

By the Committee on Banking and Insurance; and Senators Atwater,
Geller, Fasano, Garcia and Jones

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1 A bill to be entitled
2 An act relating to insurance; amending s. 215.5595, F.S.;
3 revising legislative findings with respect to the
4 Insurance Capital Build-Up Incentive Program and the
5 appropriation of state funds for surplus notes issued by
6 residential property insurers; revising the conditions and
7 requirements for providing funds to insurers under the
8 program; requiring a commitment by the insurer to meet
9 minimum premium-to-surplus writing ratios for residential
10 property insurance and for taking policies out of Citizens
11 Property Insurance Corporation; allowing the State Board
12 of Administration to charge a late fee for payment of
13 remittances; providing that amendments made by the act do
14 not affect the terms of surplus notes approved prior to a
15 specified date, but authorizing the board and an insurer
16 to renegotiate such terms consistent with such amendments;
17 amending s. 542.20, F.S.; subjecting the business of
18 insurance to the Florida Antitrust Act; providing
19 exceptions; amending s. 624.3161, F.S.; authorizing the
20 Office of Insurance Regulation to require an insurer to
21 file its claims handling practices and procedures as a
22 public record based on findings of a market conduct
23 examination; amending s. 624.418, F.S.; authorizing the
24 Office of Insurance Regulation to immediately suspend the
25 certificate of authority of an insurer that fails to
26 provide information subpoenaed by the office; amending s.
27 624.4211, F.S.; increasing the maximum amounts of
28 administrative fines that may be imposed upon an insurer
29 by the Office of Insurance Regulation for nonwillful and

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30 willful violations of an order or rule of the office or
31 any provision of the Florida Insurance Code; authorizing
32 the office to impose a fine for each day of noncompliance
33 up to a maximum amount; providing factors to consider when
34 determining the amount of the fine; creating s. 624.4213,
35 F.S.; specifying requirements for submission of a document
36 or information to the Office of Insurance Regulation or
37 the Department of Financial Services in order for a person
38 to claim that the document is a trade secret; requiring
39 each page or portion to be labeled as a trade secret and
40 be separated from non-trade secret material; requiring the
41 submitting party to include an affidavit certifying
42 certain information about the documents claimed to be
43 trade secrets; requiring an award of attorney's fees
44 against a person who certified a document as trade secret
45 if a court or administrative tribunal finds that the
46 document is not a trade secret; providing for
47 administrative penalties under certain conditions;
48 creating s. 624.4305, F.S.; requiring an insurer planning
49 to nonrenew more than a specified number of residential
50 property insurance policies to notify the Office of
51 Insurance Regulation and obtain approval; specifying
52 procedures; prohibiting the office from approving the plan
53 unless it determines that the insurer has met certain
54 conditions; amending s. 626.9521, F.S.; increasing the
55 maximum fines that may be imposed by the office for
56 nonwillful and willful violations of state law regarding
57 unfair methods of competition and unfair or deceptive acts
58 or practices related to insurance; amending s. 626.9541,

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59 F.S.; prohibiting an insurer from failing to promptly
60 provide to the insured estimates of damage and a good
61 faith explanation of the insurer's evaluation; prohibiting
62 an insurer from considering certain factors when
63 evaluating or adjusting a property insurance claim;
64 prohibiting an insurer from failing to pay undisputed
65 amounts of benefits owed under a property insurance policy
66 within a certain period; amending s. 627.062, F.S.;
67 requiring that an insurer seeking a rate for property
68 insurance that is greater than the rate most recently
69 approved by the Office of Insurance Regulation make a
70 "file and use" filing for all such rate filings made after
71 a specified date; revising the factors the office must
72 consider in reviewing a rate filing; providing that the
73 cost of reinsurance shall be presumed excessive under
74 certain conditions and, for reinsurance purchased from
75 affiliated reinsurers, may not include broker fees;
76 providing that projected hurricane losses are to be
77 considered as provided in s. 627.0628, F.S., relating to
78 hurricane loss models or methods found to be accurate or
79 reliable by the Florida Commission on Hurricane Loss
80 Projection Methodology; allowing the office to disapprove
81 a rate as excessive within 1 year after the rate has been
82 approved under certain conditions related to nonrenewal of
83 policies by the insurer; requiring certain officers and
84 the chief actuary of a property insurer to certify certain
85 information as part of a rate filing, subject to the
86 penalty of perjury; requiring that a rate filing contain
87 all information that supports the filing; providing that

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88 after the office issues a notice of intent to disapprove
89 the filing, no additional information is admissible in any
90 subsequent administrative or judicial proceeding;
91 repealing s. 627.062(6), F.S., relating to the submission
92 of a disputed rate filing, other than a rate filing for
93 medical malpractice insurance, to an arbitration panel in
94 lieu of an administrative hearing if the rate is filed
95 before a specified date; amending s. 627.0613, F.S.;

96 deleting cross-references to conform to changes made by
97 the act; amending s. 627.0628, F.S.; requiring that with
98 respect to rate filings, insurers must use actuarial
99 methods or models found to be accurate or reliable by the
100 Florida Commission on Hurricane Loss Projection
101 Methodology; deleting cross-references to conform to
102 changes made by the act; amending s. 627.0629, F.S.;

103 requiring that the Office of Insurance Regulation develop
104 and make publicly available before a specified deadline a
105 proposed method for insurers to establish windstorm
106 mitigation premium discounts that correlate to the uniform
107 home rating scale; requiring that the Financial Services
108 Commission adopt rules before a specified deadline;

109 requiring insurers to make rate filings pursuant to such
110 method; authorizing the commission to make changes by rule
111 to the uniform home grading scale and specify by rule the
112 minimum required discounts, credits, or other rate
113 differentials; requiring that such rate differentials be
114 consistent with generally accepted actuarial principles
115 and wind loss mitigation studies; amending s. 627.351,
116 F.S., relating to Citizens Property Insurance Corporation;

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117 deleting a provision to conform to changes made in the
118 act; deleting provisions defining the terms "homestead
119 property" and "nonhomestead property"; deleting a
120 provision providing for the classification of certain
121 dwellings as "nonhomestead property"; deleting provisions
122 making dwellings and condominium units that have a
123 replacement cost above a specified value ineligible for
124 coverage after a specified date; requiring certain
125 structures to have opening protections as a condition of
126 eligibility for coverage after a specified date; requiring
127 that the corporation cease issuance of new wind-only
128 coverage beginning on a specified date; deleting outdated
129 provisions requiring the corporation to submit a report
130 for approval of offering multiperil coverage; revising
131 threshold amounts of deficits incurred in a calendar year
132 on which the decision to levy assessments and the types of
133 such assessments are based; revising the formula used to
134 calculate shares of assessments owed by certain assessable
135 insureds; requiring that the board of governors make
136 certain determinations before levying emergency
137 assessments; providing the board of governors with
138 discretion to set the amount of an emergency assessment
139 within specified limits; requiring the board of governors
140 to levy a Citizens policyholder surcharge under certain
141 conditions; deleting a provision requiring the levy of an
142 immediate assessment against certain policyholders under
143 such conditions; requiring that funds collected from the
144 levy of such surcharges be used for certain purposes;
145 providing that such surcharges are not considered premium

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146 and are not subject to commissions, fees, or premium
147 taxes; requiring that the failure to pay such surcharges
148 be treated as failure to pay premium; requiring that the
149 amount of any assessment or surcharge which exceeds the
150 amount of deficits be remitted to and used by the
151 corporation for specified purposes; deleting provisions
152 requiring that the plan of operation of the corporation
153 provide for the levy of a Citizens policyholder surcharge
154 if regular deficit assessments are levied as a result of
155 deficits in certain accounts; deleting provisions related
156 to the calculation, classification, and nonpayment of such
157 surcharge; providing legislative findings; requiring that
158 the corporation make an annual filing for each personal or
159 commercial line of business it writes, beginning on a
160 specified date; limiting the overall average statewide
161 premium increase and the increase for an individual
162 policyholder to a specified amount for rates established
163 for certain policies during a specified period; deleting a
164 provision requiring an insurer to purchase bonds that
165 remain unsold; requiring the corporation to make its
166 database of policies available to prospective take-out
167 insurers under certain conditions; requiring the
168 corporation to require agents to accept or decline
169 appointment for any policy selected; requiring the
170 corporation to notify the policyholder of certain
171 information if an insurer selected his or her policy for a
172 take-out offer but the policyholder's agent refused to be
173 appointed; deleting provisions requiring the corporation
174 to make certain confidential underwriting and claims files

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175 available to agents to conform to changes made by the act
176 relating to ineligibility of certain dwellings; creating
177 s. 627.714, F.S.; requiring that personal lines
178 residential policies be guaranteed renewable for a
179 specified period if the dwelling meets certain wind-borne-
180 debris protection requirements; providing for
181 applicability; creating s. 689.262, F.S.; requiring a
182 purchaser of residential property to be presented with the
183 windstorm mitigation rating of the structure; authorizing
184 the Financial Services Commission to adopt rules; amending
185 s. 817.2341, F.S.; providing criminal penalties for any
186 person who willfully files a materially false or
187 misleading rate filing, under certain conditions, and for
188 any person who attempts to corruptly influence or obstruct
189 the lawful regulation of the business of insurance;
190 providing effective dates.

