

2720 b. A policy that is nonrenewed by Citizens Property
2721 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2722 that has been assumed by an authorized insurer offering
2723 replacement or renewal coverage to the policyholder.

2724
2725 After the policy has been in effect for 90 days, the policy
2726 shall not be canceled by the insurer except when there has been
2727 a material misstatement, a nonpayment of premium, a failure to
2728 comply with underwriting requirements established by the insurer
2729 within 90 days of the date of effectuation of coverage, or a
2730 substantial change in the risk covered by the policy or when the
2731 cancellation is for all insureds under such policies for a given
2732 class of insureds. This paragraph does not apply to individually
2733 rated risks having a policy term of less than 90 days.

2734 Section 15. Effective January 1, 2011, section 689.262,
2735 Florida Statutes, is created to read:

2736 689.262 Sale of residential property; disclosure of
2737 windstorm mitigation rating.--A purchaser of residential
2738 property that is located in the wind-borne debris region, as
2739 defined in s. 1609.2 of the International Building Code(2006),
2740 must be informed of the windstorm mitigation rating of the
2741 structure, based on the uniform home grading scale adopted
2742 pursuant to s. 215.55865. The rating must be included in the
2743 contract for sale or as a separate document attached to the

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2744 contract for sale. The Financial Services Commission may adopt
2745 rules, consistent with other state laws, to administer this
2746 section, including the form of the disclosure and the
2747 requirements for the windstorm mitigation inspection or report
2748 that is required for purposes of determining the rating.

2749 Section 16. (1) By December 15, 2008, Citizens Property
2750 Insurance Corporation shall transfer \$250 million to the General
2751 Revenue Fund, from the personal lines account and the commercial
2752 lines account only, if the combined surplus of the personal
2753 lines account and commercial lines account as defined in s.
2754 627.351(6), Florida Statutes, exceeds \$1 billion. The board of
2755 governors of Citizens Property Insurance Corporation must make a
2756 reasonable estimate of such surplus on or after December 1,
2757 2008, and no later than December 14, 2008, using generally
2758 accepted actuarial and accounting practices, recognizing that
2759 audited financial statements will not yet be available.

2760 (2) Beginning July 1, 2009, the board shall make quarterly
2761 transfers of any interest earned prior to the issuance of any
2762 surplus notes, interest paid, and principal repaid to the state
2763 for any surplus notes issued by the program after December 1,
2764 2008, to Citizens Property Insurance Corporation, provided such
2765 surplus notes were funded exclusively by an appropriation to the
2766 program by the Legislature for the 2008-2009 fiscal year. The
2767 corporation shall credit each account as defined in s.
2768 627.351(6) in a pro rata manner for the funds removed from each
2769 account to make the transfer required by subsection (1).

2770 (3) On July 1, 2009, the State Board of Administration
2771 shall transfer to Citizens Property Insurance Corporation any

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2772 funds that have not been committed or reserved for insurers
2773 approved to receive such funds under the program from the funds
2774 that were appropriated from the corporation in 2008-2009 for
2775 such purposes.

2776 Section 17. Citizens Property Insurance Corporation may
2777 not use any amendments made to s. 215.5595, Florida Statutes, by
2778 this act or any transfer of funds authorized by this act as
2779 justification or cause in seeking any rate or assessment
2780 increase.

2781 Section 18. Subsection (3) is added to section 627.06281,
2782 Florida Statutes, to read:

2783 627.06281 Public hurricane loss projection model;
2784 reporting of data by insurers.--

2785 (3) (a) A residential property insurer may have access to
2786 and use the public hurricane loss projection model, including
2787 all assumptions and factors and all detailed loss results, for
2788 the purpose of calculating rate indications in a rate filing and
2789 for analytical purposes, including any analysis or evaluation of
2790 the model required under actuarial standards of practice.

2791 (b) By January 1, 2009, the office shall establish by rule
2792 a fee schedule for access to and the use of the model. The fee
2793 schedule must be reasonably calculated to cover only the actual
2794 costs of providing access to and the use of the model.

