

Amendment No.

CHAMBER ACTION

Senate

House

.
.
.

1 Representatives Ross and Reagan offered the following:

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

5 Remove everything after the enacting clause and insert:

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

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

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

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

Amendment No.

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

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

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

252 624.3161 Market conduct examinations.--

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

292 | (3) With respect to any knowing and willful violation of a
293 | lawful order or rule of the office or commission or a provision
294 | of this code, the office may impose a fine upon the insurer in

870297
4/29/2008 8:21 AM

Amendment No.

295 an amount not to exceed \$40,000 ~~\$20,000~~ for each such violation.
296 In no event shall such fine exceed an aggregate amount of
297 \$200,000 ~~\$100,000~~ for all knowing and willful violations arising
298 out of the same action. In addition to such fines, the ~~such~~
299 insurer shall make restitution when due in accordance with ~~the~~
300 ~~provisions of~~ subsection (2).

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

303 624.4213 Trade secret documents.--

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

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

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

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

Amendment No.

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

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

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

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

335 4. The information is not publicly available elsewhere.

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

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

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

383 627.0612 Administrative proceedings in rating
384 determinations.--

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

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

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

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

Amendment No.

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

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

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

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

419 627.062 Rate standards.--

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

453 3. For all property insurance filings made or submitted
454 after January 25, 2007, but before December 31, 2009 ~~2008~~, an
455 insurer seeking a rate that is greater than the rate most
456 recently approved by the office shall make a "file and use"
457 filing. ~~This subparagraph applies to property insurance only.~~
458 For purposes of this subparagraph, motor vehicle collision and

870297

4/29/2008 8:21 AM

Amendment No.

459 comprehensive coverages are not considered to be property
460 coverages.

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

466 1. Past and prospective loss experience within and without
467 this state.

468 2. Past and prospective expenses.

469 3. The degree of competition among insurers for the risk
470 insured.

471 4. Investment income reasonably expected by the insurer,
472 consistent with the insurer's investment practices, from
473 investable premiums anticipated in the filing, plus any other
474 expected income from currently invested assets representing the
475 amount expected on unearned premium reserves and loss reserves.

476 The commission may adopt rules using ~~utilizing~~ reasonable
477 techniques of actuarial science and economics to specify the
478 manner in which insurers shall calculate investment income
479 attributable to such classes of insurance written in this state
480 and the manner in which such investment income shall be used to
481 calculate ~~in the calculation of~~ insurance rates. Such manner
482 shall contemplate allowances for an underwriting profit factor
483 and full consideration of investment income which produce a
484 reasonable rate of return; however, investment income from
485 invested surplus may ~~shall~~ not be considered.

870297

4/29/2008 8:21 AM

Amendment No.

486 5. The reasonableness of the judgment reflected in the
487 filing.

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

491 7. The adequacy of loss reserves.

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

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

499 10. Conflagration and catastrophe hazards, if applicable.

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

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

511 ~~13.12. The cost of medical services, if applicable.~~

512 ~~14.13. Other relevant factors which impact upon the~~
513 frequency or severity of claims or upon expenses.

870297

4/29/2008 8:21 AM

Amendment No.

514 (g) The office may at any time review a rate, rating
515 schedule, rating manual, or rate change; the pertinent records
516 of the insurer; and market conditions. If the office finds on a
517 preliminary basis that a rate may be excessive, inadequate, or
518 unfairly discriminatory, the office shall initiate proceedings
519 to disapprove the rate and shall so notify the insurer. However,
520 the office may not disapprove as excessive any rate for which it
521 has given final approval or which has been deemed approved for a
522 period of 1 year after the effective date of the filing unless
523 the office finds that a material misrepresentation or material
524 error was made by the insurer or was contained in the filing.
525 Upon being so notified, the insurer or rating organization
526 shall, within 60 days, file with the office all information
527 which, in the belief of the insurer or organization, proves the
528 reasonableness, adequacy, and fairness of the rate or rate
529 change. The office shall issue a notice of intent to approve or
530 a notice of intent to disapprove pursuant to the procedures of
531 paragraph (a) within 90 days after receipt of the insurer's
532 initial response. In such instances and in any administrative
533 proceeding relating to the legality of the rate, the insurer or
534 rating organization shall carry the burden of proof by a
535 preponderance of the evidence to show that the rate is not
536 excessive, inadequate, or unfairly discriminatory. After the
537 office notifies an insurer that a rate may be excessive,
538 inadequate, or unfairly discriminatory, unless the office
539 withdraws the notification, the insurer shall not alter the rate
540 except to conform with the office's notice until the earlier of
541 120 days after the date the notification was provided or 180

870297

4/29/2008 8:21 AM

Amendment No.

542 days after the date of the implementation of the rate. The
543 office may, subject to chapter 120, disapprove without the 60-
544 day notification any rate increase filed by an insurer within
545 the prohibited time period or during the time that the legality
546 of the increased rate is being contested.

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

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

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

870297
4/29/2008 8:21 AM

Amendment No.

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

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

595 ~~(c) Upon initiation of the arbitration process, the~~
596 ~~insurer waives all rights to challenge the action of the office~~

870297

4/29/2008 8:21 AM

Amendment No.

597 ~~under the Administrative Procedure Act or any other provision of~~
598 ~~law; however, such rights are restored to the insurer if the~~
599 ~~arbitrators fail to render a decision within 90 days after~~
600 ~~initiation of the arbitration process.~~

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

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

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

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

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

870297

4/29/2008 8:21 AM

Amendment No.

624 Section 9. Paragraph (c) of subsection (1) and paragraph
625 (c) of subsection (3) of section 627.0628, Florida Statutes, are
626 amended, and paragraph (e) is added to subsection (1) of that
627 section, to read:

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

631 (1) LEGISLATIVE FINDINGS AND INTENT.--

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

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

870297

4/29/2008 8:21 AM

Amendment No.

652 policy; accordingly, chapter 120 does not apply to the
653 processes, standards, and guidelines of the Florida Commission
654 on Hurricane Loss Projection Methodology.

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

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

870297

4/29/2008 8:21 AM

Amendment No.

679 ~~developing the actuarial methods, principles, standards, models,~~
680 ~~or output ranges and to determine their admissibility.~~

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

683 627.0629 Residential property insurance; rate filings.--

684 (1)(a) It is the intent of the Legislature that insurers
685 must provide savings to consumers who install or implement
686 windstorm damage mitigation techniques, alterations, or
687 solutions to their properties to prevent windstorm losses. A
688 rate filing for residential property insurance must include
689 actuarially reasonable discounts, credits, or other rate
690 differentials, or appropriate reductions in deductibles, for
691 properties on which fixtures or construction techniques
692 demonstrated to reduce the amount of loss in a windstorm have
693 been installed or implemented. The fixtures or construction
694 techniques shall include, but not be limited to, fixtures or
695 construction techniques which enhance roof strength, roof
696 covering performance, roof-to-wall strength, wall-to-floor-to-
697 foundation strength, opening protection, and window, door, and
698 skylight strength. Credits, discounts, or other rate
699 differentials, or appropriate reductions in deductibles, for
700 fixtures and construction techniques which meet the minimum
701 requirements of the Florida Building Code must be included in
702 the rate filing. All insurance companies must make a rate filing
703 which includes the credits, discounts, or other rate
704 differentials or reductions in deductibles by February 28, 2003.
705 By July 1, 2007, the office shall reevaluate the discounts,
706 credits, other rate differentials, and appropriate reductions in
870297

4/29/2008 8:21 AM

Amendment No.

707 deductibles for fixtures and construction techniques that meet
708 the minimum requirements of the Florida Building Code, based
709 upon actual experience or any other loss relativity studies
710 available to the office. The office shall determine the
711 discounts, credits, other rate differentials, and appropriate
712 reductions in deductibles that reflect the full actuarial value
713 of such revaluation, which may be used by insurers in rate
714 filings.

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

870297

4/29/2008 8:21 AM

Amendment No.

735 shall allow a period of at least 2 years after the effective
736 date of the revised mitigation discounts, credits, or other rate
737 differentials for a property owner to obtain an inspection or
738 otherwise qualify for the revised credit, during which time the
739 insurer shall continue to apply the mitigation credit that was
740 applied immediately prior to the effective date of the revised
741 credit.

742 Section 11. Subsection (2) and paragraphs (a), (b), (c),
743 (m), (p), (w), (dd), and (ee) of subsection (6) of section
744 627.351, Florida Statutes, are amended, and new paragraph (ff)
745 is added to that subsection, to read:

746 627.351 Insurance risk apportionment plans.--

747 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

748 (b) The department shall require all insurers holding a
749 certificate of authority to transact property insurance on a
750 direct basis in this state, other than joint underwriting
751 associations and other entities formed pursuant to this section,
752 to provide windstorm coverage to applicants from areas
753 determined to be eligible pursuant to paragraph (c) who in good
754 faith are entitled to, but are unable to procure, such coverage
755 through ordinary means; or it shall adopt a reasonable plan or
756 plans for the equitable apportionment or sharing among such
757 insurers of windstorm coverage, which may include formation of
758 an association for this purpose. As used in this subsection, the
759 term "property insurance" means insurance on real or personal
760 property, as defined in s. 624.604, including insurance for
761 fire, industrial fire, allied lines, farmowners multiperil,
762 homeowners' multiperil, commercial multiperil, and mobile homes,

870297

4/29/2008 8:21 AM

Amendment No.

763 and including liability coverages on all such insurance, but
764 excluding inland marine as defined in s. 624.607(3) and
765 excluding vehicle insurance as defined in s. 624.605(1)(a) other
766 than insurance on mobile homes used as permanent dwellings. The
767 department shall adopt rules that provide a formula for the
768 recovery and repayment of any deferred assessments.

769 1. For the purpose of this section, properties eligible
770 for such windstorm coverage are defined as dwellings, buildings,
771 and other structures, including mobile homes which are used as
772 dwellings and which are tied down in compliance with mobile home
773 tie-down requirements prescribed by the Department of Highway
774 Safety and Motor Vehicles pursuant to s. 320.8325, and the
775 contents of all such properties. An applicant or policyholder is
776 eligible for coverage only if an offer of coverage cannot be
777 obtained by or for the applicant or policyholder from an
778 admitted insurer at approved rates.

779 2.a.(I) All insurers required to be members of such
780 association shall participate in its writings, expenses, and
781 losses. Surplus of the association shall be retained for the
782 payment of claims and shall not be distributed to the member
783 insurers. Such participation by member insurers shall be in the
784 proportion that the net direct premiums of each member insurer
785 written for property insurance in this state during the
786 preceding calendar year bear to the aggregate net direct
787 premiums for property insurance of all member insurers, as
788 reduced by any credits for voluntary writings, in this state
789 during the preceding calendar year. For the purposes of this
790 subsection, the term "net direct premiums" means direct written

870297

4/29/2008 8:21 AM

Amendment No.

791 premiums for property insurance, reduced by premium for
792 liability coverage and for the following if included in allied
793 lines: rain and hail on growing crops; livestock; association
794 direct premiums booked; National Flood Insurance Program direct
795 premiums; and similar deductions specifically authorized by the
796 plan of operation and approved by the department. A member's
797 participation shall begin on the first day of the calendar year
798 following the year in which it is issued a certificate of
799 authority to transact property insurance in the state and shall
800 terminate 1 year after the end of the calendar year during which
801 it no longer holds a certificate of authority to transact
802 property insurance in the state. The commissioner, after review
803 of annual statements, other reports, and any other statistics
804 that the commissioner deems necessary, shall certify to the
805 association the aggregate direct premiums written for property
806 insurance in this state by all member insurers.

807 (II) Effective July 1, 2002, the association shall operate
808 subject to the supervision and approval of a board of governors
809 who are the same individuals that have been appointed by the
810 Treasurer to serve on the board of governors of the Citizens
811 Property Insurance Corporation.

812 (III) The plan of operation shall provide a formula
813 whereby a company voluntarily providing windstorm coverage in
814 affected areas will be relieved wholly or partially from
815 apportionment of a regular assessment pursuant to sub-sub-
816 subparagraph d.(I) or sub-sub-subparagraph d.(II).

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

870297

4/29/2008 8:21 AM

Amendment No.

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

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

824 (VI) The plan of operation may also provide for the award
825 of credits, for a period not to exceed 3 years, from a regular
826 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
827 subparagraph d.(II) as an incentive for taking policies out of
828 the Residential Property and Casualty Joint Underwriting
829 Association. In order to qualify for the exemption under this
830 sub-sub-subparagraph, the take-out plan must provide that at
831 least 40 percent of the policies removed from the Residential
832 Property and Casualty Joint Underwriting Association cover risks
833 located in Dade, Broward, and Palm Beach Counties or at least 30
834 percent of the policies so removed cover risks located in Dade,
835 Broward, and Palm Beach Counties and an additional 50 percent of
836 the policies so removed cover risks located in other coastal
837 counties, and must also provide that no more than 15 percent of
838 the policies so removed may exclude windstorm coverage. With the
839 approval of the department, the association may waive these
840 geographic criteria for a take-out plan that removes at least
841 the lesser of 100,000 Residential Property and Casualty Joint
842 Underwriting Association policies or 15 percent of the total
843 number of Residential Property and Casualty Joint Underwriting
844 Association policies, provided the governing board of the
845 Residential Property and Casualty Joint Underwriting Association
846 certifies that the take-out plan will materially reduce the

870297

4/29/2008 8:21 AM

Amendment No.

847 Residential Property and Casualty Joint Underwriting
848 Association's 100-year probable maximum loss from hurricanes.
849 With the approval of the department, the board may extend such
850 credits for an additional year if the insurer guarantees an
851 additional year of renewability for all policies removed from
852 the Residential Property and Casualty Joint Underwriting
853 Association, or for 2 additional years if the insurer guarantees
854 2 additional years of renewability for all policies removed from
855 the Residential Property and Casualty Joint Underwriting
856 Association.

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

860 c. The Legislature finds that the potential for unlimited
861 deficit assessments under this subparagraph may induce insurers
862 to attempt to reduce their writings in the voluntary market, and
863 that such actions would worsen the availability problems that
864 the association was created to remedy. It is the intent of the
865 Legislature that insurers remain fully responsible for paying
866 regular assessments and collecting emergency assessments for any
867 deficits of the association; however, it is also the intent of
868 the Legislature to provide a means by which assessment
869 liabilities may be amortized over a period of years.

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

870297

4/29/2008 8:21 AM

Amendment No.

875 (II) When the deficit incurred in a particular calendar
876 year exceeds 10 percent of the aggregate statewide direct
877 written premium for property insurance for the prior calendar
878 year for all member insurers, the association shall levy an
879 assessment on member insurers in an amount equal to the greater
880 of 10 percent of the deficit or 10 percent of the aggregate
881 statewide direct written premium for property insurance for the
882 prior calendar year for member insurers. Any remaining deficit
883 shall be recovered through emergency assessments under sub-sub-
884 subparagraph (III).

885 (III) Upon a determination by the board of directors that
886 a deficit exceeds the amount that will be recovered through
887 regular assessments on member insurers, pursuant to sub-sub-
888 subparagraph (I) or sub-sub-subparagraph (II), the board shall
889 levy, after verification by the department, emergency
890 assessments to be collected by member insurers and by
891 underwriting associations created pursuant to this section which
892 write property insurance, upon issuance or renewal of property
893 insurance policies other than National Flood Insurance policies
894 in the year or years following levy of the regular assessments.
895 The amount of the emergency assessment collected in a particular
896 year shall be a uniform percentage of that year's direct written
897 premium for property insurance for all member insurers and
898 underwriting associations, excluding National Flood Insurance
899 policy premiums, as annually determined by the board and
900 verified by the department. The department shall verify the
901 arithmetic calculations involved in the board's determination
902 within 30 days after receipt of the information on which the

870297

4/29/2008 8:21 AM

Amendment No.

903 determination was based. Notwithstanding any other provision of
904 law, each member insurer and each underwriting association
905 created pursuant to this section shall collect emergency
906 assessments from its policyholders without such obligation being
907 affected by any credit, limitation, exemption, or deferment. The
908 emergency assessments so collected shall be transferred directly
909 to the association on a periodic basis as determined by the
910 association. The aggregate amount of emergency assessments
911 levied under this sub-sub-subparagraph in any calendar year may
912 not exceed the greater of 10 percent of the amount needed to
913 cover the original deficit, plus interest, fees, commissions,
914 required reserves, and other costs associated with financing of
915 the original deficit, or 10 percent of the aggregate statewide
916 direct written premium for property insurance written by member
917 insurers and underwriting associations for the prior year, plus
918 interest, fees, commissions, required reserves, and other costs
919 associated with financing the original deficit. The board may
920 pledge the proceeds of the emergency assessments under this sub-
921 sub-subparagraph as the source of revenue for bonds, to retire
922 any other debt incurred as a result of the deficit or events
923 giving rise to the deficit, or in any other way that the board
924 determines will efficiently recover the deficit. The emergency
925 assessments under this sub-sub-subparagraph shall continue as
926 long as any bonds issued or other indebtedness incurred with
927 respect to a deficit for which the assessment was imposed remain
928 outstanding, unless adequate provision has been made for the
929 payment of such bonds or other indebtedness pursuant to the
930 document governing such bonds or other indebtedness. Emergency

870297

4/29/2008 8:21 AM

Amendment No.

931 assessments collected under this sub-sub-subparagraph are not
932 part of an insurer's rates, are not premium, and are not subject
933 to premium tax, fees, or commissions; however, failure to pay
934 the emergency assessment shall be treated as failure to pay
935 premium.