191

192 Be It Enacted by the Legislature of the State of Florida:

193

194 Section 1. Section 215.5595, Florida Statutes, is amended
195 to read:

196 215.5595 Insurance Capital Build-Up Incentive Program.--

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

199 (a) The losses in Florida from eight hurricanes in 2004 and
200 2005 have seriously strained the resources of both the voluntary
201 insurance market and the public sector mechanisms of Citizens
202 Property Insurance Corporation and the Florida Hurricane
203 Catastrophe Fund.

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

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

212 ~~(d) Hurricane forecast experts predict that the 2006~~
213 ~~hurricane season will be an active hurricane season and that the~~
214 ~~Atlantic and Gulf Coast regions face an active hurricane cycle of~~
215 ~~10 to 20 years or longer.~~

216 (b)(e) Citizens Property Insurance Corporation has over 1.2
217 million policies in force and has the largest market share of any
218 insurer writing residential property insurer in the state, and
219 faces the threat of a catastrophic loss that ~~The number of~~
220 ~~cancellations or nonrenewals of residential property insurance~~
221 ~~policies is expected to increase and the number of new~~
222 ~~residential policies written in the voluntary market are likely~~
223 ~~to decrease, causing increased policy growth and exposure to the~~
224 ~~state insurer of last resort, Citizens Property Insurance~~
225 ~~Corporation, and threatening to increase the deficit of the~~
226 ~~corporation, currently estimated to be over \$1.7 billion. This~~
227 ~~deficit must be funded by assessments against insurers and~~
228 ~~policyholders, unless otherwise funded by the state.~~

229 (c)(f) Policyholders are subject to high increased premiums
230 and assessments that are increasingly making such coverage
231 unaffordable and that may force policyholders to sell their homes
232 and even leave the state.

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233 ~~(d)(g)~~ The increased risk to the public sector and private
234 sector continues to pose ~~poses~~ a serious threat to the economy of
235 this state, particularly the building and financing of
236 residential structures, and existing mortgages may be placed in
237 default.

238 ~~(h) The losses from 2004 and 2005, combined with the~~
239 ~~expectation that the increase in hurricane activity will continue~~
240 ~~for the foreseeable future, have caused both insurers and~~
241 ~~reinsurers to limit the capital they are willing to commit to~~
242 ~~covering the hurricane risk in Florida; attracting new capital to~~
243 ~~the Florida market is a critical priority; and providing a low-~~
244 ~~cost source of capital would enable insurers to write additional~~
245 ~~residential property insurance coverage and act to mitigate~~
246 ~~premium increases.~~

247 (e)(i) Appropriating state funds to be exchanged for used
248 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
249 under conditions requiring the insurer to contribute additional
250 private sector capital and to write a minimum level of premiums
251 for residential hurricane coverage, is a valid and important
252 public purpose.

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

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

261 (a) The amount of state funds provided in exchange for a

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262 the surplus note to ~~for~~ any insurer or insurer group, other than
263 an insurer writing only manufactured housing policies, may not
264 exceed \$25 million or 20 percent of the total amount of funds
265 appropriated for ~~available under~~ the program, whichever is
266 greater. The amount of the surplus note for any insurer or
267 insurer group writing residential property insurance covering
268 only manufactured housing may not exceed \$7 million.

269 (b) The insurer must contribute an amount of new capital to
270 its surplus which is at least equal to the amount of the surplus
271 note ~~and must apply to the board by July 1, 2006. If an insurer~~
272 ~~applies after July 1, 2006, but before June 1, 2007, the amount~~
273 ~~of the surplus note is limited to one-half of the new capital~~
274 ~~that the insurer contributes to its surplus, except that an~~
275 ~~insurer writing only manufactured housing policies is eligible to~~
276 ~~receive a surplus note of up to \$7 million.~~ For purposes of this
277 section, new capital must be in the form of cash or cash
278 equivalents as specified in s. 625.012(1).

279 (c) The insurer's surplus, new capital, and the surplus
280 note must total at least \$50 million, except for insurers writing
281 residential property insurance covering only manufactured
282 housing. The insurer's surplus, new capital, and the surplus note
283 must total at least \$14 million for insurers writing only
284 residential property insurance covering manufactured housing
285 policies as provided in paragraph (a).

286 (d) The insurer must commit to increase its writings of
287 residential property insurance, including the peril of wind, and
288 to meet ~~meeting~~ a minimum writing ratio of net written premium to
289 surplus of at least 1:1 for the first year after receiving the
290 state funds, 1.5:1 for the second year, and 2:1 for the remaining

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291 | term of the surplus note. Alternatively, the insurer must meet a
292 | minimum writing ratio of gross written premium to surplus of at
293 | least 3:1 for the first year after receiving the state funds,
294 | 4.5:1 for the second year, and 6:1 for the remaining term of the
295 | surplus note. The writing ratios, which shall be determined by
296 | the Office of Insurance Regulation and certified quarterly to the
297 | board. For this purpose, the term "premium" ~~"net written premium"~~
298 | means ~~net written~~ premium for residential property insurance in
299 | Florida, including the peril of wind, and "surplus" refers to the
300 | entire surplus of the insurer. The insurer must also commit to
301 | writing at least one-third of its net or gross written premium
302 | for new policies, not including renewal premiums, for policies
303 | taken out of Citizens Property Insurance Corporation, during each
304 | of the first 3 years after receiving the state funds in exchange
305 | for the surplus note, which shall be determined by the Office of
306 | Insurance Regulation and certified annually to the board. The
307 | office may determine that an insurer meets the requirement for
308 | taking policies out of Citizens, by written notice to the board,
309 | upon a finding that the insurer made offers of coverage to
310 | policyholders of Citizens which would have resulted in meeting
311 | this requirement had the policyholders accepted the offer. If the
312 | required ratio or the required writings for policies taken out of
313 | Citizens is not maintained during the term of the surplus note,
314 | the board may increase the interest rate, accelerate the
315 | repayment of interest and principal, or shorten the term of the
316 | surplus note, subject to approval by the Commissioner of
317 | Insurance of payments by the insurer of principal and interest as
318 | provided in paragraph (f).

319 | (e) If the requirements of this section are met, the board

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320 may approve an application by an insurer for funds in exchange
321 for issuance of a surplus note, unless the board determines that
322 the financial condition of the insurer and its business plan for
323 writing residential property insurance in Florida places an
324 unreasonably high level of financial risk to the state of
325 nonpayment in full of the interest and principal. The board shall
326 consult with the Office of Insurance Regulation and may contract
327 with independent financial and insurance consultants in making
328 this determination.

329 (f) The surplus note must be repayable to the state with a
330 term of 20 years. The surplus note shall accrue interest on the
331 unpaid principal balance at a rate equivalent to the 10-year U.S.
332 Treasury Bond rate, require the payment only of interest during
333 the first 3 years, and include such other terms as approved by
334 the board. The board may charge late fees up to 5 percent for
335 late payments or other late remittances. Payment of principal, ~~or~~
336 interest, or late fees by the insurer on the surplus note must be
337 approved by the Commissioner of Insurance, who shall approve such
338 payment unless the commissioner determines that such payment will
339 substantially impair the financial condition of the insurer. If
340 such a determination is made, the commissioner shall approve such
341 payment that will not substantially impair the financial
342 condition of the insurer.

343 (g) The total amount of funds available for the program is
344 limited to the amount appropriated by the Legislature for this
345 purpose. If the amount of surplus notes requested by insurers
346 exceeds the amount of funds available, the board may prioritize
347 insurers that are eligible and approved, with priority for
348 funding given to insurers writing only manufactured housing

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349 policies, regardless of the date of application, based on the
350 financial strength of the insurer, the viability of its proposed
351 business plan for writing additional residential property
352 insurance in the state, and the effect on competition in the
353 residential property insurance market. Between insurers writing
354 residential property insurance covering manufactured housing,
355 priority shall be given to the insurer writing the highest
356 percentage of its policies covering manufactured housing.

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

361 (h) ~~(i)~~ Notwithstanding paragraph (d), a newly formed
362 manufactured housing insurer that is eligible for a surplus note
363 under this section shall meet the premium to surplus ratio
364 provisions of s. 624.4095.

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

367 1. A Florida domiciled insurer that begins writing personal
368 lines residential manufactured housing policies in Florida after
369 March 1, 2007, and that removes a minimum of 50,000 policies from
370 Citizens Property Insurance Corporation without accepting a
371 bonus, provided at least 25 percent of its policies cover
372 manufactured housing. Such an insurer may count any funds above
373 the minimum capital and surplus requirement that were contributed
374 into the insurer after March 1, 2007, as new capital under this
375 section.