2795 Section 19. Section 627.0655, Florida Statutes, is amended
2796 to read:

2797 627.0655 Policyholder loss or expense-related premium
2798 discounts.--An insurer or person authorized to engage in the
2799 business of insurance in this state may include, in the premium
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2800 charged an insured for any policy, contract, or certificate of
2801 insurance, a discount based on the fact that another policy,
2802 contract, or certificate of any type has been purchased by the
2803 insured from the same insurer or insurer group, the Citizens
2804 Property Insurance Corporation created under s. 627.351(6) if
2805 the same insurance agent is servicing both policies, or an
2806 insurer that has removed the policy from the Citizens Property
2807 Insurance Corporation if the same insurance agent is servicing
2808 both policies.

2809 Section 20. (1) The Citizens Property Insurance
2810 Corporation Mission Review Task Force is created to analyze and
2811 compile available data and to develop a report setting forth the
2812 statutory and operational changes needed to return Citizens
2813 Property Insurance Corporation to its former role as a state-
2814 created, noncompetitive residual market mechanism that provides
2815 property insurance coverage to risks that are otherwise entitled
2816 but unable to obtain such coverage in the private insurance
2817 market. The task force shall submit a report to the Governor,
2818 the President of the Senate, and the Speaker of the House of
2819 Representatives by January 31, 2009. At a minimum, the task
2820 force shall analyze and evaluate relevant and applicable
2821 information and data and develop recommendations concerning:

2822 (a) The nature of Citizens Property Insurance
2823 Corporation's role in providing property insurance coverage only
2824 if such coverage is not available from private insurers.

2825 (b) The ability of the admitted market to offer policies
2826 to those consumers formerly insured through Citizens Property
2827 Insurance Corporation. This consideration shall include, but not

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2828 be limited to, the availability of private market reinsurance
2829 and coverage through the Florida Hurricane Catastrophe Fund and
2830 the capacity of the industry to offer policies to former
2831 Citizens Property Insurance Corporation policyholders within
2832 existing writing ratio limitations.

2833 (c) The relationship of rates charged by Citizens Property
2834 Insurance Corporation to rates charged by private insurers, with
2835 due consideration for the corporation's role as a noncompetitive
2836 residual market mechanism.

2837 (d) The relationships between the exposure of Citizens
2838 Property Insurance Corporation to catastrophic hurricane losses,
2839 the corporation's history of purchasing any reinsurance
2840 coverage, and the corporation's capital capacity to meet its
2841 potential claim obligations without incurring large deficits.

2842 (e) The projected assessments on all policies required to
2843 offset the lack of capitol to pay claims.

2844 (f) The projections under paragraph (e) shall be specific
2845 to losses of \$3 billion, \$12 billion, and \$23 billion caused by
2846 a storm or a group of storms in any given year.

2847 (g) The operational implications of the variation in the
2848 number of policies in force over time in Citizens Property
2849 Insurance Corporation and the merits of outsourcing some or all
2850 of its operational responsibilities.

2851 (h) Changes in the mission and operations of Citizens
2852 Property Insurance Corporation to reduce or eliminate any
2853 adverse effect such mission and operations may be having on the
2854 promotion of sound and economic growth and development of the
2855 coastal areas of this state.

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2856 (i) Appropriate and consistent geographic boundaries of
2857 the high-risk account.

2858 (j) The rankings, by county, of the average approved rates
2859 in Citizens Property Insurance Corporation and any savings
2860 associated with policyholder choice in selecting Citizens.

2861 (2) The task force shall be composed of 11 members as
2862 follows:

2863 (a) Two members appointed by the Speaker of the House of
2864 Representatives.

2865 1. One member representing a property and casualty
2866 residential insurer that provides at least 150,000 homeowner's
2867 insurance policies in this state at the time of the creation of
2868 the task force.

2869 2. One member representing a surplus lines insurance
2870 company.

2871 (b) Two members appointed by the President of the
2872 Senate.