936 (IV) Each member insurer's share of the total regular
937 assessments under sub-sub-subparagraph (I) or sub-sub-
938 subparagraph (II) shall be in the proportion that the insurer's
939 net direct premium for property insurance in this state, for the
940 year preceding the assessment bears to the aggregate statewide
941 net direct premium for property insurance of all member
942 insurers, as reduced by any credits for voluntary writings for
943 that year.

944 (V) If regular deficit assessments are made under sub-sub-
945 subparagraph (I) or sub-sub-subparagraph (II), or by the
946 Residential Property and Casualty Joint Underwriting Association
947 under sub-subparagraph (6)(b)3.a. or sub-subparagraph
948 (6)(b)3.b., the association shall levy upon the association's
949 policyholders, as part of its next rate filing, or by a separate
950 rate filing solely for this purpose, a market equalization
951 surcharge in a percentage equal to the total amount of such
952 regular assessments divided by the aggregate statewide direct
953 written premium for property insurance for member insurers for
954 the prior calendar year. Market equalization surcharges under
955 this sub-sub-subparagraph are not considered premium and are not
956 subject to commissions, fees, or premium taxes; however, failure
957 to pay a market equalization surcharge shall be treated as
958 failure to pay premium.

870297

4/29/2008 8:21 AM

Amendment No.

959 e. The governing body of any unit of local government, any
960 residents of which are insured under the plan, may issue bonds
961 as defined in s. 125.013 or s. 166.101 to fund an assistance
962 program, in conjunction with the association, for the purpose of
963 defraying deficits of the association. In order to avoid
964 needless and indiscriminate proliferation, duplication, and
965 fragmentation of such assistance programs, any unit of local
966 government, any residents of which are insured by the
967 association, may provide for the payment of losses, regardless
968 of whether or not the losses occurred within or outside of the
969 territorial jurisdiction of the local government. Revenue bonds
970 may not be issued until validated pursuant to chapter 75, unless
971 a state of emergency is declared by executive order or
972 proclamation of the Governor pursuant to s. 252.36 making such
973 findings as are necessary to determine that it is in the best
974 interests of, and necessary for, the protection of the public
975 health, safety, and general welfare of residents of this state
976 and the protection and preservation of the economic stability of
977 insurers operating in this state, and declaring it an essential
978 public purpose to permit certain municipalities or counties to
979 issue bonds as will provide relief to claimants and
980 policyholders of the association and insurers responsible for
981 apportionment of plan losses. Any such unit of local government
982 may enter into such contracts with the association and with any
983 other entity created pursuant to this subsection as are
984 necessary to carry out this paragraph. Any bonds issued under
985 this sub-subparagraph shall be payable from and secured by
986 moneys received by the association from assessments under this

870297

4/29/2008 8:21 AM

Amendment No.

987 | subparagraph, and assigned and pledged to or on behalf of the
988 | unit of local government for the benefit of the holders of such
989 | bonds. The funds, credit, property, and taxing power of the
990 | state or of the unit of local government shall not be pledged
991 | for the payment of such bonds. If any of the bonds remain unsold
992 | 60 days after issuance, the department shall require all
993 | insurers subject to assessment to purchase the bonds, which
994 | shall be treated as admitted assets; each insurer shall be
995 | required to purchase that percentage of the unsold portion of
996 | the bond issue that equals the insurer's relative share of
997 | assessment liability under this subsection. An insurer shall not
998 | be required to purchase the bonds to the extent that the
999 | department determines that the purchase would endanger or impair
1000 | the solvency of the insurer. The authority granted by this sub-
1001 | subparagraph is additional to any bonding authority granted by
1002 | subparagraph 6.

1003 | 3. The plan shall also provide that any member with a
1004 | surplus as to policyholders of \$20 million or less writing 25
1005 | percent or more of its total countrywide property insurance
1006 | premiums in this state may petition the department, within the
1007 | first 90 days of each calendar year, to qualify as a limited
1008 | apportionment company. The apportionment of such a member
1009 | company in any calendar year for which it is qualified shall not
1010 | exceed its gross participation, which shall not be affected by
1011 | the formula for voluntary writings. In no event shall a limited
1012 | apportionment company be required to participate in any
1013 | apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1014 | or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
870297

4/29/2008 8:21 AM

Amendment No.

1015 \$50 million after payment of available plan funds in any
1016 calendar year. However, a limited apportionment company shall
1017 collect from its policyholders any emergency assessment imposed
1018 under sub-sub-subparagraph 2.d.(III). The plan shall provide
1019 that, if the department determines that any regular assessment
1020 will result in an impairment of the surplus of a limited
1021 apportionment company, the department may direct that all or
1022 part of such assessment be deferred. However, there shall be no
1023 limitation or deferment of an emergency assessment to be
1024 collected from policyholders under sub-sub-subparagraph
1025 2.d.(III).

1026 4. The plan shall provide for the deferment, in whole or
1027 in part, of a regular assessment of a member insurer under sub-
1028 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
1029 not for an emergency assessment collected from policyholders
1030 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1031 commissioner, payment of such regular assessment would endanger
1032 or impair the solvency of the member insurer. In the event a
1033 regular assessment against a member insurer is deferred in whole
1034 or in part, the amount by which such assessment is deferred may
1035 be assessed against the other member insurers in a manner
1036 consistent with the basis for assessments set forth in sub-sub-
1037 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1038 5.a. The plan of operation may include deductibles and
1039 rules for classification of risks and rate modifications
1040 consistent with the objective of providing and maintaining funds
1041 sufficient to pay catastrophe losses.

870297
4/29/2008 8:21 AM

Amendment No.

1042 b. ~~The association may require arbitration of a rate~~
1043 ~~filing under s. 627.062(6).~~ It is the intent of the Legislature
1044 that the rates for coverage provided by the association be
1045 actuarially sound and not competitive with approved rates
1046 charged in the admitted voluntary market such that the
1047 association functions as a residual market mechanism to provide
1048 insurance only when the insurance cannot be procured in the
1049 voluntary market. The plan of operation shall provide a
1050 mechanism to assure that, beginning no later than January 1,
1051 1999, the rates charged by the association for each line of
1052 business are reflective of approved rates in the voluntary
1053 market for hurricane coverage for each line of business in the
1054 various areas eligible for association coverage.

1055 c. The association shall provide for windstorm coverage on
1056 residential properties in limits up to \$10 million for
1057 commercial lines residential risks and up to \$1 million for
1058 personal lines residential risks. If coverage with the
1059 association is sought for a residential risk valued in excess of
1060 these limits, coverage shall be available to the risk up to the
1061 replacement cost or actual cash value of the property, at the
1062 option of the insured, if coverage for the risk cannot be
1063 located in the authorized market. The association must accept a
1064 commercial lines residential risk with limits above \$10 million
1065 or a personal lines residential risk with limits above \$1
1066 million if coverage is not available in the authorized market.
1067 The association may write coverage above the limits specified in
1068 this subparagraph with or without facultative or other
1069 reinsurance coverage, as the association determines appropriate.

870297

4/29/2008 8:21 AM

Amendment No.

1070 d. The plan of operation must provide objective criteria
1071 and procedures, approved by the department, to be uniformly
1072 applied for all applicants in determining whether an individual
1073 risk is so hazardous as to be uninsurable. In making this
1074 determination and in establishing the criteria and procedures,
1075 the following shall be considered:

1076 (I) Whether the likelihood of a loss for the individual
1077 risk is substantially higher than for other risks of the same
1078 class; and

1079 (II) Whether the uncertainty associated with the
1080 individual risk is such that an appropriate premium cannot be
1081 determined.

1082
1083 The acceptance or rejection of a risk by the association
1084 pursuant to such criteria and procedures must be construed as
1085 the private placement of insurance, and the provisions of
1086 chapter 120 do not apply.

1087 e. If the risk accepts an offer of coverage through the
1088 market assistance program or through a mechanism established by
1089 the association, either before the policy is issued by the
1090 association or during the first 30 days of coverage by the
1091 association, and the producing agent who submitted the
1092 application to the association is not currently appointed by the
1093 insurer, the insurer shall:

1094 (I) Pay to the producing agent of record of the policy,
1095 for the first year, an amount that is the greater of the
1096 insurer's usual and customary commission for the type of policy

870297
4/29/2008 8:21 AM

Amendment No.

1097 written or a fee equal to the usual and customary commission of
1098 the association; or

1099 (II) Offer to allow the producing agent of record of the
1100 policy to continue servicing the policy for a period of not less
1101 than 1 year and offer to pay the agent the greater of the
1102 insurer's or the association's usual and customary commission
1103 for the type of policy written.

1104

1105 If the producing agent is unwilling or unable to accept
1106 appointment, the new insurer shall pay the agent in accordance
1107 with sub-sub-subparagraph (I). Subject to the provisions of s.
1108 627.3517, the policies issued by the association must provide
1109 that if the association obtains an offer from an authorized
1110 insurer to cover the risk at its approved rates under either a
1111 standard policy including wind coverage or, if consistent with
1112 the insurer's underwriting rules as filed with the department, a
1113 basic policy including wind coverage, the risk is no longer
1114 eligible for coverage through the association. Upon termination
1115 of eligibility, the association shall provide written notice to
1116 the policyholder and agent of record stating that the
1117 association policy must be canceled as of 60 days after the date
1118 of the notice because of the offer of coverage from an
1119 authorized insurer. Other provisions of the insurance code
1120 relating to cancellation and notice of cancellation do not apply
1121 to actions under this sub-subparagraph.

1122 f. When the association enters into a contractual
1123 agreement for a take-out plan, the producing agent of record of

870297

4/29/2008 8:21 AM

Amendment No.

1124 the association policy is entitled to retain any unearned
1125 commission on the policy, and the insurer shall:

1126 (I) Pay to the producing agent of record of the
1127 association policy, for the first year, an amount that is the
1128 greater of the insurer's usual and customary commission for the
1129 type of policy written or a fee equal to the usual and customary
1130 commission of the association; or

1131 (II) Offer to allow the producing agent of record of the
1132 association policy to continue servicing the policy for a period
1133 of not less than 1 year and offer to pay the agent the greater
1134 of the insurer's or the association's usual and customary
1135 commission for the type of policy written.

1136

1137 If the producing agent is unwilling or unable to accept
1138 appointment, the new insurer shall pay the agent in accordance
1139 with sub-sub-subparagraph (I).

1140 6.a. The plan of operation may authorize the formation of
1141 a private nonprofit corporation, a private nonprofit
1142 unincorporated association, a partnership, a trust, a limited
1143 liability company, or a nonprofit mutual company which may be
1144 empowered, among other things, to borrow money by issuing bonds
1145 or by incurring other indebtedness and to accumulate reserves or
1146 funds to be used for the payment of insured catastrophe losses.
1147 The plan may authorize all actions necessary to facilitate the
1148 issuance of bonds, including the pledging of assessments or
1149 other revenues.

1150 b. Any entity created under this subsection, or any entity
1151 formed for the purposes of this subsection, may sue and be sued,

870297

4/29/2008 8:21 AM

Amendment No.

1152 may borrow money; issue bonds, notes, or debt instruments;
1153 pledge or sell assessments, market equalization surcharges and
1154 other surcharges, rights, premiums, contractual rights,
1155 projected recoveries from the Florida Hurricane Catastrophe
1156 Fund, other reinsurance recoverables, and other assets as
1157 security for such bonds, notes, or debt instruments; enter into
1158 any contracts or agreements necessary or proper to accomplish
1159 such borrowings; and take other actions necessary to carry out
1160 the purposes of this subsection. The association may issue bonds
1161 or incur other indebtedness, or have bonds issued on its behalf
1162 by a unit of local government pursuant to subparagraph (6)(p)2.,
1163 in the absence of a hurricane or other weather-related event,
1164 upon a determination by the association subject to approval by
1165 the department that such action would enable it to efficiently
1166 meet the financial obligations of the association and that such
1167 financings are reasonably necessary to effectuate the
1168 requirements of this subsection. Any such entity may accumulate
1169 reserves and retain surpluses as of the end of any association
1170 year to provide for the payment of losses incurred by the
1171 association during that year or any future year. The association
1172 shall incorporate and continue the plan of operation and
1173 articles of agreement in effect on the effective date of chapter
1174 76-96, Laws of Florida, to the extent that it is not
1175 inconsistent with chapter 76-96, and as subsequently modified
1176 consistent with chapter 76-96. The board of directors and
1177 officers currently serving shall continue to serve until their
1178 successors are duly qualified as provided under the plan. The
1179 assets and obligations of the plan in effect immediately prior

870297

4/29/2008 8:21 AM

Amendment No.

1180 to the effective date of chapter 76-96 shall be construed to be
1181 the assets and obligations of the successor plan created herein.

1182 c. In recognition of s. 10, Art. I of the State
1183 Constitution, prohibiting the impairment of obligations of
1184 contracts, it is the intent of the Legislature that no action be
1185 taken whose purpose is to impair any bond indenture or financing
1186 agreement or any revenue source committed by contract to such
1187 bond or other indebtedness issued or incurred by the association
1188 or any other entity created under this subsection.

1189 7. On such coverage, an agent's remuneration shall be that
1190 amount of money payable to the agent by the terms of his or her
1191 contract with the company with which the business is placed.
1192 However, no commission will be paid on that portion of the
1193 premium which is in excess of the standard premium of that
1194 company.

1195 8. Subject to approval by the department, the association
1196 may establish different eligibility requirements and operational
1197 procedures for any line or type of coverage for any specified
1198 eligible area or portion of an eligible area if the board
1199 determines that such changes to the eligibility requirements and
1200 operational procedures are justified due to the voluntary market
1201 being sufficiently stable and competitive in such area or for
1202 such line or type of coverage and that consumers who, in good
1203 faith, are unable to obtain insurance through the voluntary
1204 market through ordinary methods would continue to have access to
1205 coverage from the association. When coverage is sought in
1206 connection with a real property transfer, such requirements and
1207 procedures shall not provide for an effective date of coverage

870297

4/29/2008 8:21 AM

Amendment No.

1208 later than the date of the closing of the transfer as
1209 established by the transferor, the transferee, and, if
1210 applicable, the lender.

1211 9. Notwithstanding any other provision of law:

1212 a. The pledge or sale of, the lien upon, and the security
1213 interest in any rights, revenues, or other assets of the
1214 association created or purported to be created pursuant to any
1215 financing documents to secure any bonds or other indebtedness of
1216 the association shall be and remain valid and enforceable,
1217 notwithstanding the commencement of and during the continuation
1218 of, and after, any rehabilitation, insolvency, liquidation,
1219 bankruptcy, receivership, conservatorship, reorganization, or
1220 similar proceeding against the association under the laws of
1221 this state or any other applicable laws.

1222 b. No such proceeding shall relieve the association of its
1223 obligation, or otherwise affect its ability to perform its
1224 obligation, to continue to collect, or levy and collect,
1225 assessments, market equalization or other surcharges, projected
1226 recoveries from the Florida Hurricane Catastrophe Fund,
1227 reinsurance recoverables, or any other rights, revenues, or
1228 other assets of the association pledged.

1229 c. Each such pledge or sale of, lien upon, and security
1230 interest in, including the priority of such pledge, lien, or
1231 security interest, any such assessments, emergency assessments,
1232 market equalization or renewal surcharges, projected recoveries
1233 from the Florida Hurricane Catastrophe Fund, reinsurance
1234 recoverables, or other rights, revenues, or other assets which
1235 are collected, or levied and collected, after the commencement

870297

4/29/2008 8:21 AM

Amendment No.

1236 of and during the pendency of or after any such proceeding shall
1237 continue unaffected by such proceeding.

1238 d. As used in this subsection, the term "financing
1239 documents" means any agreement, instrument, or other document
1240 now existing or hereafter created evidencing any bonds or other
1241 indebtedness of the association or pursuant to which any such
1242 bonds or other indebtedness has been or may be issued and
1243 pursuant to which any rights, revenues, or other assets of the
1244 association are pledged or sold to secure the repayment of such
1245 bonds or indebtedness, together with the payment of interest on
1246 such bonds or such indebtedness, or the payment of any other
1247 obligation of the association related to such bonds or
1248 indebtedness.

1249 e. Any such pledge or sale of assessments, revenues,
1250 contract rights or other rights or assets of the association
1251 shall constitute a lien and security interest, or sale, as the
1252 case may be, that is immediately effective and attaches to such
1253 assessments, revenues, contract, or other rights or assets,
1254 whether or not imposed or collected at the time the pledge or
1255 sale is made. Any such pledge or sale is effective, valid,
1256 binding, and enforceable against the association or other entity
1257 making such pledge or sale, and valid and binding against and
1258 superior to any competing claims or obligations owed to any
1259 other person or entity, including policyholders in this state,
1260 asserting rights in any such assessments, revenues, contract, or
1261 other rights or assets to the extent set forth in and in
1262 accordance with the terms of the pledge or sale contained in the
1263 applicable financing documents, whether or not any such person

870297

4/29/2008 8:21 AM

Amendment No.

1264 or entity has notice of such pledge or sale and without the need
1265 for any physical delivery, recordation, filing, or other action.

1266 f. There shall be no liability on the part of, and no
1267 cause of action of any nature shall arise against, any member
1268 insurer or its agents or employees, agents or employees of the
1269 association, members of the board of directors of the
1270 association, or the department or its representatives, for any
1271 action taken by them in the performance of their duties or
1272 responsibilities under this subsection. Such immunity does not
1273 apply to actions for breach of any contract or agreement
1274 pertaining to insurance, or any willful tort.