376 2. A Florida domiciled insurer that writes at least 40
377 percent of its policies covering manufactured housing in Florida.

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

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

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

382 (4) The state funds provided to the insurer in exchange for
383 the A surplus note ~~provided to an insurer~~ pursuant to this
384 section ~~are~~ ~~is~~ considered borrowed surplus ~~an asset~~ of the
385 insurer pursuant to s. 628.401 ~~s. 625.012~~.

386 (5) If an insurer that receives funds in exchange for
387 issuance of a surplus note pursuant to this section is rendered
388 insolvent, the state is a class 3 creditor pursuant to s. 631.271
389 for the unpaid principal and interest on the surplus note.

390 (6) The board shall adopt rules prescribing the procedures,
391 administration, and criteria for approving the applications of
392 insurers to receive funds in exchange for issuance of surplus
393 notes pursuant to this section, which may be adopted pursuant to
394 the procedures for emergency rules of chapter 120. Otherwise,
395 actions and determinations by the board pursuant to this section
396 are exempt from chapter 120.

397 (7) The board shall invest and reinvest the funds
398 appropriated for the program in accordance with s. 215.47 and
399 consistent with board policy.

400 (8) The amendments to this section enacted in 2008 do not
401 affect the terms or conditions of the surplus notes that were
402 approved prior to January 1, 2008. However, the board may
403 renegotiate the terms of any surplus note issued by an insurer
404 prior to January 2008 under this program, upon the agreement of
405 the insurer and the board, consistent with the requirements of
406 this section as amended in 2008.

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407 Section 2. Section 542.20, Florida Statutes, is amended to
408 read:

409 542.20 Exemptions.--

410 (1) Any activity or conduct exempt under Florida statutory
411 or common law or exempt from the provisions of the antitrust laws
412 of the United States is exempt from the provisions of this
413 chapter, except as provided in subsection (2).

414 (2) The business of insurance is subject to the provisions
415 of this chapter. This chapter does not prohibit a rating
416 organization or advisory organization from collecting claims,
417 loss, or expense data from insurers and filing rates or advisory
418 rates with the Office of Insurance Regulation.

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

421 624.3161 Market conduct examinations.--

422 (6) Based on the findings of a market conduct examination
423 that an insurer has violated an unfair insurance trade practice
424 related to claims-handling as prohibited by s. 626.9541(1)(i),
425 the office may require an insurer to file its claims-handling
426 practices and procedures related to that line of insurance with
427 the office for review and inspection, to be held by the office
428 for the following 36-month period. Such claims-handling practices
429 and procedures are public records and are not trade secrets or
430 otherwise exempt from the provisions of s. 119.07(1). As used in
431 this section, "claims-handling practices and procedures" are any
432 policies, guidelines, rules, protocols, standard operating
433 procedures, instructions, or directives that govern or guide how
434 and the manner in which an insured's claims for benefits under
435 any policy will be processed.

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436 Section 4. Subsection (4) is added to section 624.418,
437 Florida Statutes, to read:

438 624.418 Suspension, revocation of certificate of authority
439 for violations and special grounds.--

440 (4) The failure of an insurer to provide documents or
441 information subpoenaed by the office constitutes an immediate and
442 serious danger to the public health, safety, and welfare; and the
443 office may, at its discretion, without prior notice or the
444 opportunity for a hearing immediately suspend the insurer's
445 certificate of authority.

446 Section 5. Subsections (2) and (3) of section 624.4211,
447 Florida Statutes, are amended, and subsections (5) and (6) are
448 added to that section, to read:

449 624.4211 Administrative fine in lieu of suspension or
450 revocation.--

451 (2) With respect to any nonwillful violation, such fine may
452 ~~shall~~ not exceed \$25,000 ~~\$2,500~~ per violation. ~~In no event shall~~
453 ~~such fine exceed an aggregate amount of \$10,000 for all~~
454 ~~nonwillful violations arising out of the same action. If When an~~
455 insurer discovers a nonwillful violation, the insurer shall
456 correct the violation and, if restitution is due, make
457 restitution to all affected persons. Such restitution shall
458 include interest at 12 percent per year from either the date of
459 the violation or the date of inception of the affected person's
460 policy, at the insurer's option. The restitution may be a credit
461 against future premiums due provided that ~~the~~ interest
462 accumulates ~~shall accumulate~~ until the premiums are due. If the
463 amount of restitution due to any person is \$50 or more and the
464 insurer wishes to credit it against future premiums, it shall

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465 notify such person that she or he may receive a check instead of
466 a credit. If the credit is on a policy that ~~which~~ is not renewed,
467 the insurer shall pay the restitution to the person to whom it is
468 due.

469 (3) With respect to any knowing and willful violation of a
470 lawful order or rule of the office or commission or a provision
471 of this code, the office may impose a fine upon the insurer in an
472 amount not to exceed \$100,000 ~~\$20,000~~ for each such violation. ~~In~~
473 ~~no event shall such fine exceed an aggregate amount of \$100,000~~
474 ~~for all knowing and willful violations arising out of the same~~
475 ~~action.~~ In addition to such fines, the ~~such~~ insurer shall make
476 restitution when due in accordance with ~~the provisions of~~
477 subsection (2).

478 (5) The office may impose an administrative fine for each
479 day the insurer is not in compliance with the Florida Insurance
480 Code up to a maximum of \$25,000 per violation per day.

481 (6) In determining the amount of the fine, the office shall
482 consider:

483 (a) The degree of consumer harm caused or potentially
484 caused by the violation;

485 (b) Whether the violation constitutes an immediate danger
486 to the public;

487 (c) Whether the violation is a repeat violation or similar
488 to past violations by the insurer;

489 (d) The effect on the solvency of the insurer;

490 (e) The premium volume of the insurer; and

491 (f) The effect that fining the insurer will have on the
492 insurer's compliance with the Florida Insurance Code.

493 Section 6. Section 624.4213, Florida Statutes, is created to

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494 read:

495 624.4213 Trade secret documents.--

496 (1) If any person who is required to submit documents or
497 other information to the office or department pursuant to the
498 Insurance Code or by rule or order of the office, department, or
499 commission claims that such submission contains a trade secret,
500 such person may file with the office or department a notice of
501 trade secret as provided in this section. Failure to do so
502 constitutes a waiver of any claim by such person that the
503 document or information is a trade secret.

504 (a) Each page of such document or specific portion of a
505 document claimed to be a trade secret must be clearly marked as
506 "trade secret."

507 (b) All material marked as a trade secret must be separated
508 from all non-trade secret material, such as being submitted in a
509 separate envelope clearly marked as "trade secret."

510 (c) In submitting a notice of trade secret to the office or
511 department, the submitting party must include an affidavit
512 certifying under oath to the truth of the following statements
513 concerning all documents or information that are claimed to be
514 trade secrets:

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

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

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

526 4. The information is not publicly available elsewhere.

527 (2) If a court or administrative tribunal finds that any
528 document or information certified as a trade secret, submitted to
529 the office or department under this section, and subsequently
530 requested by a third party is not a trade secret, the company or
531 the person certifying such document or information as a trade
532 secret is liable for an award of reasonable attorney's fees and
533 costs to the third party seeking access to such documents. In
534 addition, it is a violation of the Florida Insurance Code if the
535 office or department finds that the person submitting the
536 document or information knew, or should have known, that the
537 document or information is not a trade secret.

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

542 Section 7. Section 624.4305, Florida Statutes, is created to
543 read:

544 624.4305 Nonrenewal of residential property insurance
545 policies.--

546 (1) Any insurer planning to nonrenew more than 10,000
547 residential property insurance policies in this state within a
548 12-month period shall give 90 days' notice in writing to the
549 office prior to the issuance of any notices of nonrenewal. The
550 notice must set forth the insurer's reasons for such action, the
551 effective dates of nonrenewal, and any arrangements that have

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552 been made for other insurers to offer coverage to affected
553 policyholders.

554 (2) The insurer may not issue a notice of nonrenewal to
555 such policyholders unless the office approves or fails to
556 disapprove the nonrenewal plan within 90 days after receiving the
557 notice from the insurer. The office may not approve the plan
558 unless it finds that the insurer has staggered the nonrenewals
559 over a reasonable period relative to the number of nonrenewals,
560 or has made arrangements for offers of replacement coverage, such
561 that the actions are not hazardous to policyholders or the
562 public.

563 Section 8. Subsection (2) of section 626.9521, Florida
564 Statutes, is amended to read:

565 626.9521 Unfair methods of competition and unfair or
566 deceptive acts or practices prohibited; penalties.--

567 (2) Any person who violates any provision of this part
568 shall be subject to a fine in an amount not greater than \$25,000
569 ~~\$2,500~~ for each nonwillful violation and not greater than
570 \$100,000 ~~\$20,000~~ for each willful violation. ~~Fines under this~~
571 ~~subsection may not exceed an aggregate amount of \$10,000 for all~~
572 ~~nonwillful violations arising out of the same action or an~~
573 ~~aggregate amount of \$100,000 for all willful violations arising~~
574 ~~out of the same action.~~ The fines authorized by this subsection
575 may be imposed in addition to any other applicable penalty.