2873 1. One member representing a property and casualty
2874 commercial non-residential insurer.

2875 2. One member representing a property and casualty
2876 residential insurer with fewer than 150,000 homeowner's policies
2877 in this state at the time of the creation of the task force.

2878 (c) Three members appointed by the Governor who are not
2879 employed by or professionally affiliated with an insurance
2880 company or a subsidiary of an insurance company, at least one of
2881 whom must be consumer advocates or members of a consumer
2882 advocacy organization or agency.

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2883 (d) Two members appointed by the Chief Financial Officer
2884 representing insurance agents in this state.

2885 (e) One member representing Citizens Property Insurance
2886 Corporation selected by Citizens Chairman of the Board.

2887 (f) The Commissioner of Insurance Regulation or his or her
2888 designee.

2889 (3) The task force shall conduct research, hold public
2890 meetings, receive testimony, employ consultants and
2891 administrative staff, and undertake other activities determined
2892 by its members to be necessary to complete its responsibilities.
2893 Citizens Property Insurance Corporation shall have appropriate
2894 senior staff attend task force meetings, shall respond to
2895 requests for testimony and data by the task force, shall
2896 otherwise cooperate with the task force, and shall provide
2897 funding for the necessary costs of implementing the provisions
2898 of this section.

2899 (4) A member of the task force may not delegate his or her
2900 attendance or voting power to a designee.

2901 (5) Members of the task force shall serve without
2902 compensation but are entitled to receive reimbursement for
2903 travel and per diem as provided in s. 112.061, Florida Statutes.

2904 (6) The appointments to the task force must be completed
2905 within 30 calendar days after the effective date of this act,
2906 and the task force must hold its initial meeting within 1 month
2907 after appointment of all members. The task force shall expire no
2908 later than 60 calendar days after submission of the report
2909 required in subsection (1).

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2910 Section 21. The Chief Financial Officer shall provide a
2911 report on the economic impact on the state of a 1-in-100-year
2912 hurricane to the Governor, the President of the Senate, and the
2913 Speaker of the House of Representatives by March 1 of each year.
2914 The report shall include an estimate of the short-term and long-
2915 term fiscal impacts of such a storm on Citizens Property
2916 Insurance Corporation, the Florida Hurricane Catastrophe Fund,
2917 the private insurance and reinsurance markets, the state
2918 economy, and the state debt. The report shall also include an
2919 analysis of the average premium increase to fund a 1-in-100-year
2920 hurricane event and list the average cost, in both a percentage
2921 and dollar amount, impact to consumers on a county-level basis.
2922 The report may also include recommendations by the Chief
2923 Financial Officer for preparing for such a hurricane and
2924 reducing the economic impact of such a hurricane on the state.
2925 In preparing the analysis, the Chief Financial Officer shall
2926 coordinate with and obtain data from the Office of Insurance
2927 Regulation, Citizens Property Insurance Corporation, the Florida
2928 Hurricane Catastrophe Fund, the Florida Commission on Hurricane
2929 Loss Projection Methodology, the State Board of Administration,
2930 the Office of Economic and Demographic Research, and other state
2931 agencies.

2932 Section 22. Section 627.0621, Florida Statutes, is created
2933 to read:

2934 627.0621 Transparency in rate regulation.--

2935 (1) DEFINITIONS.--As used in this section, the term:

2936 (a) "Rate filing" means any original or amended rate
2937 residential property insurance filing.

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2938 (b) "Recommendation" means any proposed, preliminary, or
2939 final recommendation from an office actuary reviewing a rate
2940 filing with respect to the issue of approval or disapproval of
2941 the rate filing or with respect to rate indications that the
2942 office would consider acceptable.

2943 (2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING
2944 INFORMATION.--With respect to any rate filing made on after July
2945 1, 2008, the office shall provide the following information on a
2946 publicly accessible Internet website:

2947 (a) The overall rate change requested by the insurer.

2948 (b) All assumptions made by the office's actuaries.