1275 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1276 (a)1. It is the public purpose of this subsection to
1277 ensure the existence of an orderly market for property insurance
1278 for Floridians and Florida businesses. The Legislature finds
1279 that private insurers are unwilling or unable to provide
1280 affordable property insurance coverage in this state to the
1281 extent sought and needed. The absence of affordable property
1282 insurance threatens the public health, safety, and welfare and
1283 likewise threatens the economic health of the state. The state
1284 therefore has a compelling public interest and a public purpose
1285 to assist in assuring that property in the state is insured and
1286 that it is insured at affordable rates so as to facilitate the
1287 remediation, reconstruction, and replacement of damaged or
1288 destroyed property in order to reduce or avoid the negative
1289 effects otherwise resulting to the public health, safety, and
1290 welfare, to the economy of the state, and to the revenues of the
1291 state and local governments which are needed to provide for the

870297

4/29/2008 8:21 AM

Amendment No.

1292 public welfare. It is necessary, therefore, to provide
1293 affordable property insurance to applicants who are in good
1294 faith entitled to procure insurance through the voluntary market
1295 but are unable to do so. The Legislature intends by this
1296 subsection that affordable property insurance be provided and
1297 that it continue to be provided, as long as necessary, through
1298 Citizens Property Insurance Corporation, a government entity
1299 that is an integral part of the state, and that is not a private
1300 insurance company. To that end, Citizens Property Insurance
1301 Corporation shall strive to increase the availability of
1302 affordable property insurance in this state, while achieving
1303 efficiencies and economies, and while providing service to
1304 policyholders, applicants, and agents which is no less than the
1305 quality generally provided in the voluntary market, for the
1306 achievement of the foregoing public purposes. Because it is
1307 essential for this government entity to have the maximum
1308 financial resources to pay claims following a catastrophic
1309 hurricane, it is the intent of the Legislature that Citizens
1310 Property Insurance Corporation continue to be an integral part
1311 of the state and that the income of the corporation be exempt
1312 from federal income taxation and that interest on the debt
1313 obligations issued by the corporation be exempt from federal
1314 income taxation.

1315 2. The Residential Property and Casualty Joint
1316 Underwriting Association originally created by this statute
1317 shall be known, as of July 1, 2002, as the Citizens Property
1318 Insurance Corporation. The corporation shall provide insurance
1319 for residential and commercial property, for applicants who are

870297

4/29/2008 8:21 AM

Amendment No.

1320 in good faith entitled, but are unable, to procure insurance
1321 through the voluntary market. The corporation shall operate
1322 pursuant to a plan of operation approved by order of the
1323 Financial Services Commission. The plan is subject to continuous
1324 review by the commission. The commission may, by order, withdraw
1325 approval of all or part of a plan if the commission determines
1326 that conditions have changed since approval was granted and that
1327 the purposes of the plan require changes in the plan. The
1328 corporation shall continue to operate pursuant to the plan of
1329 operation approved by the Office of Insurance Regulation until
1330 October 1, 2006. For the purposes of this subsection,
1331 residential coverage includes both personal lines residential
1332 coverage, which consists of the type of coverage provided by
1333 homeowner's, mobile home owner's, dwelling, tenant's,
1334 condominium unit owner's, and similar policies, and commercial
1335 lines residential coverage, which consists of the type of
1336 coverage provided by condominium association, apartment
1337 building, and similar policies.

1338 ~~3. For the purposes of this subsection, the term~~
1339 ~~"homestead property" means:~~

1340 ~~a. Property that has been granted a homestead exemption~~
1341 ~~under chapter 196;~~

1342 ~~b. Property for which the owner has a current, written~~
1343 ~~lease with a renter for a term of at least 7 months and for~~
1344 ~~which the dwelling is insured by the corporation for \$200,000 or~~
1345 ~~less;~~

1346 ~~c. An owner-occupied mobile home or manufactured home, as~~
1347 ~~defined in s. 320.01, which is permanently affixed to real~~

870297

4/29/2008 8:21 AM

Amendment No.

1348 ~~property, is owned by a Florida resident, and has been granted a~~
1349 ~~homestead exemption under chapter 196 or, if the owner does not~~
1350 ~~own the real property, the owner certifies that the mobile home~~
1351 ~~or manufactured home is his or her principal place of residence;~~

1352 ~~d. Tenant's coverage;~~

1353 ~~e. Commercial lines residential property; or~~

1354 ~~f. Any county, district, or municipal hospital; a hospital~~
1355 ~~licensed by any not for profit corporation qualified under s.~~
1356 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
1357 ~~continuing care retirement community that is certified under~~
1358 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1359 ~~under chapter 196.~~

1360 ~~4. For the purposes of this subsection, the term~~
1361 ~~"nonhomestead property" means property that is not homestead~~
1362 ~~property.~~

1363 ~~3.5.~~ Effective January 1, 2009, a personal lines
1364 residential structure that has a dwelling replacement cost of \$2
1365 ~~\$1~~ million or more, or a single condominium unit that has a
1366 combined dwelling and content replacement cost of \$2 ~~\$1~~ million
1367 or more is not eligible for coverage by the corporation. Such
1368 dwellings insured by the corporation on December 31, 2008, may
1369 continue to be covered by the corporation until the end of the
1370 policy term. However, such dwellings that are insured by the
1371 corporation and become ineligible for coverage due to the
1372 provisions of this subparagraph may reapply and obtain coverage
1373 ~~in the high risk account and be considered "nonhomestead~~
1374 ~~property"~~ if the property owner provides the corporation with a
1375 sworn affidavit from one or more insurance agents, on a form

870297

4/29/2008 8:21 AM

Amendment No.

1376 provided by the corporation, stating that the agents have made
1377 their best efforts to obtain coverage and that the property has
1378 been rejected for coverage by at least one authorized insurer
1379 and at least three surplus lines insurers. If such conditions
1380 are met, the dwelling may be insured by the corporation for up
1381 to 3 years, after which time the dwelling is ineligible for
1382 coverage. The office shall approve the method used by the
1383 corporation for valuing the dwelling replacement cost for the
1384 purposes of this subparagraph. If a policyholder is insured by
1385 the corporation prior to being determined to be ineligible
1386 pursuant to this subparagraph and such policyholder files a
1387 lawsuit challenging the determination, the policyholder may
1388 remain insured by the corporation until the conclusion of the
1389 litigation.

1390 ~~6. For properties constructed on or after January 1, 2009,~~
1391 ~~the corporation may not insure any property located within 2,500~~
1392 ~~feet landward of the coastal construction control line created~~
1393 ~~pursuant to s. 161.053 unless the property meets the~~
1394 ~~requirements of the code plus building standards developed by~~
1395 ~~the Florida Building Commission.~~

1396 4.7. It is the intent of the Legislature that
1397 policyholders, applicants, and agents of the corporation receive
1398 service and treatment of the highest possible level but never
1399 less than that generally provided in the voluntary market. It
1400 also is intended that the corporation be held to service
1401 standards no less than those applied to insurers in the
1402 voluntary market by the office with respect to responsiveness,

870297
4/29/2008 8:21 AM

Amendment No.

1403 timeliness, customer courtesy, and overall dealings with
1404 policyholders, applicants, or agents of the corporation.

1405 ~~5.8-~~ Effective January 1, 2009, a personal lines
1406 residential structure that is located in the "wind-borne debris
1407 region," as defined in s. 1609.2, International Building Code
1408 (2006), and that has an insured value on the structure of
1409 \$750,000 or more is not eligible for coverage by the corporation
1410 unless the structure has opening protections as required under
1411 the Florida Building Code for a newly constructed residential
1412 structure in that area. A residential structure shall be deemed
1413 to comply with the requirements of this subparagraph if it has
1414 shutters or opening protections on all openings and if such
1415 opening protections complied with the Florida Building Code at
1416 the time they were installed.

1417 (b)1. All insurers authorized to write one or more subject
1418 lines of business in this state are subject to assessment by the
1419 corporation and, for the purposes of this subsection, are
1420 referred to collectively as "assessable insurers." Insurers
1421 writing one or more subject lines of business in this state
1422 pursuant to part VIII of chapter 626 are not assessable
1423 insurers, but insureds who procure one or more subject lines of
1424 business in this state pursuant to part VIII of chapter 626 are
1425 subject to assessment by the corporation and are referred to
1426 collectively as "assessable insureds." An authorized insurer's
1427 assessment liability shall begin on the first day of the
1428 calendar year following the year in which the insurer was issued
1429 a certificate of authority to transact insurance for subject
1430 lines of business in this state and shall terminate 1 year after

870297

4/29/2008 8:21 AM

Amendment No.

1431 the end of the first calendar year during which the insurer no
1432 longer holds a certificate of authority to transact insurance
1433 for subject lines of business in this state.

1434 2.a. All revenues, assets, liabilities, losses, and
1435 expenses of the corporation shall be divided into three separate
1436 accounts as follows:

1437 (I) A personal lines account for personal residential
1438 policies issued by the corporation or issued by the Residential
1439 Property and Casualty Joint Underwriting Association and renewed
1440 by the corporation that provide comprehensive, multiperil
1441 coverage on risks that are not located in areas eligible for
1442 coverage in the Florida Windstorm Underwriting Association as
1443 those areas were defined on January 1, 2002, and for such
1444 policies that do not provide coverage for the peril of wind on
1445 risks that are located in such areas;

1446 (II) A commercial lines account for commercial residential
1447 and commercial nonresidential policies issued by the corporation
1448 or issued by the Residential Property and Casualty Joint
1449 Underwriting Association and renewed by the corporation that
1450 provide coverage for basic property perils on risks that are not
1451 located in areas eligible for coverage in the Florida Windstorm
1452 Underwriting Association as those areas were defined on January
1453 1, 2002, and for such policies that do not provide coverage for
1454 the peril of wind on risks that are located in such areas; and

1455 (III) A high-risk account for personal residential
1456 policies and commercial residential and commercial
1457 nonresidential property policies issued by the corporation or
1458 transferred to the corporation that provide coverage for the

870297

4/29/2008 8:21 AM

Amendment No.

1459 | peril of wind on risks that are located in areas eligible for
1460 | coverage in the Florida Windstorm Underwriting Association as
1461 | those areas were defined on January 1, 2002. ~~Subject to the~~
1462 | ~~approval of a business plan by the Financial Services Commission~~
1463 | ~~and Legislative Budget Commission as provided in this sub-sub-~~
1464 | ~~subparagraph, but no earlier than March 31, 2007,~~ The
1465 | corporation may offer policies that provide multiperil coverage
1466 | and the corporation shall continue to offer policies that
1467 | provide coverage only for the peril of wind for risks located in
1468 | areas eligible for coverage in the high-risk account. In issuing
1469 | multiperil coverage, the corporation may use its approved policy
1470 | forms and rates for the personal lines account. An applicant or
1471 | insured who is eligible to purchase a multiperil policy from the
1472 | corporation may purchase a multiperil policy from an authorized
1473 | insurer without prejudice to the applicant's or insured's
1474 | eligibility to prospectively purchase a policy that provides
1475 | coverage only for the peril of wind from the corporation. An
1476 | applicant or insured who is eligible for a corporation policy
1477 | that provides coverage only for the peril of wind may elect to
1478 | purchase or retain such policy and also purchase or retain
1479 | coverage excluding wind from an authorized insurer without
1480 | prejudice to the applicant's or insured's eligibility to
1481 | prospectively purchase a policy that provides multiperil
1482 | coverage from the corporation. It is the goal of the Legislature
1483 | that there would be an overall average savings of 10 percent or
1484 | more for a policyholder who currently has a wind-only policy
1485 | with the corporation, and an ex-wind policy with a voluntary
1486 | insurer or the corporation, and who then obtains a multiperil

870297

4/29/2008 8:21 AM

Amendment No.

1487 policy from the corporation. It is the intent of the Legislature
1488 that the offer of multiperil coverage in the high-risk account
1489 be made and implemented in a manner that does not adversely
1490 affect the tax-exempt status of the corporation or
1491 creditworthiness of or security for currently outstanding
1492 financing obligations or credit facilities of the high-risk
1493 account, the personal lines account, or the commercial lines
1494 account. ~~By March 1, 2007, the corporation shall prepare and~~
1495 ~~submit for approval by the Financial Services Commission and~~
1496 ~~Legislative Budget Commission a report detailing the~~
1497 ~~corporation's business plan for issuing multiperil coverage in~~
1498 ~~the high risk account. The business plan shall be approved or~~
1499 ~~disapproved within 30 days after receipt, as submitted or~~
1500 ~~modified and resubmitted by the corporation. The business plan~~
1501 ~~must include: the impact of such multiperil coverage on the~~
1502 ~~corporation's financial resources, the impact of such multiperil~~
1503 ~~coverage on the corporation's tax exempt status, the manner in~~
1504 ~~which the corporation plans to implement the processing of~~
1505 ~~applications and policy forms for new and existing~~
1506 ~~policyholders, the impact of such multiperil coverage on the~~
1507 ~~corporation's ability to deliver customer service at the high~~
1508 ~~level required by this subsection, the ability of the~~
1509 ~~corporation to process claims, the ability of the corporation to~~
1510 ~~quote and issue policies, the impact of such multiperil coverage~~
1511 ~~on the corporation's agents, the impact of such multiperil~~
1512 ~~coverage on the corporation's existing policyholders, and the~~
1513 ~~impact of such multiperil coverage on rates and premium. The~~
1514 high-risk account must also include quota share primary

870297

4/29/2008 8:21 AM

Amendment No.

1515 insurance under subparagraph (c)2. The area eligible for
1516 coverage under the high-risk account also includes the area
1517 within Port Canaveral, which is bordered on the south by the
1518 City of Cape Canaveral, bordered on the west by the Banana
1519 River, and bordered on the north by Federal Government property.

1520 b. The three separate accounts must be maintained as long
1521 as financing obligations entered into by the Florida Windstorm
1522 Underwriting Association or Residential Property and Casualty
1523 Joint Underwriting Association are outstanding, in accordance
1524 with the terms of the corresponding financing documents. When
1525 the financing obligations are no longer outstanding, in
1526 accordance with the terms of the corresponding financing
1527 documents, the corporation may use a single account for all
1528 revenues, assets, liabilities, losses, and expenses of the
1529 corporation. Consistent with the requirement of this
1530 subparagraph and prudent investment policies that minimize the
1531 cost of carrying debt, the board shall exercise its best efforts
1532 to retire existing debt or to obtain approval of necessary
1533 parties to amend the terms of existing debt, so as to structure
1534 the most efficient plan to consolidate the three separate
1535 accounts into a single account. By February 1, 2007, the board
1536 shall submit a report to the Financial Services Commission, the
1537 President of the Senate, and the Speaker of the House of
1538 Representatives which includes an analysis of consolidating the
1539 accounts, the actions the board has taken to minimize the cost
1540 of carrying debt, and its recommendations for executing the most
1541 efficient plan.

870297

4/29/2008 8:21 AM

Amendment No.

1542 c. Creditors of the Residential Property and Casualty
1543 Joint Underwriting Association and of the accounts specified in
1544 sub-sub-subparagraphs a.(I) and (II) may have a claim against,
1545 and recourse to, the accounts referred to in sub-sub-
1546 subparagraphs a.(I) and (II) and shall have no claim against, or
1547 recourse to, the account referred to in sub-sub-subparagraph
1548 a.(III). Creditors of the Florida Windstorm Underwriting
1549 Association shall have a claim against, and recourse to, the
1550 account referred to in sub-sub-subparagraph a.(III) and shall
1551 have no claim against, or recourse to, the accounts referred to
1552 in sub-sub-subparagraphs a.(I) and (II).

1553 d. Revenues, assets, liabilities, losses, and expenses not
1554 attributable to particular accounts shall be prorated among the
1555 accounts.

1556 e. The Legislature finds that the revenues of the
1557 corporation are revenues that are necessary to meet the
1558 requirements set forth in documents authorizing the issuance of
1559 bonds under this subsection.

1560 f. No part of the income of the corporation may inure to
1561 the benefit of any private person.

1562 3. With respect to a deficit in an account:

1563 a. After accounting for the Citizens policyholder
1564 surcharge imposed under sub-subparagraph i., when the remaining
1565 projected deficit incurred in a particular calendar year is not
1566 greater than 6 ~~10~~ percent of the aggregate statewide direct
1567 written premium for the subject lines of business for the prior
1568 calendar year, the entire deficit shall be recovered through

870297

4/29/2008 8:21 AM

Amendment No.

1569 regular assessments of assessable insurers under paragraph (p)
1570 and assessable insureds.

1571 b. After accounting for the Citizens policyholder
1572 surcharge imposed under sub-subparagraph i., when the remaining
1573 projected deficit incurred in a particular calendar year exceeds
1574 6 10 percent of the aggregate statewide direct written premium
1575 for the subject lines of business for the prior calendar year,
1576 the corporation shall levy regular assessments on assessable
1577 insurers under paragraph (p) and on assessable insureds in an
1578 amount equal to the greater of 6 10 percent of the deficit or 6
1579 10 percent of the aggregate statewide direct written premium for
1580 the subject lines of business for the prior calendar year. Any
1581 remaining deficit shall be recovered through emergency
1582 assessments under sub-subparagraph d.