576 Section 9. Paragraph (i) of subsection (1) of section
577 626.9541, Florida Statutes, is amended to read:

578 626.9541 Unfair methods of competition and unfair or
579 deceptive acts or practices defined.--

580 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE

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581 ACTS.--The following are defined as unfair methods of competition
582 and unfair or deceptive acts or practices:

583 (i) Unfair claim settlement practices.--

584 1. Attempting to settle claims on the basis of an
585 application, ~~when~~ serving as a binder or intended to become a
586 part of the policy, or any other material document that is ~~which~~
587 ~~was~~ altered without notice to, or knowledge or consent of, the
588 insured;

589 2. A material misrepresentation made to an insured or any
590 other person having an interest in the proceeds payable under a
591 ~~such~~ contract or policy, for the purpose and with the intent of
592 effecting settlement of such claims, loss, or damage under such
593 contract or policy on less favorable terms than those provided
594 in, and contemplated by, the ~~such~~ contract or policy; ~~or~~

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

597 a. Failing to adopt and implement standards for the proper
598 investigation of claims.†

599 b. Misrepresenting pertinent facts or insurance policy
600 provisions relating to coverages at issue.†

601 c. Failing to acknowledge and act promptly upon
602 communications with respect to claims.†

603 d. Denying claims without conducting reasonable
604 investigations based upon available information.†

605 e. Failing to affirm or deny full or partial coverage of
606 claims, and, as to partial coverage, the dollar amount or extent
607 of coverage, or failing to provide a written statement that the
608 claim is being investigated, upon the written request of the
609 insured within 30 days after proof-of-loss statements have been

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610 completed.~~†~~

611 f. Failing to promptly provide a reasonable explanation in
612 writing to the insured of the basis in the insurance policy, in
613 relation to the facts or applicable law, for denial of a claim or
614 for the offer of a compromise settlement.~~†~~

615 g. Failing to promptly notify the insured of any additional
616 information necessary for the processing of a claim.~~†~~~~or~~

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

619 i. Failing to promptly provide to the insured estimates of
620 damage and a good faith explanation in writing of the insurer's
621 evaluation of benefits and the basis for the evaluation.

622 4. Giving consideration to the age, race, income level,
623 education, credit score, or any other personal characteristic of
624 a policyholder when evaluating, adjusting, settling, or
625 attempting to settle a property insurance claim; or

626 5. Failing to pay undisputed amounts of partial or full
627 benefits owed under first-party property insurance policies
628 within 30 days after determining the amounts of partial or full
629 benefits and agreeing to coverage. This subparagraph controls to
630 the extent of any conflict with any other provision of law.

631 Section 10. Paragraphs (a), (b), and (g) of subsection (2)
632 and subsection (9) of section 627.062, Florida Statutes, are
633 amended to read:

634 627.062 Rate standards.--

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

636 (a) Insurers or rating organizations shall establish and
637 use rates, rating schedules, or rating manuals to allow the
638 insurer a reasonable rate of return on such classes of insurance

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639 written in this state. A copy of rates, rating schedules, rating
640 manuals, premium credits or discount schedules, and surcharge
641 schedules, and changes thereto, shall be filed with the office
642 under one of the following procedures except as provided in
643 subparagraph 3.:

644 1. If the filing is made at least 90 days before the
645 proposed effective date and the filing is not implemented during
646 the office's review of the filing and any proceeding and judicial
647 review, then such filing shall be considered a "file and use"
648 filing. In such case, the office shall finalize its review by
649 issuance of a notice of intent to approve or a notice of intent
650 to disapprove within 90 days after receipt of the filing. The
651 notice of intent to approve and the notice of intent to
652 disapprove constitute agency action for purposes of the
653 Administrative Procedure Act. Requests for supporting
654 information, requests for mathematical or mechanical corrections,
655 or notification to the insurer by the office of its preliminary
656 findings shall not toll the 90-day period during any such
657 proceedings and subsequent judicial review. The rate shall be
658 deemed approved if the office does not issue a notice of intent
659 to approve or a notice of intent to disapprove within 90 days
660 after receipt of the filing.

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

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668 3. For all property insurance filings ~~made or submitted~~
669 ~~after January 25, 2007, but before December 31, 2008~~, an insurer
670 seeking a rate that is greater than the rate most recently
671 approved by the office shall make a "file and use" filing. ~~This~~
672 ~~subparagraph applies to property insurance only.~~ For purposes of
673 this subparagraph, motor vehicle collision and comprehensive
674 coverages are not considered to be property coverages.

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

680 1. Past and prospective loss experience within and without
681 this state.

682 2. Past and prospective expenses.

683 3. The degree of competition among insurers for the risk
684 insured.

685 4. Investment income reasonably expected by the insurer,
686 consistent with the insurer's investment practices, from
687 investable premiums anticipated in the filing, plus any other
688 expected income from currently invested assets representing the
689 amount expected on unearned premium reserves and loss reserves.

690 The commission may adopt rules using ~~utilizing~~ reasonable
691 techniques of actuarial science and economics to specify the
692 manner in which insurers shall calculate investment income
693 attributable to such classes of insurance written in this state
694 and the manner in which such investment income shall be used to
695 calculate ~~in the calculation of~~ insurance rates. Such manner
696 shall contemplate allowances for an underwriting profit factor

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697 and full consideration of investment income which produce a
698 reasonable rate of return; however, investment income from
699 invested surplus may ~~shall~~ not be considered.

700 5. The reasonableness of the judgment reflected in the
701 filing.

702 6. Dividends, savings, or unabsorbed premium deposits
703 allowed or returned to Florida policyholders, members, or
704 subscribers.

705 7. The adequacy of loss reserves.

706 8. The cost of reinsurance, subject to the following
707 conditions:-

708 a. The cost of reinsurance shall be presumed to be
709 excessive if the annual expected recoveries are less than 40
710 percent of the annual reinsurance premium for reinsurance
711 purchased from affiliated reinsurers, or less than 20 percent of
712 the annual reinsurance premium for reinsurance purchased from
713 unaffiliated reinsurers after excluding the Florida Hurricane
714 Catastrophe Fund. The insurer may rebut this presumption by
715 providing documentation to the office demonstrating that the
716 annual expected recovery must deviate from such requirements in
717 order to ensure the financial soundness of the insurer.

718 b. For reinsurance purchased from affiliated reinsurers,
719 the costs may not include any broker fees.

720 c. The cost of catastrophe reinsurance shall be presumed to
721 be excessive to the extent that the amount of reinsurance
722 coverage was based on estimates of probable maximum loss which
723 are in excess of estimates using a hurricane loss model or method
724 found to be acceptable or reliable by the Florida Commission on
725 Hurricane Loss Projection Methodology, as provided in s.

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726 627.0628.

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

729 10. Conflagration and catastrophe hazards, if applicable.

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

734 ~~12.11.~~ A reasonable margin for underwriting profit and
735 contingencies. ~~For that portion of the rate covering the risk of~~
736 ~~hurricanes and other catastrophic losses for which the insurer~~
737 ~~has not purchased reinsurance and has exposed its capital and~~
738 ~~surplus to such risk, the office must approve a rating factor~~
739 ~~that provides the insurer a reasonable rate of return that is~~
740 ~~commensurate with such risk.~~

741 13.12. The cost of medical services, if applicable.

742 14.13. Other relevant factors which impact upon the
743 frequency or severity of claims or upon expenses.

744 (g) The office may at any time review a rate, rating
745 schedule, rating manual, or rate change; the pertinent records of
746 the insurer; and market conditions. If the office finds on a
747 preliminary basis that a rate may be excessive, inadequate, or
748 unfairly discriminatory, the office shall initiate proceedings to
749 disapprove the rate and shall so notify the insurer. However, the
750 office may not disapprove as excessive any rate for which it has
751 given final approval or which has been deemed approved for a
752 period of 1 year after the effective date of the filing unless
753 the office finds that a material misrepresentation or material
754 error was made by the insurer or was contained in the filing, or

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755 unless the insurer has nonrenewed a number or percentage of
756 policies which the office determines may result in the insurer
757 having an excessive rate. Upon being so notified, the insurer or
758 rating organization shall, within 60 days, file with the office
759 all information which, in the belief of the insurer or
760 organization, proves the reasonableness, adequacy, and fairness
761 of the rate or rate change. The office shall issue a notice of
762 intent to approve or a notice of intent to disapprove pursuant to
763 the procedures of paragraph (a) within 90 days after receipt of
764 the insurer's initial response. In such instances and in any
765 administrative proceeding relating to the legality of the rate,
766 the insurer or rating organization shall carry the burden of
767 proof by a preponderance of the evidence to show that the rate is
768 not excessive, inadequate, or unfairly discriminatory. After the
769 office notifies an insurer that a rate may be excessive,
770 inadequate, or unfairly discriminatory, unless the office
771 withdraws the notification, the insurer shall not alter the rate
772 except to conform with the office's notice until the earlier of
773 120 days after the date the notification was provided or 180 days
774 after the date of the implementation of the rate. The office may,
775 subject to chapter 120, disapprove without the 60-day
776 notification any rate increase filed by an insurer within the
777 prohibited time period or during the time that the legality of
778 the increased rate is being contested.