2949 (c) A statement describing any assumptions or methods that
2950 deviate from the actuarial standards of practice of the Casualty
2951 Actuarial Society or the American Academy of Actuaries,
2952 including an explanation of the nature, rationale, and effect of
2953 the deviation.

2954 (d) All recommendations made by any office actuary who
2955 reviewed the rate filing.

2956 (e) Certification by the office's actuary that, based on
2957 the actuary's knowledge, his or her recommendations are
2958 consistent with accepted actuarial principles.

2959 (f) The overall rate change approved by the office.

2960 (3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT.--It is the
2961 intent of the Legislature that the principles of the public
2962 records and open meetings laws apply to the assertion of
2963 attorney-client privilege and work product confidentiality by
2964 the office in connection with a challenge to its actions on a
2965 rate filing. Therefore, in any administrative or judicial

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2966 proceeding relating to a rate filing, attorney-client privilege
2967 and work product exemptions from disclosure do not apply to
2968 communications with office attorneys or records prepared by or
2969 at the direction of an office attorney, except when the
2970 conditions of paragraphs (a) and (b) have been met:

2971 (a) The communication or record reflects a mental
2972 impression, conclusion, litigation strategy, or legal theory of
2973 the attorney or office that was prepared exclusively for civil
2974 or criminal litigation or adversarial administrative
2975 proceedings.

2976 (b) The communication occurred or the record was prepared
2977 after the initiation of an action in a court of competent
2978 jurisdiction, after the issuance of a notice of intent to deny a
2979 rate filing, or after the filing of a request for a proceeding
2980 under ss. 120.569 and 120.57.

2981 Section 23. Paragraph (b) of subsection (4) of section
2982 215.555, Florida Statutes, is amended to read:

2983 215.555 Florida Hurricane Catastrophe Fund.--

2984 (4) REIMBURSEMENT CONTRACTS.--

2985 (b)1. The contract shall contain a promise by the board to
2986 reimburse the insurer for 45 percent, 75 percent, or 90 percent
2987 of its losses from each covered event in excess of the insurer's
2988 retention, plus 5 percent of the reimbursed losses to cover loss
2989 adjustment expenses.

2990 2. The insurer must elect one of the percentage coverage
2991 levels specified in this paragraph and may, upon renewal of a
2992 reimbursement contract, elect a lower percentage coverage level
2993 if no revenue bonds issued under subsection (6) after a covered
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2994 event are outstanding, or elect a higher percentage coverage
2995 level, regardless of whether or not revenue bonds are
2996 outstanding. All members of an insurer group must elect the same
2997 percentage coverage level. Any joint underwriting association,
2998 risk apportionment plan, or other entity created under s.
2999 627.351 must elect the 90-percent coverage level.

3000 3. The contract shall provide that reimbursement amounts
3001 shall not be reduced by reinsurance paid or payable to the
3002 insurer from other sources.

3003 4. Notwithstanding any other provision contained in this
3004 section, the board shall make available to insurers that
3005 purchased coverage provided by this subparagraph in 2007 ~~2006~~,
3006 insurers qualifying as limited apportionment companies under s.
3007 627.351(6)(c), and insurers that have been ~~were~~ approved to
3008 participate in ~~2006 or that are approved in 2007~~ for the
3009 Insurance Capital Build-Up Incentive Program pursuant to s.
3010 215.5595, a contract or contract addendum that provides an
3011 additional amount of reimbursement coverage of up to \$10
3012 million. The premium to be charged for this additional
3013 reimbursement coverage shall be 50 percent of the additional
3014 reimbursement coverage provided, which shall include one prepaid
3015 reinstatement. The minimum retention level that an eligible
3016 participating insurer must retain associated with this
3017 additional coverage layer is 30 percent of the insurer's surplus
3018 as of December 31, 2007 ~~2006~~. This coverage shall be in addition
3019 to all other coverage that may be provided under this section.
3020 The coverage provided by the fund under this subparagraph shall
3021 be in addition to the claims-paying capacity as defined in