1583 c. Each assessable insurer's share of the amount being
1584 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1585 be in the proportion that the assessable insurer's direct
1586 written premium for the subject lines of business for the year
1587 preceding the assessment bears to the aggregate statewide direct
1588 written premium for the subject lines of business for that year.
1589 The assessment percentage applicable to each assessable insured
1590 is the ratio of the amount being assessed under sub-subparagraph
1591 a. or sub-subparagraph b. to the aggregate statewide direct
1592 written premium for the subject lines of business for the prior
1593 year. Assessments levied by the corporation on assessable
1594 insurers under sub-subparagraphs a. and b. shall be paid as
1595 required by the corporation's plan of operation and paragraph
1596 (p). ~~notwithstanding any other provision of this subsection, the~~

870297

4/29/2008 8:21 AM

Amendment No.

1597 ~~aggregate amount of a regular assessment for a deficit incurred~~
1598 ~~in a particular calendar year shall be reduced by the estimated~~
1599 ~~amount to be received by the corporation from the Citizens~~
1600 ~~policyholder surcharge under subparagraph (c)10. and the amount~~
1601 ~~collected or estimated to be collected from the assessment on~~
1602 ~~Citizens policyholders pursuant to sub subparagraph i.~~
1603 Assessments levied by the corporation on assessable insureds
1604 under sub-subparagraphs a. and b. shall be collected by the
1605 surplus lines agent at the time the surplus lines agent collects
1606 the surplus lines tax required by s. 626.932 and shall be paid
1607 to the Florida Surplus Lines Service Office at the time the
1608 surplus lines agent pays the surplus lines tax to the Florida
1609 Surplus Lines Service Office. Upon receipt of regular
1610 assessments from surplus lines agents, the Florida Surplus Lines
1611 Service Office shall transfer the assessments directly to the
1612 corporation as determined by the corporation.

1613 d. Upon a determination by the board of governors that a
1614 deficit in an account exceeds the amount that will be recovered
1615 through regular assessments under sub-subparagraph a. or sub-
1616 subparagraph b., plus the amount that is expected to be
1617 recovered through surcharges under sub-subparagraph i., as to
1618 the remaining projected deficit the board shall levy, after
1619 verification by the office, emergency assessments, for as many
1620 years as necessary to cover the deficits, to be collected by
1621 assessable insurers and the corporation and collected from
1622 assessable insureds upon issuance or renewal of policies for
1623 subject lines of business, excluding National Flood Insurance
1624 policies. The amount of the emergency assessment collected in a

870297

4/29/2008 8:21 AM

Amendment No.

1625 particular year shall be a uniform percentage of that year's
1626 direct written premium for subject lines of business and all
1627 accounts of the corporation, excluding National Flood Insurance
1628 Program policy premiums, as annually determined by the board and
1629 verified by the office. The office shall verify the arithmetic
1630 calculations involved in the board's determination within 30
1631 days after receipt of the information on which the determination
1632 was based. Notwithstanding any other provision of law, the
1633 corporation and each assessable insurer that writes subject
1634 lines of business shall collect emergency assessments from its
1635 policyholders without such obligation being affected by any
1636 credit, limitation, exemption, or deferment. Emergency
1637 assessments levied by the corporation on assessable insureds
1638 shall be collected by the surplus lines agent at the time the
1639 surplus lines agent collects the surplus lines tax required by
1640 s. 626.932 and shall be paid to the Florida Surplus Lines
1641 Service Office at the time the surplus lines agent pays the
1642 surplus lines tax to the Florida Surplus Lines Service Office.
1643 The emergency assessments so collected shall be transferred
1644 directly to the corporation on a periodic basis as determined by
1645 the corporation and shall be held by the corporation solely in
1646 the applicable account. The aggregate amount of emergency
1647 assessments levied for an account under this sub-subparagraph in
1648 any calendar year may, at the discretion of the board of
1649 governors, be less than but may not exceed the greater of 10
1650 percent of the amount needed to cover the ~~original~~ deficit, plus
1651 interest, fees, commissions, required reserves, and other costs
1652 associated with financing of the original deficit, or 10 percent

870297

4/29/2008 8:21 AM

Amendment No.

1653 of the aggregate statewide direct written premium for subject
1654 lines of business and for all accounts of the corporation for
1655 the prior year, plus interest, fees, commissions, required
1656 reserves, and other costs associated with financing the ~~original~~
1657 deficit.

1658 e. The corporation may pledge the proceeds of assessments,
1659 projected recoveries from the Florida Hurricane Catastrophe
1660 Fund, other insurance and reinsurance recoverables, policyholder
1661 surcharges and other surcharges, and other funds available to
1662 the corporation as the source of revenue for and to secure bonds
1663 issued under paragraph (p), bonds or other indebtedness issued
1664 under subparagraph (c)3., or lines of credit or other financing
1665 mechanisms issued or created under this subsection, or to retire
1666 any other debt incurred as a result of deficits or events giving
1667 rise to deficits, or in any other way that the board determines
1668 will efficiently recover such deficits. The purpose of the lines
1669 of credit or other financing mechanisms is to provide additional
1670 resources to assist the corporation in covering claims and
1671 expenses attributable to a catastrophe. As used in this
1672 subsection, the term "assessments" includes regular assessments
1673 under sub-subparagraph a., sub-subparagraph b., or subparagraph
1674 (p)1. and emergency assessments under sub-subparagraph d.
1675 Emergency assessments collected under sub-subparagraph d. are
1676 not part of an insurer's rates, are not premium, and are not
1677 subject to premium tax, fees, or commissions; however, failure
1678 to pay the emergency assessment shall be treated as failure to
1679 pay premium. The emergency assessments under sub-subparagraph d.
1680 shall continue as long as any bonds issued or other indebtedness

870297

4/29/2008 8:21 AM

Amendment No.

1681 incurred with respect to a deficit for which the assessment was
1682 imposed remain outstanding, unless adequate provision has been
1683 made for the payment of such bonds or other indebtedness
1684 pursuant to the documents governing such bonds or other
1685 indebtedness.

1686 f. As used in this subsection for purposes of any deficit
1687 incurred on or after January 25, 2007, the term "subject lines
1688 of business" means insurance written by assessable insurers or
1689 procured by assessable insureds for all property and casualty
1690 lines of business in this state, but not including workers'
1691 compensation or medical malpractice. As used in the sub-
1692 subparagraph, the term "property and casualty lines of business"
1693 includes all lines of business identified on Form 2, Exhibit of
1694 Premiums and Losses, in the annual statement required of
1695 authorized insurers by s. 624.424 and any rule adopted under
1696 this section, except for those lines identified as accident and
1697 health insurance and except for policies written under the
1698 National Flood Insurance Program or the Federal Crop Insurance
1699 Program. For purposes of this sub-subparagraph, the term
1700 "workers' compensation" includes both workers' compensation
1701 insurance and excess workers' compensation insurance.

1702 g. The Florida Surplus Lines Service Office shall
1703 determine annually the aggregate statewide written premium in
1704 subject lines of business procured by assessable insureds and
1705 shall report that information to the corporation in a form and
1706 at a time the corporation specifies to ensure that the
1707 corporation can meet the requirements of this subsection and the
1708 corporation's financing obligations.

870297

4/29/2008 8:21 AM

Amendment No.

1709 h. The Florida Surplus Lines Service Office shall verify
1710 the proper application by surplus lines agents of assessment
1711 percentages for regular assessments and emergency assessments
1712 levied under this subparagraph on assessable insureds and shall
1713 assist the corporation in ensuring the accurate, timely
1714 collection and payment of assessments by surplus lines agents as
1715 required by the corporation.

1716 i. If a deficit is incurred in any account in 2008 or
1717 thereafter, the board of governors shall levy a Citizens
1718 policyholder surcharge ~~an immediate assessment against the~~
1719 ~~premium of each nonhomestead property policyholder in all~~
1720 ~~accounts of the corporation, as a uniform percentage of the~~
1721 ~~premium of the policy of up to 10 percent of such premium, which~~
1722 ~~funds shall be used to offset the deficit. If this assessment is~~
1723 ~~insufficient to eliminate the deficit, the board of governors~~
1724 ~~shall levy an additional assessment against all policyholders of~~
1725 ~~the corporation for a 12-month period, which shall be collected~~
1726 ~~at the time of issuance or renewal of a policy, as a uniform~~
1727 ~~percentage of the premium for the policy of up to 15 ~~10~~ percent~~
1728 ~~of such premium, which funds shall be used to further offset the~~
1729 ~~deficit.~~ Citizens policyholder surcharges under this sub-
1730 subparagraph are not considered premium and are not subject to
1731 commissions, fees, or premium taxes. However, failure to pay
1732 such surcharges shall be treated as failure to pay premium.

1733 j. If the amount of any assessments or surcharges
1734 collected from corporation policyholders, assessable insurers or
1735 their policyholders, or assessable insureds exceeds the amount
1736 of the deficits, such excess amounts shall be remitted to and

870297

4/29/2008 8:21 AM

Amendment No.

1737 retained by the corporation in a reserve to be used by the
1738 corporation, as determined by the board of governors and
1739 approved by the office, to pay claims or reduce any past,
1740 present, or future plan-year deficits or to reduce outstanding
1741 debt. ~~The board of governors shall maintain separate accounting~~
1742 ~~records that consolidate data for nonhomestead properties,~~
1743 ~~including, but not limited to, number of policies, insured~~
1744 ~~values, premiums written, and losses. The board of governors~~
1745 ~~shall annually report to the office and the Legislature a~~
1746 ~~summary of such data.~~

1747 (c) The plan of operation of the corporation:

1748 1. Must provide for adoption of residential property and
1749 casualty insurance policy forms and commercial residential and
1750 nonresidential property insurance forms, which forms must be
1751 approved by the office prior to use. The corporation shall adopt
1752 the following policy forms:

1753 a. Standard personal lines policy forms that are
1754 comprehensive multiperil policies providing full coverage of a
1755 residential property equivalent to the coverage provided in the
1756 private insurance market under an HO-3, HO-4, or HO-6 policy.

1757 b. Basic personal lines policy forms that are policies
1758 similar to an HO-8 policy or a dwelling fire policy that provide
1759 coverage meeting the requirements of the secondary mortgage
1760 market, but which coverage is more limited than the coverage
1761 under a standard policy.

1762 c. Commercial lines residential and nonresidential policy
1763 forms that are generally similar to the basic perils of full
1764 coverage obtainable for commercial residential structures and

870297

4/29/2008 8:21 AM

Amendment No.

1765 commercial nonresidential structures in the admitted voluntary
1766 market.

1767 d. Personal lines and commercial lines residential
1768 property insurance forms that cover the peril of wind only. The
1769 forms are applicable only to residential properties located in
1770 areas eligible for coverage under the high-risk account referred
1771 to in sub-subparagraph (b)2.a.

1772 e. Commercial lines nonresidential property insurance
1773 forms that cover the peril of wind only. The forms are
1774 applicable only to nonresidential properties located in areas
1775 eligible for coverage under the high-risk account referred to in
1776 sub-subparagraph (b)2.a.

1777 f. The corporation may adopt variations of the policy
1778 forms listed in sub-subparagraphs a.-e. that contain more
1779 restrictive coverage.

1780 2.a. Must provide that the corporation adopt a program in
1781 which the corporation and authorized insurers enter into quota
1782 share primary insurance agreements for hurricane coverage, as
1783 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1784 property insurance forms for eligible risks which cover the
1785 peril of wind only. As used in this subsection, the term:

1786 (I) "Quota share primary insurance" means an arrangement
1787 in which the primary hurricane coverage of an eligible risk is
1788 provided in specified percentages by the corporation and an
1789 authorized insurer. The corporation and authorized insurer are
1790 each solely responsible for a specified percentage of hurricane
1791 coverage of an eligible risk as set forth in a quota share
1792 primary insurance agreement between the corporation and an

870297

4/29/2008 8:21 AM

Amendment No.

1793 authorized insurer and the insurance contract. The
1794 responsibility of the corporation or authorized insurer to pay
1795 its specified percentage of hurricane losses of an eligible
1796 risk, as set forth in the quota share primary insurance
1797 agreement, may not be altered by the inability of the other
1798 party to the agreement to pay its specified percentage of
1799 hurricane losses. Eligible risks that are provided hurricane
1800 coverage through a quota share primary insurance arrangement
1801 must be provided policy forms that set forth the obligations of
1802 the corporation and authorized insurer under the arrangement,
1803 clearly specify the percentages of quota share primary insurance
1804 provided by the corporation and authorized insurer, and
1805 conspicuously and clearly state that neither the authorized
1806 insurer nor the corporation may be held responsible beyond its
1807 specified percentage of coverage of hurricane losses.

1808 (II) "Eligible risks" means personal lines residential and
1809 commercial lines residential risks that meet the underwriting
1810 criteria of the corporation and are located in areas that were
1811 eligible for coverage by the Florida Windstorm Underwriting
1812 Association on January 1, 2002.

1813 b. The corporation may enter into quota share primary
1814 insurance agreements with authorized insurers at corporation
1815 coverage levels of 90 percent and 50 percent.

1816 c. If the corporation determines that additional coverage
1817 levels are necessary to maximize participation in quota share
1818 primary insurance agreements by authorized insurers, the
1819 corporation may establish additional coverage levels. However,

870297

4/29/2008 8:21 AM

Amendment No.

1820 the corporation's quota share primary insurance coverage level
1821 may not exceed 90 percent.

1822 d. Any quota share primary insurance agreement entered
1823 into between an authorized insurer and the corporation must
1824 provide for a uniform specified percentage of coverage of
1825 hurricane losses, by county or territory as set forth by the
1826 corporation board, for all eligible risks of the authorized
1827 insurer covered under the quota share primary insurance
1828 agreement.

1829 e. Any quota share primary insurance agreement entered
1830 into between an authorized insurer and the corporation is
1831 subject to review and approval by the office. However, such
1832 agreement shall be authorized only as to insurance contracts
1833 entered into between an authorized insurer and an insured who is
1834 already insured by the corporation for wind coverage.

1835 f. For all eligible risks covered under quota share
1836 primary insurance agreements, the exposure and coverage levels
1837 for both the corporation and authorized insurers shall be
1838 reported by the corporation to the Florida Hurricane Catastrophe
1839 Fund. For all policies of eligible risks covered under quota
1840 share primary insurance agreements, the corporation and the
1841 authorized insurer shall maintain complete and accurate records
1842 for the purpose of exposure and loss reimbursement audits as
1843 required by Florida Hurricane Catastrophe Fund rules. The
1844 corporation and the authorized insurer shall each maintain
1845 duplicate copies of policy declaration pages and supporting
1846 claims documents.

870297

4/29/2008 8:21 AM

Amendment No.

1847 g. The corporation board shall establish in its plan of
1848 operation standards for quota share agreements which ensure that
1849 there is no discriminatory application among insurers as to the
1850 terms of quota share agreements, pricing of quota share
1851 agreements, incentive provisions if any, and consideration paid
1852 for servicing policies or adjusting claims.

1853 h. The quota share primary insurance agreement between the
1854 corporation and an authorized insurer must set forth the
1855 specific terms under which coverage is provided, including, but
1856 not limited to, the sale and servicing of policies issued under
1857 the agreement by the insurance agent of the authorized insurer
1858 producing the business, the reporting of information concerning
1859 eligible risks, the payment of premium to the corporation, and
1860 arrangements for the adjustment and payment of hurricane claims
1861 incurred on eligible risks by the claims adjuster and personnel
1862 of the authorized insurer. Entering into a quota sharing
1863 insurance agreement between the corporation and an authorized
1864 insurer shall be voluntary and at the discretion of the
1865 authorized insurer.

1866 3. May provide that the corporation may employ or
1867 otherwise contract with individuals or other entities to provide
1868 administrative or professional services that may be appropriate
1869 to effectuate the plan. The corporation shall have the power to
1870 borrow funds, by issuing bonds or by incurring other
1871 indebtedness, and shall have other powers reasonably necessary
1872 to effectuate the requirements of this subsection, including,
1873 without limitation, the power to issue bonds and incur other
1874 indebtedness in order to refinance outstanding bonds or other

870297

4/29/2008 8:21 AM

Amendment No.

1875 indebtedness. The corporation may, but is not required to, seek
1876 judicial validation of its bonds or other indebtedness under
1877 chapter 75. The corporation may issue bonds or incur other
1878 indebtedness, or have bonds issued on its behalf by a unit of
1879 local government pursuant to subparagraph (p)2., in the absence
1880 of a hurricane or other weather-related event, upon a
1881 determination by the corporation, subject to approval by the
1882 office, that such action would enable it to efficiently meet the
1883 financial obligations of the corporation and that such
1884 financings are reasonably necessary to effectuate the
1885 requirements of this subsection. The corporation is authorized
1886 to take all actions needed to facilitate tax-free status for any
1887 such bonds or indebtedness, including formation of trusts or
1888 other affiliated entities. The corporation shall have the
1889 authority to pledge assessments, projected recoveries from the
1890 Florida Hurricane Catastrophe Fund, other reinsurance
1891 recoverables, market equalization and other surcharges, and
1892 other funds available to the corporation as security for bonds
1893 or other indebtedness. In recognition of s. 10, Art. I of the
1894 State Constitution, prohibiting the impairment of obligations of
1895 contracts, it is the intent of the Legislature that no action be
1896 taken whose purpose is to impair any bond indenture or financing
1897 agreement or any revenue source committed by contract to such
1898 bond or other indebtedness.

1899 4.a. Must require that the corporation operate subject to
1900 the supervision and approval of a board of governors consisting
1901 of eight individuals who are residents of this state, from
1902 different geographical areas of this state. The Governor, the

870297

4/29/2008 8:21 AM

Amendment No.