779

780 The provisions of this subsection shall not apply to workers'
781 compensation and employer's liability insurance and to motor
782 vehicle insurance.

783 (9) (a) ~~Effective March 1, 2007,~~ The chief executive officer

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784 or chief financial officer of a property insurer and the chief
785 actuary of a property insurer must certify under oath and subject
786 to the penalty of perjury, on a form approved by the commission,
787 the following information, which must accompany a rate filing:

788 1. The signing officer and actuary have reviewed the rate
789 filing;

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

795 3. Based on the signing officer's and actuary's knowledge,
796 the information and other factors described in paragraph (2) (b),
797 including, but not limited to, investment income, fairly present
798 in all material respects the basis of the rate filing for the
799 periods presented in the filing; ~~and~~

800 4. Based on the signing officer's and actuary's knowledge,
801 the rate filing reflects all premium savings that are reasonably
802 expected to result from legislative enactments and are in
803 accordance with generally accepted and reasonable actuarial
804 techniques; ~~-~~

805 5. Based on the signing officer's and actuary's knowledge,
806 the actuary responsible for preparing the rate filing reviewed
807 the rate indications used by the office in approving the
808 insurer's last rate filing, if made available to the insurer for
809 review, and identified factors used in the current rate filing
810 which are inconsistent with the factors used by the office in
811 developing such rate indications; and

812 6. Based on the signing officer's and actuary's knowledge,

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813 the number and type of policies that the insurer intends to
814 nonrenew during the year following the proposed effective date of
815 the rate filing, and that the rate filing reflects the reduced
816 risk of loss associated with such nonrenewals.

817 (b) A signing officer or actuary knowingly making a false
818 certification under this subsection commits a violation of s.
819 626.9541(1)(e) and is subject to the penalties under s. 626.9521.

820 (c) Failure to provide such certification by the officer
821 and actuary shall result in the rate filing being disapproved
822 without prejudice to be refiled.

823 (d) A properly certified rate filing must contain all
824 information that the insurer intends to support the rate filing,
825 unless the office requests additional information to support the
826 filing. If the office issues a notice of intent to disapprove the
827 filing, additional information related to the rate filing is not
828 admissible to justify the rate in any subsequent administrative
829 or legal proceeding, other than expert opinion.

830 (e)~~(d)~~ The commission may adopt rules and forms pursuant to
831 ss. 120.536(1) and 120.54 to administer this subsection.

832 Section 11. Subsection (6) of section 627.062, Florida
833 Statutes, is repealed.

834 Section 12. Subsection (1) of section 627.0613, Florida
835 Statutes, is amended to read:

836 627.0613 Consumer advocate.--The Chief Financial Officer
837 must appoint a consumer advocate who must represent the general
838 public of the state before the department and the office. The
839 consumer advocate must report directly to the Chief Financial
840 Officer, but is not otherwise under the authority of the
841 department or of any employee of the department. The consumer

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842 advocate has such powers as are necessary to carry out the duties
843 of the office of consumer advocate, including, but not limited
844 to, the powers to:

845 (1) Recommend to the department or office, by petition, the
846 commencement of any proceeding or action; appear in any
847 proceeding or action before the department or office; or appear
848 in any proceeding before the Division of Administrative Hearings
849 ~~or arbitration panel specified in s. 627.062(6)~~ relating to
850 subject matter under the jurisdiction of the department or
851 office.

852 Section 13. Paragraph (c) of subsection (1) and paragraph
853 (c) of subsection (3) of section 627.0628, Florida Statutes, are
854 amended to read:

855 627.0628 Florida Commission on Hurricane Loss Projection
856 Methodology; public records exemption; public meetings
857 exemption.--

858 (1) LEGISLATIVE FINDINGS AND INTENT.--

859 (c) It is the intent of the Legislature to create the
860 Florida Commission on Hurricane Loss Projection Methodology as a
861 panel of experts to provide the most actuarially sophisticated
862 guidelines and standards for projection of hurricane losses
863 possible, given the current state of actuarial science. It is the
864 further intent of the Legislature that such standards and
865 guidelines must be used by the State Board of Administration in
866 developing reimbursement premium rates for the Florida Hurricane
867 Catastrophe Fund, and, subject to paragraph (3)(c), must ~~may~~ be
868 used by insurers in rate filings under s. 627.062 unless the way
869 in which such standards and guidelines were applied by the
870 insurer was erroneous, as shown by a preponderance of the

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871 | evidence.

872 | (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

873 | (c) With respect to a rate filing under s. 627.062, an
874 | insurer must ~~may~~ employ and may not modify or adjust actuarial
875 | methods, principles, standards, models, or output ranges found by
876 | the commission to be accurate or reliable in determining ~~to~~
877 | ~~determine~~ hurricane loss factors used ~~for use~~ in a rate filing
878 | and in determining probable maximum loss levels for reinsurance
879 | costs included in a rate filing under s. 627.062. However, such
880 | findings and factors are admissible and relevant in consideration
881 | of a rate filing by the office or in any arbitration or
882 | administrative or judicial review only if the office and the
883 | consumer advocate appointed pursuant to s. 627.0613 have access
884 | to all of the assumptions and factors that were used in
885 | developing the actuarial methods, principles, standards, models,
886 | or output ranges, and are not precluded from disclosing such
887 | information in a rate proceeding. In any rate hearing under s.
888 | 120.57 ~~or in any arbitration proceeding under s. 627.062(6)~~, the
889 | hearing officer or judge, ~~or arbitration panel~~ may determine
890 | whether the office and the consumer advocate were provided with
891 | access to all of the assumptions and factors that were used in
892 | developing the actuarial methods, principles, standards, models,
893 | or output ranges and may ~~to~~ determine their admissibility.

894 | Section 14. Subsection (1) of section 627.0629, Florida
895 | Statutes, is amended to read:

896 | 627.0629 Residential property insurance; rate filings.--

897 | (1) (a) It is the intent of the Legislature that insurers
898 | must provide savings to consumers who install or implement
899 | windstorm damage mitigation techniques, alterations, or solutions

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900 | to their properties to prevent windstorm losses. A rate filing
901 | for residential property insurance must include actuarially
902 | reasonable discounts, credits, or other rate differentials, or
903 | appropriate reductions in deductibles, for properties on which
904 | fixtures or construction techniques demonstrated to reduce the
905 | amount of loss in a windstorm have been installed or implemented.
906 | The fixtures or construction techniques shall include, but not be
907 | limited to, fixtures or construction techniques which enhance
908 | roof strength, roof covering performance, roof-to-wall strength,
909 | wall-to-floor-to-foundation strength, opening protection, and
910 | window, door, and skylight strength. Credits, discounts, or other
911 | rate differentials, or appropriate reductions in deductibles, for
912 | fixtures and construction techniques which meet the minimum
913 | requirements of the Florida Building Code must be included in the
914 | rate filing. All insurance companies must make a rate filing
915 | which includes the credits, discounts, or other rate
916 | differentials or reductions in deductibles by February 28, 2003.
917 | By July 1, 2007, the office shall reevaluate the discounts,
918 | credits, other rate differentials, and appropriate reductions in
919 | deductibles for fixtures and construction techniques that meet
920 | the minimum requirements of the Florida Building Code, based upon
921 | actual experience or any other loss relativity studies available
922 | to the office. The office shall determine the discounts, credits,
923 | other rate differentials, and appropriate reductions in
924 | deductibles that reflect the full actuarial value of such
925 | revaluation, which may be used by insurers in rate filings.

926 | (b) By February 1, 2009, the Office of Insurance
927 | Regulation, in consultation with the Department of Financial
928 | Services and the Department of Community Affairs, shall develop

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929 and make publicly available a proposed method for insurers to
930 establish discounts, credits, or other rate differentials for
931 hurricane mitigation measures which directly correlate to the
932 numerical rating assigned to a structure pursuant to the uniform
933 home grading scale adopted by the Financial Services Commission
934 pursuant to s. 215.55865, including any proposed changes to the
935 uniform home grading scale. By October 1, 2009, the commission
936 shall adopt rules requiring insurers to make rate filings for
937 residential property insurance which revise insurers' discounts,
938 credits, or other rate differentials for hurricane mitigation
939 measures so that such rate differentials correlate directly to
940 the uniform home grading scale. The rules may include such
941 changes to the uniform home grading scale as the commission
942 determines are necessary, and may specify the minimum required
943 discounts, credits, or other rate differentials. Such rate
944 differentials must be consistent with generally accepted
945 actuarial principles and wind-loss mitigation studies. The rules
946 shall allow a period of at least 2 years after the effective date
947 of the revised mitigation discounts, credits, or other rate
948 differentials for a property owner to obtain an inspection or
949 otherwise qualify for the revised credit, during which time the
950 insurer shall continue to apply the mitigation credit that was
951 applied immediately prior to the effective date of the revised
952 credit.