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3022 subparagraph (c)1., but only with respect to those insurers that
3023 select the additional coverage option and meet the requirements
3024 of this subparagraph. The claims-paying capacity with respect to
3025 all other participating insurers and limited apportionment
3026 companies that do not select the additional coverage option
3027 shall be limited to their reimbursement premium's proportionate
3028 share of the actual claims-paying capacity otherwise defined in
3029 subparagraph (c)1. and as provided for under the terms of the
3030 reimbursement contract. Coverage provided in the reimbursement
3031 contract shall ~~will~~ not be affected by the additional premiums
3032 paid by participating insurers exercising the additional
3033 coverage option allowed in this subparagraph. This subparagraph
3034 expires on May 31, 2009 ~~2008~~.

3035 Section 24. Subsection (1) of section 627.0613, Florida
3036 Statutes, is amended to read:

3037 627.0613 Consumer advocate.--The Chief Financial Officer
3038 must appoint a consumer advocate who must represent the general
3039 public of the state before the department and the office. The
3040 consumer advocate must report directly to the Chief Financial
3041 Officer, but is not otherwise under the authority of the
3042 department or of any employee of the department. The consumer
3043 advocate has such powers as are necessary to carry out the
3044 duties of the office of consumer advocate, including, but not
3045 limited to, the powers to:

3046 (1) Recommend to the department or office, by petition,
3047 the commencement of any proceeding or action; appear in any
3048 proceeding or action before the department or office; or appear
3049 in any proceeding before the Division of Administrative Hearings
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3050 ~~er arbitration panel specified in s. 627.062(6)~~ relating to
3051 subject matter under the jurisdiction of the department or
3052 office.

3053 Section 25. Subsections (1) and (2) of section 627.712,
3054 Florida Statutes, are amended to read:

3055 627.712 Residential windstorm coverage required;
3056 availability of exclusions for windstorm or contents.--

3057 (1) An insurer issuing a residential property insurance
3058 policy must provide windstorm coverage. Except as provided in
3059 paragraph (2)(c), this section subsection does not apply with
3060 respect to risks that are eligible for wind-only coverage from
3061 Citizens Property Insurance Corporation under s. 627.351(6).

3062 (2) A property insurer must make available, at the option
3063 of the policyholder, an exclusion of windstorm coverage.

3064 (a) The coverage may be excluded only if:

3065 ~~(a)~~1. When the policyholder is a natural person, the
3066 policyholder personally writes and provides to the insurer the
3067 following statement in his or her own handwriting and signs his
3068 or her name, which must also be signed by every other named
3069 insured on the policy, and dated: "I do not want the insurance
3070 on my (home/mobile home/condominium unit) to pay for damage from
3071 windstorms. I will pay those costs. My insurance will not."

3072 2. When the policyholder is other than a natural person,
3073 the policyholder provides to the insurer on the policyholder's
3074 letterhead the following statement that must be signed by the
3075 policyholder's authorized representative and dated: " (Name of
3076 entity) does not want the insurance on its (type of
3077 structure) to pay for damage from windstorms. (Name of

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3078 entity) will be responsible for these costs. (Name of
3079 entity's) insurance will not."

3080 (b) If the structure insured by the policy is subject to a
3081 mortgage or lien, the policyholder must provide the insurer with
3082 a written statement from the mortgageholder or lienholder
3083 indicating that the mortgageholder or lienholder approves the
3084 policyholder electing to exclude windstorm coverage or hurricane
3085 coverage from his or her or its property insurance policy.

3086 (c) If the residential structure is eligible for wind-only
3087 coverage from Citizens Property Insurance Corporation, an
3088 insurer nonrenewing a policy and issuing a replacement policy,
3089 or issuing a new policy, that does not provide wind coverage
3090 shall provide a notice to the mortgageholder or lienholder
3091 indicating the policyholder has elected coverage that does not
3092 cover wind.