1903 Chief Financial Officer, the President of the Senate, and the
1904 Speaker of the House of Representatives shall each appoint two
1905 members of the board. At least one of the two members appointed
1906 by each appointing officer must have demonstrated expertise in
1907 insurance. The Chief Financial Officer shall designate one of
1908 the appointees as chair. All board members serve at the pleasure
1909 of the appointing officer. All members of the board of governors
1910 are subject to removal at will by the officers who appointed
1911 them. All board members, including the chair, must be appointed
1912 to serve for 3-year terms beginning annually on a date
1913 designated by the plan. Any board vacancy shall be filled for
1914 the unexpired term by the appointing officer. The Chief
1915 Financial Officer shall appoint a technical advisory group to
1916 provide information and advice to the board of governors in
1917 connection with the board's duties under this subsection. The
1918 executive director and senior managers of the corporation shall
1919 be engaged by the board and serve at the pleasure of the board.
1920 Any executive director appointed on or after July 1, 2006, is
1921 subject to confirmation by the Senate. The executive director is
1922 responsible for employing other staff as the corporation may
1923 require, subject to review and concurrence by the board.

1924 b. The board shall create a Market Accountability Advisory
1925 Committee to assist the corporation in developing awareness of
1926 its rates and its customer and agent service levels in
1927 relationship to the voluntary market insurers writing similar
1928 coverage. The members of the advisory committee shall consist of
1929 the following 11 persons, one of whom must be elected chair by
1930 the members of the committee: four representatives, one

870297

4/29/2008 8:21 AM

Amendment No.

1931 appointed by the Florida Association of Insurance Agents, one by
1932 the Florida Association of Insurance and Financial Advisors, one
1933 by the Professional Insurance Agents of Florida, and one by the
1934 Latin American Association of Insurance Agencies; three
1935 representatives appointed by the insurers with the three highest
1936 voluntary market share of residential property insurance
1937 business in the state; one representative from the Office of
1938 Insurance Regulation; one consumer appointed by the board who is
1939 insured by the corporation at the time of appointment to the
1940 committee; one representative appointed by the Florida
1941 Association of Realtors; and one representative appointed by the
1942 Florida Bankers Association. All members must serve for 3-year
1943 terms and may serve for consecutive terms. The committee shall
1944 report to the corporation at each board meeting on insurance
1945 market issues which may include rates and rate competition with
1946 the voluntary market; service, including policy issuance, claims
1947 processing, and general responsiveness to policyholders,
1948 applicants, and agents; and matters relating to depopulation.

1949 5. Must provide a procedure for determining the
1950 eligibility of a risk for coverage, as follows:

1951 a. Subject to the provisions of s. 627.3517, with respect
1952 to personal lines residential risks, if the risk is offered
1953 coverage from an authorized insurer at the insurer's approved
1954 rate under either a standard policy including wind coverage or,
1955 if consistent with the insurer's underwriting rules as filed
1956 with the office, a basic policy including wind coverage, for a
1957 new application to the corporation for coverage, the risk is not
1958 eligible for any policy issued by the corporation unless the

870297

4/29/2008 8:21 AM

Amendment No.

1959 premium for coverage from the authorized insurer is more than 15
1960 percent greater than the premium for comparable coverage from
1961 the corporation. If the risk is not able to obtain any such
1962 offer, the risk is eligible for either a standard policy
1963 including wind coverage or a basic policy including wind
1964 coverage issued by the corporation; however, if the risk could
1965 not be insured under a standard policy including wind coverage
1966 regardless of market conditions, the risk shall be eligible for
1967 a basic policy including wind coverage unless rejected under
1968 subparagraph 9. However, with regard to a policyholder of the
1969 corporation or a policyholder removed from the corporation
1970 through an assumption agreement until the end of the assumption
1971 period, the policyholder remains eligible for coverage from the
1972 corporation regardless of any offer of coverage from an
1973 authorized insurer or surplus lines insurer. The corporation
1974 shall determine the type of policy to be provided on the basis
1975 of objective standards specified in the underwriting manual and
1976 based on generally accepted underwriting practices.

1977 (I) If the risk accepts an offer of coverage through the
1978 market assistance plan or an offer of coverage through a
1979 mechanism established by the corporation before a policy is
1980 issued to the risk by the corporation or during the first 30
1981 days of coverage by the corporation, and the producing agent who
1982 submitted the application to the plan or to the corporation is
1983 not currently appointed by the insurer, the insurer shall:

1984 (A) Pay to the producing agent of record of the policy,
1985 for the first year, an amount that is the greater of the
1986 insurer's usual and customary commission for the type of policy

870297

4/29/2008 8:21 AM

Amendment No.

1987 written or a fee equal to the usual and customary commission of
1988 the corporation; or

1989 (B) Offer to allow the producing agent of record of the
1990 policy to continue servicing the policy for a period of not less
1991 than 1 year and offer to pay the agent the greater of the
1992 insurer's or the corporation's usual and customary commission
1993 for the type of policy written.

1994
1995 If the producing agent is unwilling or unable to accept
1996 appointment, the new insurer shall pay the agent in accordance
1997 with sub-sub-sub-subparagraph (A).

1998 (II) When the corporation enters into a contractual
1999 agreement for a take-out plan, the producing agent of record of
2000 the corporation policy is entitled to retain any unearned
2001 commission on the policy, and the insurer shall:

2002 (A) Pay to the producing agent of record of the
2003 corporation policy, for the first year, an amount that is the
2004 greater of the insurer's usual and customary commission for the
2005 type of policy written or a fee equal to the usual and customary
2006 commission of the corporation; or

2007 (B) Offer to allow the producing agent of record of the
2008 corporation policy to continue servicing the policy for a period
2009 of not less than 1 year and offer to pay the agent the greater
2010 of the insurer's or the corporation's usual and customary
2011 commission for the type of policy written.

2012
870297
4/29/2008 8:21 AM

Amendment No.

2013 If the producing agent is unwilling or unable to accept
2014 appointment, the new insurer shall pay the agent in accordance
2015 with sub-sub-sub-subparagraph (A).

2016 b. With respect to commercial lines residential risks, for
2017 a new application to the corporation for coverage, if the risk
2018 is offered coverage under a policy including wind coverage from
2019 an authorized insurer at its approved rate, the risk is not
2020 eligible for any policy issued by the corporation unless the
2021 premium for coverage from the authorized insurer is more than 15
2022 percent greater than the premium for comparable coverage from
2023 the corporation. If the risk is not able to obtain any such
2024 offer, the risk is eligible for a policy including wind coverage
2025 issued by the corporation. However, with regard to a
2026 policyholder of the corporation or a policyholder removed from
2027 the corporation through an assumption agreement until the end of
2028 the assumption period, the policyholder remains eligible for
2029 coverage from the corporation regardless of any offer of
2030 coverage from an authorized insurer or surplus lines insurer.

2031 (I) If the risk accepts an offer of coverage through the
2032 market assistance plan or an offer of coverage through a
2033 mechanism established by the corporation before a policy is
2034 issued to the risk by the corporation or during the first 30
2035 days of coverage by the corporation, and the producing agent who
2036 submitted the application to the plan or the corporation is not
2037 currently appointed by the insurer, the insurer shall:

2038 (A) Pay to the producing agent of record of the policy,
2039 for the first year, an amount that is the greater of the
2040 insurer's usual and customary commission for the type of policy

870297

4/29/2008 8:21 AM

Amendment No.

2041 written or a fee equal to the usual and customary commission of
2042 the corporation; or

2043 (B) Offer to allow the producing agent of record of the
2044 policy to continue servicing the policy for a period of not less
2045 than 1 year and offer to pay the agent the greater of the
2046 insurer's or the corporation's usual and customary commission
2047 for the type of policy written.

2048
2049 If the producing agent is unwilling or unable to accept
2050 appointment, the new insurer shall pay the agent in accordance
2051 with sub-sub-sub-subparagraph (A).

2052 (II) When the corporation enters into a contractual
2053 agreement for a take-out plan, the producing agent of record of
2054 the corporation policy is entitled to retain any unearned
2055 commission on the policy, and the insurer shall:

2056 (A) Pay to the producing agent of record of the
2057 corporation policy, for the first year, an amount that is the
2058 greater of the insurer's usual and customary commission for the
2059 type of policy written or a fee equal to the usual and customary
2060 commission of the corporation; or

2061 (B) Offer to allow the producing agent of record of the
2062 corporation policy to continue servicing the policy for a period
2063 of not less than 1 year and offer to pay the agent the greater
2064 of the insurer's or the corporation's usual and customary
2065 commission for the type of policy written.

2066
870297
4/29/2008 8:21 AM

Amendment No.

2067 If the producing agent is unwilling or unable to accept
2068 appointment, the new insurer shall pay the agent in accordance
2069 with sub-sub-sub-subparagraph (A).

2070 c. For purposes of determining comparable coverage under
2071 sub-subparagraphs a. and b., the comparison shall be based on
2072 those forms and coverages that are reasonably comparable. The
2073 corporation may rely on a determination of comparable coverage
2074 and premium made by the producing agent who submits the
2075 application to the corporation, made in the agent's capacity as
2076 the corporation's agent. A comparison may be made solely of the
2077 premium with respect to the main building or structure only on
2078 the following basis: the same coverage A or other building
2079 limits; the same percentage hurricane deductible that applies on
2080 an annual basis or that applies to each hurricane for commercial
2081 residential property; the same percentage of ordinance and law
2082 coverage, if the same limit is offered by both the corporation
2083 and the authorized insurer; the same mitigation credits, to the
2084 extent the same types of credits are offered both by the
2085 corporation and the authorized insurer; the same method for loss
2086 payment, such as replacement cost or actual cash value, if the
2087 same method is offered both by the corporation and the
2088 authorized insurer in accordance with underwriting rules; and
2089 any other form or coverage that is reasonably comparable as
2090 determined by the board. If an application is submitted to the
2091 corporation for wind-only coverage in the high-risk account, the
2092 premium for the corporation's wind-only policy plus the premium
2093 for the ex-wind policy that is offered by an authorized insurer
2094 to the applicant shall be compared to the premium for multiperil

870297

4/29/2008 8:21 AM

Amendment No.

2095 coverage offered by an authorized insurer, subject to the
2096 standards for comparison specified in this subparagraph. If the
2097 corporation or the applicant requests from the authorized
2098 insurer a breakdown of the premium of the offer by types of
2099 coverage so that a comparison may be made by the corporation or
2100 its agent and the authorized insurer refuses or is unable to
2101 provide such information, the corporation may treat the offer as
2102 not being an offer of coverage from an authorized insurer at the
2103 insurer's approved rate.

2104 6. Must include rules for classifications of risks and
2105 rates therefor.

2106 7. Must provide that if premium and investment income for
2107 an account attributable to a particular calendar year are in
2108 excess of projected losses and expenses for the account
2109 attributable to that year, such excess shall be held in surplus
2110 in the account. Such surplus shall be available to defray
2111 deficits in that account as to future years and shall be used
2112 for that purpose prior to assessing assessable insurers and
2113 assessable insureds as to any calendar year.

2114 8. Must provide objective criteria and procedures to be
2115 uniformly applied for all applicants in determining whether an
2116 individual risk is so hazardous as to be uninsurable. In making
2117 this determination and in establishing the criteria and
2118 procedures, the following shall be considered:

2119 a. Whether the likelihood of a loss for the individual
2120 risk is substantially higher than for other risks of the same
2121 class; and

870297
4/29/2008 8:21 AM

Amendment No.

2122 b. Whether the uncertainty associated with the individual
2123 risk is such that an appropriate premium cannot be determined.

2124
2125 The acceptance or rejection of a risk by the corporation shall
2126 be construed as the private placement of insurance, and the
2127 provisions of chapter 120 shall not apply.

2128 9. Must provide that the corporation shall make its best
2129 efforts to procure catastrophe reinsurance at reasonable rates,
2130 to cover its projected 100-year probable maximum loss as
2131 determined by the board of governors.

2132 ~~10. Must provide that in the event of regular deficit~~
2133 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2134 ~~(b)3.b., in the personal lines account, the commercial lines~~
2135 ~~residential account, or the high risk account, the corporation~~
2136 ~~shall levy upon corporation policyholders in its next rate~~
2137 ~~filing, or by a separate rate filing solely for this purpose, a~~
2138 ~~Citizens policyholder surcharge arising from a regular~~
2139 ~~assessment in such account in a percentage equal to the total~~
2140 ~~amount of such regular assessments divided by the aggregate~~
2141 ~~statewide direct written premium for subject lines of business~~
2142 ~~for the prior calendar year. For purposes of calculating the~~
2143 ~~Citizens policyholder surcharge to be levied under this~~
2144 ~~subparagraph, the total amount of the regular assessment to~~
2145 ~~which this surcharge is related shall be determined as set forth~~
2146 ~~in subparagraph (b)3., without deducting the estimated Citizens~~
2147 ~~policyholder surcharge. Citizens policyholder surcharges under~~
2148 ~~this subparagraph are not considered premium and are not subject~~
2149 ~~to commissions, fees, or premium taxes; however, failure to pay~~

870297

4/29/2008 8:21 AM

Amendment No.

2150 ~~a market equalization surcharge shall be treated as failure to~~
2151 ~~pay premium.~~

2152 10.11. The policies issued by the corporation must provide
2153 that, if the corporation or the market assistance plan obtains
2154 an offer from an authorized insurer to cover the risk at its
2155 approved rates, the risk is no longer eligible for renewal
2156 through the corporation, except as otherwise provided in this
2157 subsection.

2158 11.12. Corporation policies and applications must include
2159 a notice that the corporation policy could, under this section,
2160 be replaced with a policy issued by an authorized insurer that
2161 does not provide coverage identical to the coverage provided by
2162 the corporation. The notice shall also specify that acceptance
2163 of corporation coverage creates a conclusive presumption that
2164 the applicant or policyholder is aware of this potential.

2165 12.13. May establish, subject to approval by the office,
2166 different eligibility requirements and operational procedures
2167 for any line or type of coverage for any specified county or
2168 area if the board determines that such changes to the
2169 eligibility requirements and operational procedures are
2170 justified due to the voluntary market being sufficiently stable
2171 and competitive in such area or for such line or type of
2172 coverage and that consumers who, in good faith, are unable to
2173 obtain insurance through the voluntary market through ordinary
2174 methods would continue to have access to coverage from the
2175 corporation. When coverage is sought in connection with a real
2176 property transfer, such requirements and procedures shall not
2177 provide for an effective date of coverage later than the date of
870297

4/29/2008 8:21 AM

Amendment No.

2178 the closing of the transfer as established by the transferor,
2179 the transferee, and, if applicable, the lender.

2180 ~~13.14.~~ Must provide that, with respect to the high-risk
2181 account, any assessable insurer with a surplus as to
2182 policyholders of \$25 million or less writing 25 percent or more
2183 of its total countrywide property insurance premiums in this
2184 state may petition the office, within the first 90 days of each
2185 calendar year, to qualify as a limited apportionment company. A
2186 regular assessment levied by the corporation on a limited
2187 apportionment company for a deficit incurred by the corporation
2188 for the high-risk account in 2006 or thereafter may be paid to
2189 the corporation on a monthly basis as the assessments are
2190 collected by the limited apportionment company from its insureds
2191 pursuant to s. 627.3512, but the regular assessment must be paid
2192 in full within 12 months after being levied by the corporation.
2193 A limited apportionment company shall collect from its
2194 policyholders any emergency assessment imposed under sub-
2195 subparagraph (b)3.d. The plan shall provide that, if the office
2196 determines that any regular assessment will result in an
2197 impairment of the surplus of a limited apportionment company,
2198 the office may direct that all or part of such assessment be
2199 deferred as provided in subparagraph (p)4. However, there shall
2200 be no limitation or deferment of an emergency assessment to be
2201 collected from policyholders under sub-subparagraph (b)3.d.

2202 ~~14.15.~~ Must provide that the corporation appoint as its
2203 licensed agents only those agents who also hold an appointment
2204 as defined in s. 626.015(3) with an insurer who at the time of
2205 the agent's initial appointment by the corporation is authorized

870297

4/29/2008 8:21 AM

Amendment No.

2206 to write and is actually writing personal lines residential
2207 property coverage, commercial residential property coverage, or
2208 commercial nonresidential property coverage within the state.

2209 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
2210 plan option to its policyholders which allows at a minimum for
2211 quarterly and semiannual payment of premiums. A monthly payment
2212 plan may, but is not required to, be offered.

2213 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
2214 homes built prior to 1994 to actual cash value of the dwelling
2215 rather than replacement costs of the dwelling.

2216 ~~17.18.~~ May provide such limits of coverage as the board
2217 determines, consistent with the requirements of this subsection.

2218 ~~18.19.~~ May require commercial property to meet specified
2219 hurricane mitigation construction features as a condition of
2220 eligibility for coverage.

2221 (m)1. Rates for coverage provided by the corporation shall
2222 be actuarially sound and subject to the requirements of s.
2223 627.062, except as otherwise provided in this paragraph. The
2224 corporation shall file its recommended rates with the office at
2225 least annually. The corporation shall provide any additional
2226 information regarding the rates which the office requires. The
2227 office shall consider the recommendations of the board and issue
2228 a final order establishing the rates for the corporation within
2229 45 days after the recommended rates are filed. The corporation
2230 may not pursue an administrative challenge or judicial review of
2231 the final order of the office.

2232 2. In addition to the rates otherwise determined pursuant
2233 to this paragraph, the corporation shall impose and collect an
870297

4/29/2008 8:21 AM

Amendment No.

2234 amount equal to the premium tax provided for in s. 624.509 to
2235 augment the financial resources of the corporation.