953 Section 15. Paragraph (b) of subsection (2) and subsection
954 (6) of section 627.351, Florida Statutes, are amended to read:
955 627.351 Insurance risk apportionment plans.--
956 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--
957 (b) The department shall require all insurers holding a

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958 certificate of authority to transact property insurance on a
959 direct basis in this state, other than joint underwriting
960 associations and other entities formed pursuant to this section,
961 to provide windstorm coverage to applicants from areas determined
962 to be eligible pursuant to paragraph (c) who in good faith are
963 entitled to, but are unable to procure, such coverage through
964 ordinary means; or it shall adopt a reasonable plan or plans for
965 the equitable apportionment or sharing among such insurers of
966 windstorm coverage, which may include formation of an association
967 for this purpose. As used in this subsection, the term "property
968 insurance" means insurance on real or personal property, as
969 defined in s. 624.604, including insurance for fire, industrial
970 fire, allied lines, farmowners multiperil, homeowners'
971 multiperil, commercial multiperil, and mobile homes, and
972 including liability coverages on all such insurance, but
973 excluding inland marine as defined in s. 624.607(3) and excluding
974 vehicle insurance as defined in s. 624.605(1)(a) other than
975 insurance on mobile homes used as permanent dwellings. The
976 department shall adopt rules that provide a formula for the
977 recovery and repayment of any deferred assessments.

978 1. For the purpose of this section, properties eligible for
979 such windstorm coverage are defined as dwellings, buildings, and
980 other structures, including mobile homes which are used as
981 dwellings and which are tied down in compliance with mobile home
982 tie-down requirements prescribed by the Department of Highway
983 Safety and Motor Vehicles pursuant to s. 320.8325, and the
984 contents of all such properties. An applicant or policyholder is
985 eligible for coverage only if an offer of coverage cannot be
986 obtained by or for the applicant or policyholder from an admitted

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987 insurer at approved rates.

988 2.a.(I) All insurers required to be members of such
989 association shall participate in its writings, expenses, and
990 losses. Surplus of the association shall be retained for the
991 payment of claims and shall not be distributed to the member
992 insurers. Such participation by member insurers shall be in the
993 proportion that the net direct premiums of each member insurer
994 written for property insurance in this state during the preceding
995 calendar year bear to the aggregate net direct premiums for
996 property insurance of all member insurers, as reduced by any
997 credits for voluntary writings, in this state during the
998 preceding calendar year. For the purposes of this subsection, the
999 term "net direct premiums" means direct written premiums for
1000 property insurance, reduced by premium for liability coverage and
1001 for the following if included in allied lines: rain and hail on
1002 growing crops; livestock; association direct premiums booked;
1003 National Flood Insurance Program direct premiums; and similar
1004 deductions specifically authorized by the plan of operation and
1005 approved by the department. A member's participation shall begin
1006 on the first day of the calendar year following the year in which
1007 it is issued a certificate of authority to transact property
1008 insurance in the state and shall terminate 1 year after the end
1009 of the calendar year during which it no longer holds a
1010 certificate of authority to transact property insurance in the
1011 state. The commissioner, after review of annual statements, other
1012 reports, and any other statistics that the commissioner deems
1013 necessary, shall certify to the association the aggregate direct
1014 premiums written for property insurance in this state by all
1015 member insurers.

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1016 (II) Effective July 1, 2002, the association shall operate
1017 subject to the supervision and approval of a board of governors
1018 who are the same individuals that have been appointed by the
1019 Treasurer to serve on the board of governors of the Citizens
1020 Property Insurance Corporation.

1021 (III) The plan of operation shall provide a formula whereby
1022 a company voluntarily providing windstorm coverage in affected
1023 areas will be relieved wholly or partially from apportionment of
1024 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
1025 sub-sub-subparagraph d.(II).

1026 (IV) A company which is a member of a group of companies
1027 under common management may elect to have its credits applied on
1028 a group basis, and any company or group may elect to have its
1029 credits applied to any other company or group.

1030 (V) There shall be no credits or relief from apportionment
1031 to a company for emergency assessments collected from its
1032 policyholders under sub-sub-subparagraph d.(III).

1033 (VI) The plan of operation may also provide for the award
1034 of credits, for a period not to exceed 3 years, from a regular
1035 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
1036 subparagraph d.(II) as an incentive for taking policies out of
1037 the Residential Property and Casualty Joint Underwriting
1038 Association. In order to qualify for the exemption under this
1039 sub-sub-subparagraph, the take-out plan must provide that at
1040 least 40 percent of the policies removed from the Residential
1041 Property and Casualty Joint Underwriting Association cover risks
1042 located in Dade, Broward, and Palm Beach Counties or at least 30
1043 percent of the policies so removed cover risks located in Dade,
1044 Broward, and Palm Beach Counties and an additional 50 percent of

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1045 | the policies so removed cover risks located in other coastal
1046 | counties, and must also provide that no more than 15 percent of
1047 | the policies so removed may exclude windstorm coverage. With the
1048 | approval of the department, the association may waive these
1049 | geographic criteria for a take-out plan that removes at least the
1050 | lesser of 100,000 Residential Property and Casualty Joint
1051 | Underwriting Association policies or 15 percent of the total
1052 | number of Residential Property and Casualty Joint Underwriting
1053 | Association policies, provided the governing board of the
1054 | Residential Property and Casualty Joint Underwriting Association
1055 | certifies that the take-out plan will materially reduce the
1056 | Residential Property and Casualty Joint Underwriting
1057 | Association's 100-year probable maximum loss from hurricanes.
1058 | With the approval of the department, the board may extend such
1059 | credits for an additional year if the insurer guarantees an
1060 | additional year of renewability for all policies removed from the
1061 | Residential Property and Casualty Joint Underwriting Association,
1062 | or for 2 additional years if the insurer guarantees 2 additional
1063 | years of renewability for all policies removed from the
1064 | Residential Property and Casualty Joint Underwriting Association.

1065 | b. Assessments to pay deficits in the association under
1066 | this subparagraph shall be included as an appropriate factor in
1067 | the making of rates as provided in s. 627.3512.

1068 | c. The Legislature finds that the potential for unlimited
1069 | deficit assessments under this subparagraph may induce insurers
1070 | to attempt to reduce their writings in the voluntary market, and
1071 | that such actions would worsen the availability problems that the
1072 | association was created to remedy. It is the intent of the
1073 | Legislature that insurers remain fully responsible for paying

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1074 regular assessments and collecting emergency assessments for any
1075 deficits of the association; however, it is also the intent of
1076 the Legislature to provide a means by which assessment
1077 liabilities may be amortized over a period of years.

1078 d.(I) When the deficit incurred in a particular calendar
1079 year is 10 percent or less of the aggregate statewide direct
1080 written premium for property insurance for the prior calendar
1081 year for all member insurers, the association shall levy an
1082 assessment on member insurers in an amount equal to the deficit.

1083 (II) When the deficit incurred in a particular calendar
1084 year exceeds 10 percent of the aggregate statewide direct written
1085 premium for property insurance for the prior calendar year for
1086 all member insurers, the association shall levy an assessment on
1087 member insurers in an amount equal to the greater of 10 percent
1088 of the deficit or 10 percent of the aggregate statewide direct
1089 written premium for property insurance for the prior calendar
1090 year for member insurers. Any remaining deficit shall be
1091 recovered through emergency assessments under sub-sub-
1092 subparagraph (III).