3093 Section 26. The provisions of this act shall supersede and
3094 control over any conflicting provisions adopted in House Bill
3095 5057, 2008 Regular Session, to the extent of such conflict, if
3096 that bill becomes a law.

3097 Section 27. Except as otherwise expressly provided in this
3098 act, this act shall take effect July 1, 2008.

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

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3106 Remove the entire title and insert:
3107 A bill to be entitled
3108 An act relating to insurance; providing a short title; amending
3109 s. 215.5595, F.S.; revising legislative findings; providing for
3110 an appropriation of state funds in exchange for surplus notes
3111 issued by residential property insurers under the program;
3112 revising the conditions and requirements for providing funds to
3113 insurers under the program; requiring a commitment by the
3114 insurer to meet minimum premium-to-surplus writing ratios for
3115 residential property insurance and for taking policies out of
3116 Citizens Property Insurance Corporation; requiring insurers to
3117 commit to maintaining certain levels of surplus and reinsurance;
3118 authorizing the State Board of Administration to charge a fee
3119 for late payments; providing for payment of costs and fees
3120 incurred by the board in administering the program from funds
3121 appropriated to the program, subject to a specified limit;
3122 requiring the board to submit an annual report to the
3123 Legislature on the program and insurer compliance with certain
3124 requirements; providing that amendments made by the act do not
3125 affect the terms of surplus notes approved prior to a specified
3126 date; authorizing the State Board of Administration and an
3127 insurer to renegotiate such terms consistent with such
3128 amendments; requiring the State Board of Administration to
3129 transfer to Citizens Property Insurance Corporation certain
3130 uncommitted or unreserved funds; amending s. 624.3161, F.S. ;
3131 authorizing the Office of Insurance Regulation to require an
3132 insurer to file its claims handling practices and procedures as
3133 a public record based on findings of a market conduct

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3134 examination; amending s. 624.4211, F.S.; increasing the maximum
3135 amounts of administrative fines that may be imposed upon an
3136 insurer by the Office of Insurance Regulation for nonwillful and
3137 willful violations of an order or rule of the office or any
3138 provision of the Florida Insurance Code; creating s. 624.4213,
3139 F.S.; specifying requirements for submission of a document or
3140 information to the Office of Insurance Regulation or the
3141 Department of Financial Services in order for a person to claim
3142 that the document is a trade secret; requiring each page or
3143 portion to be labeled as a trade secret and be separated from
3144 non-trade secret material; requiring the submitting party to
3145 include an affidavit certifying certain information about the
3146 documents claimed to be trade secrets; requiring the office or
3147 department to notify persons who submit trade secret documents
3148 of any public-records request and the opportunity to file a
3149 court action to bar disclosure; specifying conditions for the
3150 office to retain or release such documents; creating s.
3151 624.4305, F.S.; requiring that an insurer planning to nonrenew
3152 more than a specified number of residential property insurance
3153 policies notify the Office of Insurance Regulation and obtain
3154 approval for such nonrenewals; specifying procedures for
3155 issuance of such notice; amending s. 626.9521, F.S.; increasing
3156 the maximum fines that may be imposed by the office or
3157 department for nonwillful and willful violations of state law
3158 regarding unfair methods of competition and unfair or deceptive
3159 acts or practices related to insurance; amending s. 626.9541,
3160 F.S.; specifying an additional unfair claims settlement
3161 practice; amending s. 627.0612, F.S.; providing criteria for
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3162 administrative hearings to determine whether an insurer's
3163 property insurance rates, rating manuals, premium credits,
3164 discount schedules, and surcharge schedules comply with the law;
3165 providing for entry of certain orders; amending s. 627.062,
3166 F.S.; requiring that an insurer seeking a rate for property
3167 insurance that is greater than the rate most recently approved
3168 by the Office of Insurance Regulation make a "file and use"
3169 filing for all such rate filings made after a specified date;
3170 revising the factors the office must consider in reviewing a
3171 rate filing; prohibiting the Office of Insurance Regulation from
3172 disapproving as excessive a rate solely because the insurer
3173 obtained reinsurance covering a specified probably maximum loss;
3174 allowing the office to disapprove a rate as excessive within 1
3175 year after the rate has been approved under certain conditions
3176 related to nonrenewal of policies by the insurer; requiring the
3177 Division of Administrative Hearings to expedite a hearing
3178 request by an insurer and for the administrative law judge to
3179 commence the hearing within a specified time; authorizing an
3180 insurer to request an expedited appellate review pursuant to the
3181 Florida Rules of Appellate Procedure; expressing legislative
3182 intent for an expedited appellate review; revising provisions
3183 relating to the submission of a disputed rate filing, other than
3184 a rate filing for medical malpractice insurance, to an
3185 arbitration panel in lieu of an administrative hearing if the
3186 rate is filed before a specified date; deleting provisions
3187 relating to mandatory arbitration in lieu of certain hearings;
3188 amending s. 627.0628, F.S.; providing legislative findings
3189 relating to final agency action for insurance ratemaking;