2236 3. After the public hurricane loss-projection model under
2237 s. 627.06281 has been found to be accurate and reliable by the
2238 Florida Commission on Hurricane Loss Projection Methodology,
2239 that model shall serve as the minimum benchmark for determining
2240 the windstorm portion of the corporation's rates. This
2241 subparagraph does not require or allow the corporation to adopt
2242 rates lower than the rates otherwise required or allowed by this
2243 paragraph.

2244 4. The rate filings for the corporation which were
2245 approved by the office and which took effect January 1, 2007,
2246 are rescinded, except for those rates that were lowered. As soon
2247 as possible, the corporation shall begin using the lower rates
2248 that were in effect on December 31, 2006, and shall provide
2249 refunds to policyholders who have paid higher rates as a result
2250 of that rate filing. The rates in effect on December 31, 2006,
2251 shall remain in effect for the 2007 and 2008 calendar years
2252 except for any rate change that results in a lower rate. The
2253 next rate change that may increase rates shall take effect
2254 ~~January 1, 2009~~, pursuant to a new rate filing recommended by
2255 the corporation and established by the office, subject to the
2256 requirements of this paragraph.

2257 5.a. Beginning on January 15, 2009, and each year
2258 thereafter, the corporation must make a recommended actuarially
2259 sound rate filing for each personal and commercial line of
2260 business it writes, to be effective no earlier than July 1,
2261 2009.

870297

4/29/2008 8:21 AM

Amendment No.

2262 b. For the 36-month period beginning with the effective
2263 date for each of the rate filings made by the corporation on
2264 January 15, 2009, the rates established by the office for the
2265 corporation for its personal residential multiperil policies,
2266 its commercial residential multiperil policies, and its
2267 commercial nonresidential multiperil policies may not result in
2268 an overall average statewide premium increase of more than 10
2269 percent or an increase for any single policyholder of more than
2270 10 percent, during the first 12-month period, and may not result
2271 in an overall average statewide premium increase of more than 10
2272 percent, or an increase for any single policyholder of more than
2273 10 percent, during each of the two subsequent 12-month periods,
2274 excluding coverage changes and surcharges.

2275 c. For the 36-month period beginning with the effective
2276 date for the rate filings made by the corporation on January 15,
2277 2009, the rates established by the office for the corporation
2278 for its personal residential wind-only policies, its commercial
2279 residential wind-only policies, and its commercial
2280 nonresidential wind-only policies may not result in an overall
2281 average statewide premium increase of more than 10 percent, or
2282 an increase for any single policyholder of more than 10 percent,
2283 during the first 12-month period, and may not result in an
2284 overall average statewide premium increase of more than 10
2285 percent, or an increase for any single policyholder of more than
2286 10 percent, during each of the two subsequent 12-month periods,
2287 excluding coverage changes and surcharges.

2288 (p)1. The corporation shall certify to the office its
2289 needs for annual assessments as to a particular calendar year,

870297

4/29/2008 8:21 AM

Amendment No.

2290 and for any interim assessments that it deems to be necessary to
2291 sustain operations as to a particular year pending the receipt
2292 of annual assessments. Upon verification, the office shall
2293 approve such certification, and the corporation shall levy such
2294 annual or interim assessments. Such assessments shall be
2295 prorated as provided in paragraph (b). The corporation shall
2296 take all reasonable and prudent steps necessary to collect the
2297 amount of assessment due from each assessable insurer,
2298 including, if prudent, filing suit to collect such assessment.
2299 If the corporation is unable to collect an assessment from any
2300 assessable insurer, the uncollected assessments shall be levied
2301 as an additional assessment against the assessable insurers and
2302 any assessable insurer required to pay an additional assessment
2303 as a result of such failure to pay shall have a cause of action
2304 against such nonpaying assessable insurer. Assessments shall be
2305 included as an appropriate factor in the making of rates. The
2306 failure of a surplus lines agent to collect and remit any
2307 regular or emergency assessment levied by the corporation is
2308 considered to be a violation of s. 626.936 and subjects the
2309 surplus lines agent to the penalties provided in that section.

2310 2. The governing body of any unit of local government, any
2311 residents of which are insured by the corporation, may issue
2312 bonds as defined in s. 125.013 or s. 166.101 from time to time
2313 to fund an assistance program, in conjunction with the
2314 corporation, for the purpose of defraying deficits of the
2315 corporation. In order to avoid needless and indiscriminate
2316 proliferation, duplication, and fragmentation of such assistance
2317 programs, any unit of local government, any residents of which

870297

4/29/2008 8:21 AM

Amendment No.

2318 are insured by the corporation, may provide for the payment of
2319 losses, regardless of whether or not the losses occurred within
2320 or outside of the territorial jurisdiction of the local
2321 government. Revenue bonds under this subparagraph may not be
2322 issued until validated pursuant to chapter 75, unless a state of
2323 emergency is declared by executive order or proclamation of the
2324 Governor pursuant to s. 252.36 making such findings as are
2325 necessary to determine that it is in the best interests of, and
2326 necessary for, the protection of the public health, safety, and
2327 general welfare of residents of this state and declaring it an
2328 essential public purpose to permit certain municipalities or
2329 counties to issue such bonds as will permit relief to claimants
2330 and policyholders of the corporation. Any such unit of local
2331 government may enter into such contracts with the corporation
2332 and with any other entity created pursuant to this subsection as
2333 are necessary to carry out this paragraph. Any bonds issued
2334 under this subparagraph shall be payable from and secured by
2335 moneys received by the corporation from emergency assessments
2336 under sub-subparagraph (b)3.d., and assigned and pledged to or
2337 on behalf of the unit of local government for the benefit of the
2338 holders of such bonds. The funds, credit, property, and taxing
2339 power of the state or of the unit of local government shall not
2340 be pledged for the payment of such bonds. ~~If any of the bonds~~
2341 ~~remain unsold 60 days after issuance, the office shall require~~
2342 ~~all insurers subject to assessment to purchase the bonds, which~~
2343 ~~shall be treated as admitted assets; each insurer shall be~~
2344 ~~required to purchase that percentage of the unsold portion of~~
2345 ~~the bond issue that equals the insurer's relative share of~~

870297

4/29/2008 8:21 AM

Amendment No.

2346 ~~assessment liability under this subsection. An insurer shall not~~
2347 ~~be required to purchase the bonds to the extent that the office~~
2348 ~~determines that the purchase would endanger or impair the~~
2349 ~~solvency of the insurer.~~

2350 3.a. The corporation shall adopt one or more programs
2351 subject to approval by the office for the reduction of both new
2352 and renewal writings in the corporation. Beginning January 1,
2353 2008, any program the corporation adopts for the payment of
2354 bonuses to an insurer for each risk the insurer removes from the
2355 corporation shall comply with s. 627.3511(2) and may not exceed
2356 the amount referenced in s. 627.3511(2) for each risk removed.
2357 The corporation may consider any prudent and not unfairly
2358 discriminatory approach to reducing corporation writings, and
2359 may adopt a credit against assessment liability or other
2360 liability that provides an incentive for insurers to take risks
2361 out of the corporation and to keep risks out of the corporation
2362 by maintaining or increasing voluntary writings in counties or
2363 areas in which corporation risks are highly concentrated and a
2364 program to provide a formula under which an insurer voluntarily
2365 taking risks out of the corporation by maintaining or increasing
2366 voluntary writings will be relieved wholly or partially from
2367 assessments under sub-subparagraphs (b)3.a. and b. However, any
2368 "take-out bonus" or payment to an insurer must be conditioned on
2369 the property being insured for at least 5 years by the insurer,
2370 unless canceled or nonrenewed by the policyholder. If the policy
2371 is canceled or nonrenewed by the policyholder before the end of
2372 the 5-year period, the amount of the take-out bonus must be
2373 prorated for the time period the policy was insured. When the

870297

4/29/2008 8:21 AM

Amendment No.

2374 corporation enters into a contractual agreement for a take-out
2375 plan, the producing agent of record of the corporation policy is
2376 entitled to retain any unearned commission on such policy, and
2377 the insurer shall either:

2378 (I) Pay to the producing agent of record of the policy,
2379 for the first year, an amount which is the greater of the
2380 insurer's usual and customary commission for the type of policy
2381 written or a policy fee equal to the usual and customary
2382 commission of the corporation; or

2383 (II) Offer to allow the producing agent of record of the
2384 policy to continue servicing the policy for a period of not less
2385 than 1 year and offer to pay the agent the insurer's usual and
2386 customary commission for the type of policy written. If the
2387 producing agent is unwilling or unable to accept appointment by
2388 the new insurer, the new insurer shall pay the agent in
2389 accordance with sub-sub-subparagraph (I).

2390 b. Any credit or exemption from regular assessments
2391 adopted under this subparagraph shall last no longer than the 3
2392 years following the cancellation or expiration of the policy by
2393 the corporation. With the approval of the office, the board may
2394 extend such credits for an additional year if the insurer
2395 guarantees an additional year of renewability for all policies
2396 removed from the corporation, or for 2 additional years if the
2397 insurer guarantees 2 additional years of renewability for all
2398 policies so removed.

2399 c. There shall be no credit, limitation, exemption, or
2400 deferment from emergency assessments to be collected from
2401 policyholders pursuant to sub-subparagraph (b)3.d.

870297

4/29/2008 8:21 AM

Amendment No.

2402 4. The plan shall provide for the deferment, in whole or
2403 in part, of the assessment of an assessable insurer, other than
2404 an emergency assessment collected from policyholders pursuant to
2405 sub-subparagraph (b)3.d., if the office finds that payment of
2406 the assessment would endanger or impair the solvency of the
2407 insurer. In the event an assessment against an assessable
2408 insurer is deferred in whole or in part, the amount by which
2409 such assessment is deferred may be assessed against the other
2410 assessable insurers in a manner consistent with the basis for
2411 assessments set forth in paragraph (b).

2412 5. Effective July 1, 2007, in order to evaluate the costs
2413 and benefits of approved take-out plans, if the corporation pays
2414 a bonus or other payment to an insurer for an approved take-out
2415 plan, it shall maintain a record of the address or such other
2416 identifying information on the property or risk removed in order
2417 to track if and when the property or risk is later insured by
2418 the corporation.

2419 6. Any policy taken out, assumed, or removed from the
2420 corporation is, as of the effective date of the take-out,
2421 assumption, or removal, direct insurance issued by the insurer
2422 and not by the corporation, even if the corporation continues to
2423 service the policies. This subparagraph applies to policies of
2424 the corporation and not policies taken out, assumed, or removed
2425 from any other entity.

2426 (w)1. The following records of the corporation are
2427 confidential and exempt from the provisions of s. 119.07(1) and
2428 s. 24(a), Art. I of the State Constitution:

870297
4/29/2008 8:21 AM

Amendment No.

2429 a. Underwriting files, except that a policyholder or an
2430 applicant shall have access to his or her own underwriting
2431 files. Confidential and exempt underwriting file records may
2432 also be released to other governmental agencies upon written
2433 request and demonstration of need; such records held by the
2434 receiving agency remain confidential and exempt as provided
2435 herein.

2436 b. Claims files, until termination of all litigation and
2437 settlement of all claims arising out of the same incident,
2438 although portions of the claims files may remain exempt, as
2439 otherwise provided by law. Confidential and exempt claims file
2440 records may be released to other governmental agencies upon
2441 written request and demonstration of need; such records held by
2442 the receiving agency remain confidential and exempt as provided
2443 ~~for~~ herein.

2444 c. Records obtained or generated by an internal auditor
2445 pursuant to a routine audit, until the audit is completed, or if
2446 the audit is conducted as part of an investigation, until the
2447 investigation is closed or ceases to be active. An investigation
2448 is considered "active" while the investigation is being
2449 conducted with a reasonable, good faith belief that it could
2450 lead to the filing of administrative, civil, or criminal
2451 proceedings.

2452 d. Matters reasonably encompassed in privileged attorney-
2453 client communications.

2454 e. Proprietary information licensed to the corporation
2455 under contract and the contract provides for the confidentiality
2456 of such proprietary information.

870297

4/29/2008 8:21 AM

Amendment No.

2457 f. All information relating to the medical condition or
2458 medical status of a corporation employee which is not relevant
2459 to the employee's capacity to perform his or her duties, except
2460 as otherwise provided in this paragraph. Information ~~that~~ ~~which~~
2461 is exempt shall include, but is not limited to, information
2462 relating to workers' compensation, insurance benefits, and
2463 retirement or disability benefits.

2464 g. Upon an employee's entrance into the employee
2465 assistance program, a program to assist any employee who has a
2466 behavioral or medical disorder, substance abuse problem, or
2467 emotional difficulty which affects the employee's job
2468 performance, all records relative to that participation shall be
2469 confidential and exempt from the provisions of s. 119.07(1) and
2470 s. 24(a), Art. I of the State Constitution, except as otherwise
2471 provided in s. 112.0455(11).

2472 h. Information relating to negotiations for financing,
2473 reinsurance, depopulation, or contractual services, until the
2474 conclusion of the negotiations.

2475 i. Minutes of closed meetings regarding underwriting
2476 files, and minutes of closed meetings regarding an open claims
2477 file until termination of all litigation and settlement of all
2478 claims with regard to that claim, except that information
2479 otherwise confidential or exempt by law shall ~~will~~ be redacted.

2480 2. If ~~When~~ an authorized insurer is considering
2481 underwriting a risk insured by the corporation, relevant
2482 underwriting files and confidential claims files may be released
2483 to the insurer provided the insurer agrees in writing, notarized
2484 and under oath, to maintain the confidentiality of such files.

870297

4/29/2008 8:21 AM

Amendment No.

2485 If ~~When~~ a file is transferred to an insurer that file is no
2486 longer a public record because it is not held by an agency
2487 subject to the provisions of the public records law.
2488 Underwriting files and confidential claims files may also be
2489 released to staff ~~of~~ and the board of governors of the market
2490 assistance plan established pursuant to s. 627.3515, who must
2491 retain the confidentiality of such files, except such files may
2492 be released to authorized insurers that are considering assuming
2493 the risks to which the files apply, provided the insurer agrees
2494 in writing, notarized and under oath, to maintain the
2495 confidentiality of such files. Finally, the corporation or the
2496 board or staff of the market assistance plan may make the
2497 following information obtained from underwriting files and
2498 confidential claims files available to licensed general lines
2499 insurance agents: name, address, and telephone number of the
2500 residential property owner or insured; location of the risk;
2501 rating information; loss history; and policy type. The receiving
2502 licensed general lines insurance agent must retain the
2503 confidentiality of the information received.

2504 3. A policyholder who has filed suit against the
2505 corporation has the right to discover the contents of his or her
2506 own claims file to the same extent that discovery of such
2507 contents would be available from a private insurer in litigation
2508 as provided by the Florida Rules of Civil Procedure, the Florida
2509 Evidence Code, and other applicable law. Pursuant to subpoena, a
2510 third party has the right to discover the contents of an
2511 insured's or applicant's underwriting or claims file to the same
2512 extent that discovery of such contents would be available from a

870297

4/29/2008 8:21 AM

Amendment No.

2513 private insurer by subpoena as provided by the Florida Rules of
2514 Civil Procedure, the Florida Evidence Code, and other applicable
2515 law, and subject to any confidentiality protections requested by
2516 the corporation and agreed to by the seeking party or ordered by
2517 the court. The corporation may release confidential underwriting
2518 and claims file contents and information as it deems necessary
2519 and appropriate to underwrite or service insurance policies and
2520 claims, subject to any confidentiality protections deemed
2521 necessary and appropriate by the corporation.

2522 4.2- Portions of meetings of the corporation are exempt
2523 from the provisions of s. 286.011 and s. 24(b), Art. I of the
2524 State Constitution wherein confidential underwriting files or
2525 confidential open claims files are discussed. All portions of
2526 corporation meetings which are closed to the public shall be
2527 recorded by a court reporter. The court reporter shall record
2528 the times of commencement and termination of the meeting, all
2529 discussion and proceedings, the names of all persons present at
2530 any time, and the names of all persons speaking. No portion of
2531 any closed meeting shall be off the record. Subject to the
2532 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
2533 notes of any closed meeting shall be retained by the corporation
2534 for a minimum of 5 years. A copy of the transcript, less any
2535 exempt matters, of any closed meeting wherein claims are
2536 discussed shall become public as to individual claims after
2537 settlement of the claim.

2538 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2539 ~~the risk being no longer eligible for coverage due to being~~
2540 ~~valued at \$1 million or more, the corporation shall, directly or~~

870297

4/29/2008 8:21 AM

Amendment No.

2541 ~~through the market assistance plan, make information from~~
2542 ~~confidential underwriting and claims files of policyholders~~
2543 ~~available only to licensed general lines agents who register~~
2544 ~~with the corporation to receive such information according to~~
2545 ~~the following procedures:~~

2546 ~~2. By August 1, 2006, the corporation shall provide such~~
2547 ~~policyholders who are not eligible for renewal the opportunity~~
2548 ~~to request in writing, within 30 days after the notification is~~
2549 ~~sent, that information from their confidential underwriting and~~
2550 ~~claims files not be released to licensed general lines agents~~
2551 ~~registered pursuant to this paragraph.~~

2552 ~~3. By August 1, 2006, the corporation shall make available~~
2553 ~~to licensed general lines agents the registration procedures to~~
2554 ~~be used to obtain confidential information from underwriting and~~
2555 ~~claims files for such policies not eligible for renewal. As a~~
2556 ~~condition of registration, the corporation shall require the~~
2557 ~~licensed general lines agent to attest that the agent has the~~
2558 ~~experience and relationships with authorized or surplus lines~~
2559 ~~carriers to attempt to offer replacement coverage for such~~
2560 ~~policies.~~

2561 ~~4. By September 1, 2006, the corporation shall make~~
2562 ~~available through a secured website to licensed general lines~~
2563 ~~agents registered pursuant to this paragraph application,~~
2564 ~~rating, loss history, mitigation, and policy type information~~
2565 ~~relating to such policies not eligible for renewal and for which~~
2566 ~~the policyholder has not requested the corporation withhold such~~
2567 ~~information. The registered licensed general lines agent may use~~
2568 ~~such information to contact and assist the policyholder in~~

870297

4/29/2008 8:21 AM

Amendment No.