1093 (III) Upon a determination by the board of directors that a
1094 deficit exceeds the amount that will be recovered through regular
1095 assessments on member insurers, pursuant to sub-sub-subparagraph
1096 (I) or sub-sub-subparagraph (II), the board shall levy, after
1097 verification by the department, emergency assessments to be
1098 collected by member insurers and by underwriting associations
1099 created pursuant to this section which write property insurance,
1100 upon issuance or renewal of property insurance policies other
1101 than National Flood Insurance policies in the year or years
1102 following levy of the regular assessments. The amount of the

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1103 emergency assessment collected in a particular year shall be a
1104 uniform percentage of that year's direct written premium for
1105 property insurance for all member insurers and underwriting
1106 associations, excluding National Flood Insurance policy premiums,
1107 as annually determined by the board and verified by the
1108 department. The department shall verify the arithmetic
1109 calculations involved in the board's determination within 30 days
1110 after receipt of the information on which the determination was
1111 based. Notwithstanding any other provision of law, each member
1112 insurer and each underwriting association created pursuant to
1113 this section shall collect emergency assessments from its
1114 policyholders without such obligation being affected by any
1115 credit, limitation, exemption, or deferment. The emergency
1116 assessments so collected shall be transferred directly to the
1117 association on a periodic basis as determined by the association.
1118 The aggregate amount of emergency assessments levied under this
1119 sub-sub-subparagraph in any calendar year may not exceed the
1120 greater of 10 percent of the amount needed to cover the original
1121 deficit, plus interest, fees, commissions, required reserves, and
1122 other costs associated with financing of the original deficit, or
1123 10 percent of the aggregate statewide direct written premium for
1124 property insurance written by member insurers and underwriting
1125 associations for the prior year, plus interest, fees,
1126 commissions, required reserves, and other costs associated with
1127 financing the original deficit. The board may pledge the proceeds
1128 of the emergency assessments under this sub-sub-subparagraph as
1129 the source of revenue for bonds, to retire any other debt
1130 incurred as a result of the deficit or events giving rise to the
1131 deficit, or in any other way that the board determines will

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1132 efficiently recover the deficit. The emergency assessments under
1133 this sub-sub-subparagraph shall continue as long as any bonds
1134 issued or other indebtedness incurred with respect to a deficit
1135 for which the assessment was imposed remain outstanding, unless
1136 adequate provision has been made for the payment of such bonds or
1137 other indebtedness pursuant to the document governing such bonds
1138 or other indebtedness. Emergency assessments collected under this
1139 sub-sub-subparagraph are not part of an insurer's rates, are not
1140 premium, and are not subject to premium tax, fees, or
1141 commissions; however, failure to pay the emergency assessment
1142 shall be treated as failure to pay premium.

1143 (IV) Each member insurer's share of the total regular
1144 assessments under sub-sub-subparagraph (I) or sub-sub-
1145 subparagraph (II) shall be in the proportion that the insurer's
1146 net direct premium for property insurance in this state, for the
1147 year preceding the assessment bears to the aggregate statewide
1148 net direct premium for property insurance of all member insurers,
1149 as reduced by any credits for voluntary writings for that year.

1150 (V) If regular deficit assessments are made under sub-sub-
1151 subparagraph (I) or sub-sub-subparagraph (II), or by the
1152 Residential Property and Casualty Joint Underwriting Association
1153 under sub-subparagraph (6) (b)3.a. or sub-subparagraph (6) (b)3.b.,
1154 the association shall levy upon the association's policyholders,
1155 as part of its next rate filing, or by a separate rate filing
1156 solely for this purpose, a market equalization surcharge in a
1157 percentage equal to the total amount of such regular assessments
1158 divided by the aggregate statewide direct written premium for
1159 property insurance for member insurers for the prior calendar
1160 year. Market equalization surcharges under this sub-sub-

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1161 subparagraph are not considered premium and are not subject to
1162 commissions, fees, or premium taxes; however, failure to pay a
1163 market equalization surcharge shall be treated as failure to pay
1164 premium.

1165 e. The governing body of any unit of local government, any
1166 residents of which are insured under the plan, may issue bonds as
1167 defined in s. 125.013 or s. 166.101 to fund an assistance
1168 program, in conjunction with the association, for the purpose of
1169 defraying deficits of the association. In order to avoid needless
1170 and indiscriminate proliferation, duplication, and fragmentation
1171 of such assistance programs, any unit of local government, any
1172 residents of which are insured by the association, may provide
1173 for the payment of losses, regardless of whether or not the
1174 losses occurred within or outside of the territorial jurisdiction
1175 of the local government. Revenue bonds may not be issued until
1176 validated pursuant to chapter 75, unless a state of emergency is
1177 declared by executive order or proclamation of the Governor
1178 pursuant to s. 252.36 making such findings as are necessary to
1179 determine that it is in the best interests of, and necessary for,
1180 the protection of the public health, safety, and general welfare
1181 of residents of this state and the protection and preservation of
1182 the economic stability of insurers operating in this state, and
1183 declaring it an essential public purpose to permit certain
1184 municipalities or counties to issue bonds as will provide relief
1185 to claimants and policyholders of the association and insurers
1186 responsible for apportionment of plan losses. Any such unit of
1187 local government may enter into such contracts with the
1188 association and with any other entity created pursuant to this
1189 subsection as are necessary to carry out this paragraph. Any

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1190 | bonds issued under this sub-subparagraph shall be payable from
1191 | and secured by moneys received by the association from
1192 | assessments under this subparagraph, and assigned and pledged to
1193 | or on behalf of the unit of local government for the benefit of
1194 | the holders of such bonds. The funds, credit, property, and
1195 | taxing power of the state or of the unit of local government
1196 | shall not be pledged for the payment of such bonds. If any of the
1197 | bonds remain unsold 60 days after issuance, the department shall
1198 | require all insurers subject to assessment to purchase the bonds,
1199 | which shall be treated as admitted assets; each insurer shall be
1200 | required to purchase that percentage of the unsold portion of the
1201 | bond issue that equals the insurer's relative share of assessment
1202 | liability under this subsection. An insurer shall not be required
1203 | to purchase the bonds to the extent that the department
1204 | determines that the purchase would endanger or impair the
1205 | solvency of the insurer. The authority granted by this sub-
1206 | subparagraph is additional to any bonding authority granted by
1207 | subparagraph 6.

1208 | 3. The plan shall also provide that any member with a
1209 | surplus as to policyholders of \$20 million or less writing 25
1210 | percent or more of its total countrywide property insurance
1211 | premiums in this state may petition the department, within the
1212 | first 90 days of each calendar year, to qualify as a limited
1213 | apportionment company. The apportionment of such a member company
1214 | in any calendar year for which it is qualified shall not exceed
1215 | its gross participation, which shall not be affected by the
1216 | formula for voluntary writings. In no event shall a limited
1217 | apportionment company be required to participate in any
1218 | apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)

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1219 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
1220 \$50 million after payment of available plan funds in any calendar
1221 year. However, a limited apportionment company shall collect from
1222 its policyholders any emergency assessment imposed under sub-sub-
1223 subparagraph 2.d.(III). The plan shall provide that, if the
1224 department determines that any regular assessment will result in
1225 an impairment of the surplus of a limited apportionment company,
1226 the department may direct that all or part of such assessment be
1227 deferred. However, there shall be no limitation or deferment of
1228 an emergency assessment to be collected from policyholders under
1229 sub-sub-subparagraph 2.d.(III).

1230 4. The plan shall provide for the deferment, in whole or in
1231 part, of a regular assessment of a member insurer under sub-sub-
1232 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not
1233 for an emergency assessment collected from policyholders under
1234 sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1235 commissioner, payment of such regular assessment would endanger
1236 or impair the solvency of the member insurer. In the event a
1237 regular assessment against a member insurer is deferred in whole
1238 or in part, the amount by which such assessment is deferred may
1239 be assessed against the other member insurers in a manner
1240 consistent with the basis for assessments set forth in sub-sub-
1241 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1242 5.a. The plan of operation may include deductibles and
1243 rules for classification of risks and rate modifications
1244 consistent with the objective of providing and maintaining funds
1245 sufficient to pay catastrophe losses.

1246 ~~b. The association may require arbitration of a rate filing~~
1247 ~~under s. 627.062(6).~~ It is the intent of the Legislature that the

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1248 rates for coverage provided by the association be actuarially
1249 sound and not competitive with approved rates charged in the
1250 admitted voluntary market such that the association functions as
1251 a residual market mechanism to provide insurance only when the
1252 insurance cannot be procured in the voluntary market. The plan of
1253 operation shall provide a mechanism to assure that, beginning no
1254 later than January 1, 1999, the rates charged by the association
1255 for each line of business are reflective of approved rates in the
1256 voluntary market for hurricane coverage for each line of business
1257 in the various areas eligible for association coverage.

1258 c. The association shall provide for windstorm coverage on
1259 residential properties in limits up to \$10 million for commercial
1260 lines residential risks and up to \$1 million for personal lines
1261 residential risks. If coverage with the association is sought for
1262 a residential risk valued in excess of these limits, coverage
1263 shall be available to the risk up to the replacement cost or
1264 actual cash value of the property, at the option of the insured,
1265 if coverage for the risk cannot be located in the authorized
1266 market. The association must accept a commercial lines
1267 residential risk with limits above \$10 million or a personal
1268 lines residential risk with limits above \$1 million if coverage
1269 is not available in the authorized market. The association may
1270 write coverage above the limits specified in this subparagraph
1271 with or without facultative or other reinsurance coverage, as the
1272 association determines appropriate.

1273 d. The plan of operation must provide objective criteria
1274 and procedures, approved by the department, to be uniformly
1275 applied for all applicants in determining whether an individual
1276 risk is so hazardous as to be uninsurable. In making this

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1277 determination and in establishing the criteria and procedures,
1278 the following shall be considered:

1279 (I) Whether the likelihood of a loss for the individual
1280 risk is substantially higher than for other risks of the same
1281 class; and

1282 (II) Whether the uncertainty associated with the individual
1283 risk is such that an appropriate premium cannot be determined.