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3190 requiring the Financial Services Commission to consider and
3191 adopt findings relating to certain actuarial models, principles,
3192 standards, or models for certain maximum loss level
3193 calculations; requiring that with respect to rate filings,
3194 insurers must use actuarial methods or models found to be
3195 accurate or reliable by the Florida Commission on Hurricane Loss
3196 Projection Methodology; deleting the requirement for the Office
3197 of Insurance Regulation and the Consumer Advocate to have access
3198 to all assumptions of a hurricane loss model in order for a
3199 model that has been found to be accurate and reliable by the
3200 Florida Commission on Hurricane Loss Projection Methodology to
3201 be admissible in a rate proceeding; deleting cross-references to
3202 conform to changes made by the act; amending s. 627.0629, F.S.;
3203 requiring that the Office of Insurance Regulation develop and
3204 make publicly available before a specified deadline a proposed
3205 method for insurers to establish windstorm mitigation premium
3206 discounts that correlate to the uniform home rating scale;
3207 requiring that the Financial Services Commission adopt rules
3208 before a specified deadline; requiring insurers to make rate
3209 filings pursuant to such method; authorizing the commission to
3210 make changes by rule to the uniform home grading scale and
3211 specify by rule the minimum required discounts, credits, or
3212 other rate differentials; requiring that such rate differentials
3213 be consistent with generally accepted actuarial principles and
3214 wind loss mitigation studies; amending s. 627.351, F.S.,
3215 relating to Citizens Property Insurance Corporation; deleting a
3216 provision to conform to changes made in the act; deleting
3217 provisions defining the terms "homestead property" and

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3218 "nonhomestead property"; increasing threshold replacement costs
3219 of certain structures for eligibility for coverage by the
3220 corporation; deleting requirements for certain properties to
3221 meeting building code plus requirements as a condition of
3222 eligibility for coverage by the corporation; decreasing the
3223 value at which certain structures are eligible for coverage;
3224 requiring written disclosure of windstorm mitigation ratings for
3225 certain structures; deleting outdated provisions requiring the
3226 corporation to submit a report for approval of offering
3227 multiperil coverage; revising threshold amounts of deficits
3228 incurred in a calendar year on which the decision to levy
3229 assessments and the types of such assessments are based;
3230 revising the formula used to calculate shares of assessments
3231 owed by certain assessable insureds; requiring that the board of
3232 governors make certain determinations before levying emergency
3233 assessments; providing the board of governors with discretion to
3234 set the amount of an emergency assessment within specified
3235 limits; requiring the board of governors to levy a Citizens
3236 policyholder surcharge under certain conditions; increasing the
3237 amount of the surcharge; deleting a provision requiring the levy
3238 of an immediate assessment against certain policyholders under
3239 such conditions; requiring that funds collected from the levy of
3240 such surcharges be used for certain purposes; providing that
3241 such surcharges are not considered premium and are not subject
3242 to commissions, fees, or premium taxes; requiring that the
3243 failure to pay such surcharges be treated as failure to pay
3244 premium; requiring that the amount of any assessment or
3245 surcharge which exceeds the amount of deficits be remitted to