2569 ~~securing replacement policies, and the agent may disclose to the~~
2570 ~~policyholder that such information was obtained from the~~
2571 ~~corporation.~~

2572 (dd)~~(ee)~~ The assets of the corporation may be invested and
2573 managed by the State Board of Administration.

2574 (ee)~~(ff)~~ The office may establish a pilot program to offer
2575 optional sinkhole coverage in one or more counties or other
2576 territories of the corporation for the purpose of implementing
2577 s. 627.706, as amended by s. 30, chapter 2007-1, Laws of
2578 Florida. Under the pilot program, the corporation is not
2579 required to issue a notice of nonrenewal to exclude sinkhole
2580 coverage upon the renewal of existing policies, but may exclude
2581 such coverage using a notice of coverage change.

2582 (ff) The corporation shall report claims data and
2583 histories to a consumer reporting agency, as defined by the
2584 federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., that
2585 maintains a national database of similar data for use in
2586 connection with the underwriting of insurance involving a
2587 consumer.

2588 Section 12. Paragraph (b) of subsection (2) of section
2589 627.4133, Florida Statutes, is amended to read:

2590 627.4133 Notice of cancellation, nonrenewal, or renewal
2591 premium.--

2592 (2) With respect to any personal lines or commercial
2593 residential property insurance policy, including, but not
2594 limited to, any homeowner's, mobile home owner's, farmowner's,
2595 condominium association, condominium unit owner's, apartment

870297
4/29/2008 8:21 AM

Amendment No.

2596 building, or other policy covering a residential structure or
2597 its contents:

2598 (b) The insurer shall give the named insured written
2599 notice of nonrenewal, cancellation, or termination at least 100
2600 days prior to the effective date of the nonrenewal,
2601 cancellation, or termination. However, the insurer shall give at
2602 least 100 days' written notice, or written notice by June 1,
2603 whichever is earlier, for any nonrenewal, cancellation, or
2604 termination that would be effective between June 1 and November
2605 30. The notice must include the reason or reasons for the
2606 nonrenewal, cancellation, or termination, except that:

2607 1. The insurer shall give the named insured written notice
2608 of nonrenewal, cancellation, or termination at least 180 days
2609 prior to the effective date of the nonrenewal, cancellation, or
2610 termination for a named insured whose residential structure has
2611 been insured by that insurer or an affiliated insurer for at
2612 least a 5-year period immediately prior to date of the written
2613 notice.

2614 ~~2.1-~~ When cancellation is for nonpayment of premium, at
2615 least 10 days' written notice of cancellation accompanied by the
2616 reason therefor shall be given. As used in this subparagraph,
2617 the term "nonpayment of premium" means failure of the named
2618 insured to discharge when due any of her or his obligations in
2619 connection with the payment of premiums on a policy or any
2620 installment of such premium, whether the premium is payable
2621 directly to the insurer or its agent or indirectly under any
2622 premium finance plan or extension of credit, or failure to
2623 maintain membership in an organization if such membership is a

870297

4/29/2008 8:21 AM

Amendment No.

2624 condition precedent to insurance coverage. "Nonpayment of
2625 premium" also means the failure of a financial institution to
2626 honor an insurance applicant's check after delivery to a
2627 licensed agent for payment of a premium, even if the agent has
2628 previously delivered or transferred the premium to the insurer.
2629 If a dishonored check represents the initial premium payment,
2630 the contract and all contractual obligations shall be void ab
2631 initio unless the nonpayment is cured within the earlier of 5
2632 days after actual notice by certified mail is received by the
2633 applicant or 15 days after notice is sent to the applicant by
2634 certified mail or registered mail, and if the contract is void,
2635 any premium received by the insurer from a third party shall be
2636 refunded to that party in full.

2637 ~~3.2-~~ When such cancellation or termination occurs during
2638 the first 90 days during which the insurance is in force and the
2639 insurance is canceled or terminated for reasons other than
2640 nonpayment of premium, at least 20 days' written notice of
2641 cancellation or termination accompanied by the reason therefor
2642 shall be given except where there has been a material
2643 misstatement or misrepresentation or failure to comply with the
2644 underwriting requirements established by the insurer.

2645 ~~4.3-~~ The requirement for providing written notice of
2646 nonrenewal by June 1 of any nonrenewal that would be effective
2647 between June 1 and November 30 does not apply to the following
2648 situations, but the insurer remains subject to the requirement
2649 to provide such notice at least 100 days prior to the effective
2650 date of nonrenewal:

870297
4/29/2008 8:21 AM

Amendment No.

2651 a. A policy that is nonrenewed due to a revision in the
2652 coverage for sinkhole losses and catastrophic ground cover
2653 collapse pursuant to s. 627.730, as amended by s. 30, chapter
2654 2007-1, Laws of Florida.

2655 b. A policy that is nonrenewed by Citizens Property
2656 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2657 that has been assumed by an authorized insurer offering
2658 replacement or renewal coverage to the policyholder.

2659
2660 After the policy has been in effect for 90 days, the policy
2661 shall not be canceled by the insurer except when there has been
2662 a material misstatement, a nonpayment of premium, a failure to
2663 comply with underwriting requirements established by the insurer
2664 within 90 days of the date of effectuation of coverage, or a
2665 substantial change in the risk covered by the policy or when the
2666 cancellation is for all insureds under such policies for a given
2667 class of insureds. This paragraph does not apply to individually
2668 rated risks having a policy term of less than 90 days.

2669 Section 13. Effective January 1, 2011, section 689.262,
2670 Florida Statutes, is created to read:

2671 689.262 Sale of residential property; disclosure of
2672 windstorm mitigation rating.--A purchaser of residential
2673 property must be informed of the windstorm mitigation rating of
2674 the structure, based on the uniform home grading scale adopted
2675 pursuant to s. 215.55865. The rating must be included in the
2676 contract for sale or as a separate document attached to the
2677 contract for sale. The Financial Services Commission may adopt
2678 rules, consistent with other state laws, to administer this

870297

4/29/2008 8:21 AM

Amendment No.

2679 section, including the form of the disclosure and the
2680 requirements for the windstorm mitigation inspection or report
2681 that is required for purposes of determining the rating.

2682 Section 14. (1) By December 15, 2008, Citizens Property
2683 Insurance Corporation shall transfer \$250 million to the General
2684 Revenue Fund if the combined surplus of each account as defined
2685 in s. 627.351(6), Florida Statutes, exceeds \$1 billion. The
2686 board of governors of Citizens Property Insurance Corporation
2687 must make a reasonable estimate of such surplus on or after
2688 December 1, 2008, and no later than December 14, 2008, using
2689 generally accepted actuarial and accounting practices,
2690 recognizing that audited financial statements will not yet be
2691 available.

2692 (2) Beginning July 1, 2009, the board shall make quarterly
2693 transfers of any interest earned prior to the issuance of any
2694 surplus notes, interest paid, and principal repaid to the state
2695 for any surplus notes issued by the program after December 1,
2696 2008, to Citizens Property Insurance Corporation, provided such
2697 surplus notes were funded exclusively by an appropriation to the
2698 program by the Legislature for the 2008-2009 fiscal year. The
2699 corporation shall credit each account as defined in s.
2700 627.351(6) in a pro rata manner for the funds removed from each
2701 account to make the transfer required by subsection (11).

2702 Section 15. Citizens Property Insurance Corporation may
2703 not use any amendments made to s. 215.5595, Florida Statutes, by
2704 this act or any transfer of funds authorized by this act as
2705 justification or cause in seeking any rate or assessment
2706 increase.

870297

4/29/2008 8:21 AM

Amendment No.

2707 Section 16. Subsection (3) is added to section 627.06281,
2708 Florida Statutes, to read:

2709 627.06281 Public hurricane loss projection model;
2710 reporting of data by insurers.--

2711 (3) (a) A residential property insurer may have access to
2712 and use the public hurricane loss projection model, including
2713 all assumptions and factors and all detailed loss results, for
2714 the purpose of calculating rate indications in a rate filing and
2715 for analytical purposes, including any analysis or evaluation of
2716 the model required under actuarial standards of practice.

2717 (b) By January 1, 2009, the office shall establish by rule
2718 a fee schedule for access to and the use of the model. The fee
2719 schedule must be reasonably calculated to cover only the actual
2720 costs of providing access to and the use of the model.

2721 Section 17. Section 627.0655, Florida Statutes, is amended
2722 to read:

2723 627.0655 Policyholder loss or expense-related premium
2724 discounts.--An insurer or person authorized to engage in the
2725 business of insurance in this state may include, in the premium
2726 charged an insured for any policy, contract, or certificate of
2727 insurance, a discount based on the fact that another policy,
2728 contract, or certificate of any type has been purchased by the
2729 insured from the same insurer or insurer group, the Citizens
2730 Property Insurance Corporation created under s. 627.351(6) if
2731 the same insurance agent is servicing both policies, or an
2732 insurer that has removed the policy from the Citizens Property
2733 Insurance Corporation if the same insurance agent is servicing
2734 both policies.

870297

4/29/2008 8:21 AM

Amendment No.

2735 Section 18. (1) The Citizens Property Insurance
2736 Corporation Mission Review Task Force is created to analyze and
2737 compile available data and to develop a report setting forth the
2738 statutory and operational changes needed to return Citizens
2739 Property Insurance Corporation to its former role as a state-
2740 created, noncompetitive residual market mechanism that provides
2741 property insurance coverage to risks that are otherwise entitled
2742 but unable to obtain such coverage in the private insurance
2743 market. The task force shall submit a report to the Governor,
2744 the President of the Senate, and the Speaker of the House of
2745 Representatives by January 31, 2009. At a minimum, the task
2746 force shall analyze and evaluate relevant and applicable
2747 information and data and develop recommendations concerning:

2748 (a) The nature of Citizens Property Insurance
2749 Corporation's role in providing property insurance coverage only
2750 if such coverage is not available from private insurers.

2751 (b) The ability of the admitted market to offer policies
2752 to those consumers formerly insured through Citizens Property
2753 Insurance Corporation. This consideration shall include, but not
2754 be limited to, the availability of private market reinsurance
2755 and coverage through the Florida Hurricane Catastrophe Fund, the
2756 general adequacy of the admitted market's current rates, and the
2757 capacity of the industry to offer policies to former Citizens
2758 Property Insurance Corporation policyholders within existing
2759 writing ratio limitations.

2760 (c) The appropriate relationship of rates charged by
2761 Citizens Property Insurance Corporation to rates charged by

870297

4/29/2008 8:21 AM

Amendment No.

2762 private insurers, with due consideration for the corporation's
2763 role as a noncompetitive residual market mechanism.

2764 (d) The relationships between the exposure of Citizens
2765 Property Insurance Corporation to catastrophic hurricane losses,
2766 the corporation's history of purchasing inadequate or no
2767 reinsurance coverage, and the corporation's lack of adequate
2768 capital to meet its potential claim obligations without
2769 incurring large deficits.

2770 (e) The adverse effects on the people and the economy of
2771 this state of the large, multiyear deficit assessments by
2772 Citizens Property Insurance Corporation that may be levied on
2773 businesses and households in this state, and steps that can be
2774 taken to reduce those effects.

2775 (f) The operational implications of the variation in the
2776 number of policies in force over time in Citizens Property
2777 Insurance Corporation and the merits of outsourcing some or all
2778 of its operational responsibilities.

2779 (g) Changes in the mission and operations of Citizens
2780 Property Insurance Corporation to reduce or eliminate any
2781 adverse effect such mission and operations may be having on the
2782 promotion of sound and economic growth and development of the
2783 coastal areas of this state.

2784 (h) Appropriate and consistent geographic boundaries of
2785 the high-risk account.

2786 (2) The task force shall be composed of 19 members as
2787 follows:

2788 (a) Three members appointed by the Speaker of the House of
2789 Representatives.

870297

4/29/2008 8:21 AM

Amendment No.

2790 (b) Three members appointed by the President of the
2791 Senate.

2792 (c) Four members appointed by the Governor who are not
2793 employed by or professionally affiliated with an insurance
2794 company or a subsidiary of an insurance company, at least two of
2795 whom must be consumer advocates or members of a consumer
2796 advocacy organization or agency.

2797 (d) Nine members appointed as representatives of private
2798 insurance companies as follows:

2799 1. Two members representing two separate insurance
2800 companies that each provide at least 150,000 homeowner's
2801 insurance policies in this state at the time of the creation of
2802 the task force.

2803 2. Two members representing two separate insurance
2804 companies that each provide fewer than 150,000 homeowner's
2805 insurance policies in this state at the time of the creation of
2806 the task force.

2807 3. Two members representing two separate insurance
2808 companies among the 10 insurance companies writing the greatest
2809 amount of commercial multiperil insurance premium in this state
2810 at the time of the creation of the task force.

2811 4. Three members appointed by the Chief Financial Officer
2812 representing insurance agents in this state.

2813
2814 Of each pair of members appointed under subparagraphs 1., 2.,
2815 and 3., one shall be appointed by the President of the Senate
2816 and one by the Speaker of the House of Representatives.

870297

4/29/2008 8:21 AM

Amendment No.

2817 (3) The task force shall conduct research, hold public
2818 meetings, receive testimony, employ consultants and
2819 administrative staff, and undertake other activities determined
2820 by its members to be necessary to complete its responsibilities.
2821 Citizens Property Insurance Corporation shall have appropriate
2822 senior staff attend task force meetings, shall respond to
2823 requests for testimony and data by the task force, shall
2824 otherwise cooperate with the task force, and shall provide
2825 funding for the necessary costs of implementing the provisions
2826 of this section.

2827 (4) A member of the task force may not delegate his or her
2828 attendance or voting power to a designee.

2829 (5) Members of the task force shall serve without
2830 compensation but are entitled to receive reimbursement for
2831 travel and per diem as provided in s. 112.061, Florida Statutes.

2832 (6) The appointments to the task force must be completed
2833 within 30 calendar days after the effective date of this act,
2834 and the task force must hold its initial meeting within 1 month
2835 after appointment of all members. The task force shall expire no
2836 later than 60 calendar days after submission of the report
2837 required in subsection (1).

2838 Section 19. Section 627.0621, Florida Statutes, is created
2839 to read:

2840 627.0621 Transparency in rate regulation.--

2841 (1) DEFINITIONS.-As used in this section, the term:

2842 (a) "Rate Filing" means any original or amended rate
2843 filing required or authorized under s. 627.062, s. 627.0651, or
2844 chapter 2007-1, Laws of Florida.

870297

4/29/2008 8:21 AM

Amendment No.

2845 (b) "Recommendation" means any proposed, preliminary, or
2846 final recommendation from an office actuary reviewing a rate
2847 filing with respect to the issue of approval or disapproval of
2848 the rate filing or with respect to rate indications that the
2849 office would consider acceptable.

2850 (2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING
2851 INFORMATION.--With respect to any rate filing made on after July
2852 1, 2008, the office shall provide the following information on a
2853 publicly accessible Internet website:

2854 (a) The overall rate change requested by the insurer.

2855 (b) All assumptions made by the office's actuaries.

2856 (c) A statement describing any assumptions or methods that
2857 deviate from the actuarial standards of practice of the Casualty
2858 Actuarial Society or the American Academy of Actuaries,
2859 including an explanation of the nature, rationale, and effect of
2860 the deviation.

2861 (d) All recommendations made by any office actuary who
2862 reviewed the rate filing.

2863 (e) Certification by the office's actuary under oath and
2864 subject to the penalty of perjury that, based on the actuary's
2865 knowledge, his or her recommendations did not contain any untrue
2866 statement of a material fact or omit to state a material fact
2867 necessary to make a recommendation and, in light of the
2868 circumstances under which such recommendation was made, was not
2869 misleading.

2870 (f) The overall rate change approved by the office.

2871 (3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT.--In any
2872 administrative or judicial proceeding relating to a rate filing,

870297

4/29/2008 8:21 AM

Amendment No.

2873 attorney-client privilege and work product exemptions from
2874 disclosure do not apply to communications, including
2875 communications with office attorneys or records prepared by or
2876 at the direction of an office attorney, except when conditions
2877 of paragraphs (a) and (b) have been met:

2878 (a) The communication or record reflects a mental
2879 impression, conclusion, litigation strategy, or legal theory of
2880 the attorney or office.

2881 (b) The communication or record was prepared after the
2882 initiation of an action in a court of competent jurisdiction or
2883 after the filing of a request for a proceeding under ss. 120.569
2884 and 120.57.

2885
2886 Work product privilege claims that do not meet the conditions of
2887 paragraphs (a) and (b) shall be deemed waived.

2888 Section 20. Paragraph (b) of subsection (4) of section
2889 215.555, Florida Statutes, is amended to read:

2890 215.555 Florida Hurricane Catastrophe Fund.--

2891 (4) REIMBURSEMENT CONTRACTS.--

2892 (b)1. The contract shall contain a promise by the board to
2893 reimburse the insurer for 45 percent, 75 percent, or 90 percent
2894 of its losses from each covered event in excess of the insurer's
2895 retention, plus 5 percent of the reimbursed losses to cover loss
2896 adjustment expenses.

2897 2. The insurer must elect one of the percentage coverage
2898 levels specified in this paragraph and may, upon renewal of a
2899 reimbursement contract, elect a lower percentage coverage level
2900 if no revenue bonds issued under subsection (6) after a covered
870297

4/29/2008 8:21 AM

Amendment No.

2901 event are outstanding, or elect a higher percentage coverage
2902 level, regardless of whether or not revenue bonds are
2903 outstanding. All members of an insurer group must elect the same
2904 percentage coverage level. Any joint underwriting association,
2905 risk apportionment plan, or other entity created under s.
2906 627.351 must elect the 90-percent coverage level.

2907 3. The contract shall provide that reimbursement amounts
2908 shall not be reduced by reinsurance paid or payable to the
2909 insurer from other sources.

2910 4. Notwithstanding any other provision contained in this
2911 section, the board shall make available to insurers that
2912 purchased coverage provided by this subparagraph in 2007 ~~2006~~,
2913 insurers qualifying as limited apportionment companies under s.
2914 627.351(6)(c), and insurers that have been ~~were~~ approved to
2915 participate in ~~2006 or that are approved in 2007~~ for the
2916 Insurance Capital Build-Up Incentive Program pursuant to s.
2917 215.5595, a contract or contract addendum that provides an
2918 additional amount of reimbursement coverage of up to \$10
2919 million. The premium to be charged for this additional
2920 reimbursement coverage shall be 50 percent of the additional
2921 reimbursement coverage provided, which shall include one prepaid
2922 reinstatement. The minimum retention level that an eligible
2923 participating insurer must retain associated with this
2924 additional coverage layer is 30 percent of the insurer's surplus
2925 as of December 31, 2007 ~~2006~~. This coverage shall be in addition
2926 to all other coverage that may be provided under this section.
2927 The coverage provided by the fund under this subparagraph shall
2928 be in addition to the claims-paying capacity as defined in

870297

4/29/2008 8:21 AM

Amendment No.

2929 subparagraph (c)1., but only with respect to those insurers that
2930 select the additional coverage option and meet the requirements
2931 of this subparagraph. The claims-paying capacity with respect to
2932 all other participating insurers and limited apportionment
2933 companies that do not select the additional coverage option
2934 shall be limited to their reimbursement premium's proportionate
2935 share of the actual claims-paying capacity otherwise defined in
2936 subparagraph (c)1. and as provided for under the terms of the
2937 reimbursement contract. Coverage provided in the reimbursement
2938 contract shall ~~will~~ not be affected by the additional premiums
2939 paid by participating insurers exercising the additional
2940 coverage option allowed in this subparagraph. This subparagraph
2941 expires on May 31, 2009 ~~2008~~.

2942 Section 21. Subsection (1) of section 627.0613, Florida
2943 Statutes, is amended to read:

2944 627.0613 Consumer advocate.--The Chief Financial Officer
2945 must appoint a consumer advocate who must represent the general
2946 public of the state before the department and the office. The
2947 consumer advocate must report directly to the Chief Financial
2948 Officer, but is not otherwise under the authority of the
2949 department or of any employee of the department. The consumer
2950 advocate has such powers as are necessary to carry out the
2951 duties of the office of consumer advocate, including, but not
2952 limited to, the powers to:

2953 (1) Recommend to the department or office, by petition,
2954 the commencement of any proceeding or action; appear in any
2955 proceeding or action before the department or office; or appear
2956 in any proceeding before the Division of Administrative Hearings

870297
4/29/2008 8:21 AM

Amendment No.

2957 ~~er arbitration panel specified in s. 627.062(6)~~ relating to
2958 subject matter under the jurisdiction of the department or
2959 office.

2960 Section 22. Subsections (1) and (2) of section 627.712,
2961 Florida Statutes, are amended to read:

2962 627.712 Residential windstorm coverage required;
2963 availability of exclusions for windstorm or contents.--

2964 (1) An insurer issuing a residential property insurance
2965 policy must provide windstorm coverage. Except as provided in
2966 paragraph (2) (c), this section subsection does not apply with
2967 respect to risks that are eligible for wind-only coverage from
2968 Citizens Property Insurance Corporation under s. 627.351(6).

2969 (2) A property insurer must make available, at the option
2970 of the policyholder, an exclusion of windstorm coverage.

2971 (a) The coverage may be excluded only if:

2972 ~~(a)~~1. When the policyholder is a natural person, the
2973 policyholder personally writes and provides to the insurer the
2974 following statement in his or her own handwriting and signs his
2975 or her name, which must also be signed by every other named
2976 insured on the policy, and dated: "I do not want the insurance
2977 on my (home/mobile home/condominium unit) to pay for damage from
2978 windstorms. I will pay those costs. My insurance will not."

2979 2. When the policyholder is other than a natural person,
2980 the policyholder provides to the insurer on the policyholder's
2981 letterhead the following statement that must be signed by the
2982 policyholder's authorized representative and dated: " (Name of
2983 entity) does not want the insurance on its (type of
2984 structure) to pay for damage from windstorms. (Name of

870297

4/29/2008 8:21 AM

Amendment No.

2985 entity) will be responsible for these costs. (Name of
2986 entity's) insurance will not."

2987 (b) If the structure insured by the policy is subject to a
2988 mortgage or lien, the policyholder must provide the insurer with
2989 a written statement from the mortgageholder or lienholder
2990 indicating that the mortgageholder or lienholder approves the
2991 policyholder electing to exclude windstorm coverage or hurricane
2992 coverage from his or her or its property insurance policy.

2993 (c) If the residential structure is eligible for wind-only
2994 coverage from Citizens Property Insurance Corporation, an
2995 insurer nonrenewing a policy and issuing a replacement policy,
2996 or issuing a new policy, that does not provide wind coverage
2997 shall provide a notice to the mortgageholder or lienholder
2998 indicating the policyholder has elected coverage that does not
2999 cover wind.

3000 Section 23. Except as otherwise expressly provided in this
3001 act, this act shall take effect July 1, 2008.

3002

3003

3004

3005 -----

3006

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

3007

Remove the entire title and insert:

3008

A bill to be entitled

3009

An act relating to insurance; amending s. 215.5595, F.S.;

3010

revising legislative findings; providing for an appropriation of

3011

state funds in exchange for surplus notes issued by residential

3012

property insurers under the program; revising the conditions and

870297

4/29/2008 8:21 AM

Amendment No.

3013 requirements for providing funds to insurers under the program;
3014 requiring a commitment by the insurer to meet minimum premium-
3015 to-surplus writing ratios for residential property insurance and
3016 for taking policies out of Citizens Property Insurance
3017 Corporation; requiring insurers to commit to maintaining certain
3018 levels of surplus and reinsurance; authorizing the State Board
3019 of Administration to charge a fee for late payments; providing
3020 for payment of costs and fees incurred by the board in
3021 administering the program from funds appropriated to the
3022 program, subject to a specified limit; requiring the board to
3023 submit an annual report to the Legislature on the program and
3024 insurer compliance with certain requirements; providing that
3025 amendments made by the act do not affect the terms of surplus
3026 notes approved prior to a specified date; authorizing the State
3027 Board of Administration and an insurer to renegotiate such terms
3028 consistent with such amendments; amending s. 624.3161, F.S.;
3029 authorizing the Office of Insurance Regulation to require an
3030 insurer to file its claims handling practices and procedures as
3031 a public record based on findings of a market conduct
3032 examination; amending s. 624.4211, F.S.; increasing the maximum
3033 amounts of administrative fines that may be imposed upon an
3034 insurer by the Office of Insurance Regulation for nonwillful and
3035 willful violations of an order or rule of the office or any
3036 provision of the Florida Insurance Code; creating s. 624.4213,
3037 F.S.; specifying requirements for submission of a document or
3038 information to the Office of Insurance Regulation or the
3039 Department of Financial Services in order for a person to claim
3040 that the document is a trade secret; requiring each page or

870297

4/29/2008 8:21 AM

Amendment No.

3041 portion to be labeled as a trade secret and be separated from
3042 non-trade secret material; requiring the submitting party to
3043 include an affidavit certifying certain information about the
3044 documents claimed to be trade secrets; requiring the office or
3045 department to notify persons who submit trade secret documents
3046 of any public-records request and the opportunity to file a
3047 court action to bar disclosure; specifying conditions for the
3048 office to retain or release such documents; creating s.
3049 624.4305, F.S.; requiring that an insurer planning to nonrenew
3050 more than a specified number of residential property insurance
3051 policies notify the Office of Insurance Regulation and obtain
3052 approval for such nonrenewals; specifying procedures for
3053 issuance of such notice; amending s. 626.9521, F.S.; increasing
3054 the maximum fines that may be imposed by the office or
3055 department for nonwillful and willful violations of state law
3056 regarding unfair methods of competition and unfair or deceptive
3057 acts or practices related to insurance; amending s. 627.0612,
3058 F.S.; providing criteria for administrative hearings to
3059 determine whether an insurer's property insurance rates, rating
3060 manuals, premium credits, discount schedules, and surcharge
3061 schedules comply with the law; providing for entry of certain
3062 orders; amending s. 627.062, F.S.; requiring that an insurer
3063 seeking a rate for property insurance that is greater than the
3064 rate most recently approved by the Office of Insurance
3065 Regulation make a "file and use" filing for all such rate
3066 filings made after a specified date; revising the factors the
3067 office must consider in reviewing a rate filing; prohibiting the
3068 Office of Insurance Regulation from disapproving as excessive a

870297
4/29/2008 8:21 AM

Amendment No.

3069 rate solely because the insurer obtained reinsurance covering a
3070 specified probably maximum loss; allowing the office to
3071 disapprove a rate as excessive within 1 year after the rate has
3072 been approved under certain conditions related to nonrenewal of
3073 policies by the insurer; requiring the Division of
3074 Administrative Hearings to expedite a hearing request by an
3075 insurer and for the administrative law judge to commence the
3076 hearing within a specified time; authorizing an insurer to
3077 request an expedited appellate review pursuant to the Florida
3078 Rules of Appellate Procedure; expressing legislative intent for
3079 an expedited appellate review; revising provisions relating to
3080 the submission of a disputed rate filing, other than a rate
3081 filing for medical malpractice insurance, to an arbitration
3082 panel in lieu of an administrative hearing if the rate is filed
3083 before a specified date; deleting provisions relating to
3084 mandatory arbitration in lieu of certain hearings; amending s.
3085 627.0628, F.S.; providing legislative findings relating to final
3086 agency action for insurance ratemaking; requiring that with
3087 respect to rate filings, insurers must use actuarial methods or
3088 models found to be accurate or reliable by the Florida
3089 Commission on Hurricane Loss Projection Methodology; providing
3090 for use of other models under certain circumstances; deleting
3091 the requirement for the Office of Insurance Regulation and the
3092 Consumer Advocate to have access to all assumptions of a
3093 hurricane loss model in order for a model that has been found to
3094 be accurate and reliable by the Florida Commission on Hurricane
3095 Loss Projection Methodology to be admissible in a rate
3096 proceeding; deleting cross-references to conform to changes made

870297

4/29/2008 8:21 AM

Amendment No.

3097 | by the act; amending s. 627.0629, F.S.; requiring that the
3098 | Office of Insurance Regulation develop and make publicly
3099 | available before a specified deadline a proposed method for
3100 | insurers to establish windstorm mitigation premium discounts
3101 | that correlate to the uniform home rating scale; requiring that
3102 | the Financial Services Commission adopt rules before a specified
3103 | deadline; requiring insurers to make rate filings pursuant to
3104 | such method; authorizing the commission to make changes by rule
3105 | to the uniform home grading scale and specify by rule the
3106 | minimum required discounts, credits, or other rate
3107 | differentials; requiring that such rate differentials be
3108 | consistent with generally accepted actuarial principles and wind
3109 | loss mitigation studies; amending s. 627.351, F.S., relating to
3110 | Citizens Property Insurance Corporation; deleting a provision to
3111 | conform to changes made in the act; deleting provisions defining
3112 | the terms "homestead property" and "nonhomestead property";
3113 | increasing threshold replacement costs of certain structures for
3114 | eligibility for coverage by the corporation; deleting
3115 | requirements for certain properties to meeting building code
3116 | plus requirements as a condition of eligibility for coverage by
3117 | the corporation; deleting outdated provisions requiring the
3118 | corporation to submit a report for approval of offering
3119 | multiperil coverage; revising threshold amounts of deficits
3120 | incurred in a calendar year on which the decision to levy
3121 | assessments and the types of such assessments are based;
3122 | revising the formula used to calculate shares of assessments
3123 | owed by certain assessable insureds; requiring that the board of
3124 | governors make certain determinations before levying emergency

870297

4/29/2008 8:21 AM

Amendment No.

3125 assessments; providing the board of governors with discretion to
3126 set the amount of an emergency assessment within specified
3127 limits; requiring the board of governors to levy a Citizens
3128 policyholder surcharge under certain conditions; increasing the
3129 amount of the surcharge; deleting a provision requiring the levy
3130 of an immediate assessment against certain policyholders under
3131 such conditions; requiring that funds collected from the levy of
3132 such surcharges be used for certain purposes; providing that
3133 such surcharges are not considered premium and are not subject
3134 to commissions, fees, or premium taxes; requiring that the
3135 failure to pay such surcharges be treated as failure to pay
3136 premium; requiring that the amount of any assessment or
3137 surcharge which exceeds the amount of deficits be remitted to
3138 and used by the corporation for specified purposes; deleting
3139 provisions requiring that the plan of operation of the
3140 corporation provide for the levy of a Citizens policyholder
3141 surcharge if regular deficit assessments are levied as a result
3142 of deficits in certain accounts; deleting provisions related to
3143 the calculation, classification, and nonpayment of such
3144 surcharge; requiring that the corporation make an annual filing
3145 for each personal or commercial line of business it writes,
3146 beginning on a specified date; limiting the overall average
3147 statewide premium increase and the increase for an individual
3148 policyholder to a specified amount for rates established for
3149 certain policies during a specified period; deleting a provision
3150 requiring an insurer to purchase bonds that remain unsold;
3151 deleting provisions requiring the corporation to make certain
3152 confidential underwriting and claims files available to agents

870297

4/29/2008 8:21 AM

Amendment No.

3153 to conform to changes made by the act relating to ineligibility
3154 of certain dwellings; clarifying the right of certain parties to
3155 discover underwriting and claims file records; authorizing the
3156 corporation to release such records as it deems necessary;
3157 requiring the corporation to report certain information to a
3158 consumer reporting agency; amending s. 627.4133, F.S.; requiring
3159 insurers to provide written notice of certain cancellations,
3160 nonrenewals, or terminations; creating s. 689.262, F.S.;

3161 requiring a purchaser of residential property to be presented
3162 with the windstorm mitigation rating of the structure;
3163 authorizing the Financial Services Commission to adopt rules;
3164 requiring Citizens Property Insurance Corporation to transfer
3165 funds to the General Revenue Fund if the losses due to a
3166 hurricane do not exceed a specified amount; requiring the board
3167 of governors of Citizens Property Insurance Corporation to make
3168 a reasonable estimate of such losses by a certain date;
3169 requiring the board to make quarterly transfers of funds to the
3170 corporation under certain circumstances; requiring the
3171 corporation to credit certain accounts for funds removed to make
3172 certain transfers; prohibiting Citizens Property Insurance
3173 Corporation from using certain statutory changes or authorized
3174 transfers of funds as justification or cause to seek any rate or
3175 assessment increase; amending s. 627.06281, F.S.; providing for
3176 residential property insurers to have access to and use a public
3177 hurricane loss projection model; requiring the office to
3178 establish a fee schedule for such model access and use; amending
3179 s. 627.0655, F.S.; expanding application of policyholder loss or
3180 expense-related premium discounts; creating the Citizens

870297

4/29/2008 8:21 AM

Amendment No.

3181 Property Insurance Corporation Mission Review Task Force;
3182 providing purposes; requiring a report; providing report
3183 requirements; providing for appointment of members; providing
3184 responsibilities; specifying service without compensation;
3185 providing for reimbursement of per diem and travel expenses;
3186 providing meeting requirements; requiring the corporation to
3187 assist the task force; providing for the expiration of the task
3188 force; requiring the Chief Financial Officer to provide a report
3189 on the economic impact on the state of certain hurricanes;
3190 providing report requirements; creating s. 627.0621, F.S.;
3191 providing requirements for transparency in rate regulation;
3192 providing definitions; providing for a website for public access
3193 to rate filing information; providing requirements; providing
3194 for application of public meeting requirements; specifying
3195 nonapplication of attorney-client or work-product privileges to
3196 certain communications in certain administrative or judicial
3197 proceedings under certain circumstances; specifying criteria;
3198 providing for waiver of such privileges under certain
3199 circumstances; amending s. 215.555, F.S.; extending for an
3200 additional year the offer of reimbursement coverage for
3201 specified insurers; revising the qualifying criteria for such
3202 insurers; revising provisions to conform; amending s. 627.0613,
3203 F.S.; deleting cross-references to conform to changes made by
3204 the act; amending s. 627.712, F.S.; requiring insurers to
3205 provide notice to mortgageholders or lienholders of certain
3206 policies not providing wind coverage for certain structures;
3207 providing effective dates.

3208

870297

4/29/2008 8:21 AM