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3246 and used by the corporation for specified purposes; deleting
3247 provisions requiring that the plan of operation of the
3248 corporation provide for the levy of a Citizens policyholder
3249 surcharge if regular deficit assessments are levied as a result
3250 of deficits in certain accounts; deleting provisions related to
3251 the calculation, classification, and nonpayment of such
3252 surcharge; requiring that the corporation make an annual filing
3253 for each personal or commercial line of business it writes,
3254 beginning on a specified date; deleting a provision requiring an
3255 insurer to purchase bonds that remain unsold; deleting
3256 provisions requiring the corporation to make certain
3257 confidential underwriting and claims files available to agents
3258 to conform to changes made by the act relating to ineligibility
3259 of certain dwellings; clarifying the right of certain parties to
3260 discover underwriting and claims file records; authorizing the
3261 corporation to release such records as it deems necessary;
3262 amending s. 627.4133, F.S.; requiring insurers to provide
3263 written notice of certain cancellations, nonrenewals, or
3264 terminations; creating s. 689.262, F.S.; requiring a purchaser
3265 of residential property in wind-borne debris regions to be
3266 presented with the windstorm mitigation rating of the structure;
3267 authorizing the Financial Services Commission to adopt rules;
3268 requiring Citizens Property Insurance Corporation to transfer
3269 funds to the General Revenue Fund if the losses due to a
3270 hurricane do not exceed a specified amount; requiring the board
3271 of governors of Citizens Property Insurance Corporation to make
3272 a reasonable estimate of such losses by a certain date;
3273 requiring the board to make quarterly transfers of funds to the
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3274 corporation under certain circumstances; requiring the
3275 corporation to credit certain accounts for funds removed to make
3276 certain transfers; requiring the State Board of Administration
3277 to transfer to Citizens Property Insurance Corporation certain
3278 uncommitted or unreserved funds under certain circumstances;
3279 prohibiting Citizens Property Insurance Corporation from using
3280 certain statutory changes or authorized transfers of funds as
3281 justification or cause to seek any rate or assessment increase;
3282 amending s. 627.06281, F.S.; providing for residential property
3283 insurers to have access to and use a public hurricane loss
3284 projection model; requiring the office to establish a fee
3285 schedule for such model access and use; amending s. 627.0655,
3286 F.S.; expanding application of policyholder loss or expense-
3287 related premium discounts; creating the Citizens Property
3288 Insurance Corporation Mission Review Task Force; providing
3289 purposes; requiring a report; providing report requirements;
3290 providing for appointment of members; providing
3291 responsibilities; specifying service without compensation;
3292 providing for reimbursement of per diem and travel expenses;
3293 providing meeting requirements; requiring the corporation to
3294 assist the task force; providing for the expiration of the task
3295 force; requiring the Chief Financial Officer to provide a report
3296 on the economic impact on the state of certain hurricanes;
3297 providing report requirements; creating s. 627.0621, F.S.;
3298 providing requirements for transparency in rate regulation;
3299 providing definitions; providing for a website for public access
3300 to rate filing information; providing requirements; providing
3301 for application of public meeting requirements; specifying

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3302 nonapplication of attorney-client or work-product privileges to
3303 certain communications in certain administrative or judicial
3304 proceedings under certain circumstances; specifying criteria;
3305 amending s. 215.555, F.S.; extending for an additional year the
3306 offer of reimbursement coverage for specified insurers; revising
3307 the qualifying criteria for such insurers; revising provisions
3308 to conform; amending s. 627.0613, F.S.; deleting cross-
3309 references to conform to changes made by the act; amending s.
3310 627.712, F.S.; requiring insurers to provide notice to
3311 mortgageholders or lienholders of certain policies not providing
3312 wind coverage for certain structures; providing for provisions
3313 of the act to supersede and control over conflicting provisions
3314 of House Bill 5057; providing effective dates.