1284

1285 The acceptance or rejection of a risk by the association pursuant
1286 to such criteria and procedures must be construed as the private
1287 placement of insurance, and the provisions of chapter 120 do not
1288 apply.

1289 e. If the risk accepts an offer of coverage through the
1290 market assistance program or through a mechanism established by
1291 the association, either before the policy is issued by the
1292 association or during the first 30 days of coverage by the
1293 association, and the producing agent who submitted the
1294 application to the association is not currently appointed by the
1295 insurer, the insurer shall:

1296 (I) Pay to the producing agent of record of the policy, for
1297 the first year, an amount that is the greater of the insurer's
1298 usual and customary commission for the type of policy written or
1299 a fee equal to the usual and customary commission of the
1300 association; or

1301 (II) Offer to allow the producing agent of record of the
1302 policy to continue servicing the policy for a period of not less
1303 than 1 year and offer to pay the agent the greater of the
1304 insurer's or the association's usual and customary commission for
1305 the type of policy written.

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1306
1307 If the producing agent is unwilling or unable to accept
1308 appointment, the new insurer shall pay the agent in accordance
1309 with sub-sub-subparagraph (I). Subject to the provisions of s.
1310 627.3517, the policies issued by the association must provide
1311 that if the association obtains an offer from an authorized
1312 insurer to cover the risk at its approved rates under either a
1313 standard policy including wind coverage or, if consistent with
1314 the insurer's underwriting rules as filed with the department, a
1315 basic policy including wind coverage, the risk is no longer
1316 eligible for coverage through the association. Upon termination
1317 of eligibility, the association shall provide written notice to
1318 the policyholder and agent of record stating that the association
1319 policy must be canceled as of 60 days after the date of the
1320 notice because of the offer of coverage from an authorized
1321 insurer. Other provisions of the insurance code relating to
1322 cancellation and notice of cancellation do not apply to actions
1323 under this sub-subparagraph.

1324 f. When the association enters into a contractual agreement
1325 for a take-out plan, the producing agent of record of the
1326 association policy is entitled to retain any unearned commission
1327 on the policy, and the insurer shall:

1328 (I) Pay to the producing agent of record of the association
1329 policy, for the first year, an amount that is the greater of the
1330 insurer's usual and customary commission for the type of policy
1331 written or a fee equal to the usual and customary commission of
1332 the association; or

1333 (II) Offer to allow the producing agent of record of the
1334 association policy to continue servicing the policy for a period

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1335 of not less than 1 year and offer to pay the agent the greater of
1336 the insurer's or the association's usual and customary commission
1337 for the type of policy written.

1338

1339 If the producing agent is unwilling or unable to accept
1340 appointment, the new insurer shall pay the agent in accordance
1341 with sub-sub-subparagraph (I).

1342 6.a. The plan of operation may authorize the formation of a
1343 private nonprofit corporation, a private nonprofit unincorporated
1344 association, a partnership, a trust, a limited liability company,
1345 or a nonprofit mutual company which may be empowered, among other
1346 things, to borrow money by issuing bonds or by incurring other
1347 indebtedness and to accumulate reserves or funds to be used for
1348 the payment of insured catastrophe losses. The plan may authorize
1349 all actions necessary to facilitate the issuance of bonds,
1350 including the pledging of assessments or other revenues.

1351 b. Any entity created under this subsection, or any entity
1352 formed for the purposes of this subsection, may sue and be sued,
1353 may borrow money; issue bonds, notes, or debt instruments; pledge
1354 or sell assessments, market equalization surcharges and other
1355 surcharges, rights, premiums, contractual rights, projected
1356 recoveries from the Florida Hurricane Catastrophe Fund, other
1357 reinsurance recoverables, and other assets as security for such
1358 bonds, notes, or debt instruments; enter into any contracts or
1359 agreements necessary or proper to accomplish such borrowings; and
1360 take other actions necessary to carry out the purposes of this
1361 subsection. The association may issue bonds or incur other
1362 indebtedness, or have bonds issued on its behalf by a unit of
1363 local government pursuant to subparagraph (6)(p)2., in the

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1364 absence of a hurricane or other weather-related event, upon a
1365 determination by the association subject to approval by the
1366 department that such action would enable it to efficiently meet
1367 the financial obligations of the association and that such
1368 financings are reasonably necessary to effectuate the
1369 requirements of this subsection. Any such entity may accumulate
1370 reserves and retain surpluses as of the end of any association
1371 year to provide for the payment of losses incurred by the
1372 association during that year or any future year. The association
1373 shall incorporate and continue the plan of operation and articles
1374 of agreement in effect on the effective date of chapter 76-96,
1375 Laws of Florida, to the extent that it is not inconsistent with
1376 chapter 76-96, and as subsequently modified consistent with
1377 chapter 76-96. The board of directors and officers currently
1378 serving shall continue to serve until their successors are duly
1379 qualified as provided under the plan. The assets and obligations
1380 of the plan in effect immediately prior to the effective date of
1381 chapter 76-96 shall be construed to be the assets and obligations
1382 of the successor plan created herein.

1383 c. In recognition of s. 10, Art. I of the State
1384 Constitution, prohibiting the impairment of obligations of
1385 contracts, it is the intent of the Legislature that no action be
1386 taken whose purpose is to impair any bond indenture or financing
1387 agreement or any revenue source committed by contract to such
1388 bond or other indebtedness issued or incurred by the association
1389 or any other entity created under this subsection.

1390 7. On such coverage, an agent's remuneration shall be that
1391 amount of money payable to the agent by the terms of his or her
1392 contract with the company with which the business is placed.

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1393 | However, no commission will be paid on that portion of the
1394 | premium which is in excess of the standard premium of that
1395 | company.

1396 | 8. Subject to approval by the department, the association
1397 | may establish different eligibility requirements and operational
1398 | procedures for any line or type of coverage for any specified
1399 | eligible area or portion of an eligible area if the board
1400 | determines that such changes to the eligibility requirements and
1401 | operational procedures are justified due to the voluntary market
1402 | being sufficiently stable and competitive in such area or for
1403 | such line or type of coverage and that consumers who, in good
1404 | faith, are unable to obtain insurance through the voluntary
1405 | market through ordinary methods would continue to have access to
1406 | coverage from the association. When coverage is sought in
1407 | connection with a real property transfer, such requirements and
1408 | procedures shall not provide for an effective date of coverage
1409 | later than the date of the closing of the transfer as established
1410 | by the transferor, the transferee, and, if applicable, the
1411 | lender.

1412 | 9. Notwithstanding any other provision of law:

1413 | a. The pledge or sale of, the lien upon, and the security
1414 | interest in any rights, revenues, or other assets of the
1415 | association created or purported to be created pursuant to any
1416 | financing documents to secure any bonds or other indebtedness of
1417 | the association shall be and remain valid and enforceable,
1418 | notwithstanding the commencement of and during the continuation
1419 | of, and after, any rehabilitation, insolvency, liquidation,
1420 | bankruptcy, receivership, conservatorship, reorganization, or
1421 | similar proceeding against the association under the laws of this

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1422 state or any other applicable laws.

1423 b. No such proceeding shall relieve the association of its
1424 obligation, or otherwise affect its ability to perform its
1425 obligation, to continue to collect, or levy and collect,
1426 assessments, market equalization or other surcharges, projected
1427 recoveries from the Florida Hurricane Catastrophe Fund,
1428 reinsurance recoverables, or any other rights, revenues, or other
1429 assets of the association pledged.

1430 c. Each such pledge or sale of, lien upon, and security
1431 interest in, including the priority of such pledge, lien, or
1432 security interest, any such assessments, emergency assessments,
1433 market equalization or renewal surcharges, projected recoveries
1434 from the Florida Hurricane Catastrophe Fund, reinsurance
1435 recoverables, or other rights, revenues, or other assets which
1436 are collected, or levied and collected, after the commencement of
1437 and during the pendency of or after any such proceeding shall
1438 continue unaffected by such proceeding.

1439 d. As used in this subsection, the term "financing
1440 documents" means any agreement, instrument, or other document now
1441 existing or hereafter created evidencing any bonds or other
1442 indebtedness of the association or pursuant to which any such
1443 bonds or other indebtedness has been or may be issued and
1444 pursuant to which any rights, revenues, or other assets of the
1445 association are pledged or sold to secure the repayment of such
1446 bonds or indebtedness, together with the payment of interest on
1447 such bonds or such indebtedness, or the payment of any other
1448 obligation of the association related to such bonds or
1449 indebtedness.

1450 e. Any such pledge or sale of assessments, revenues,

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1451 contract rights or other rights or assets of the association
1452 shall constitute a lien and security interest, or sale, as the
1453 case may be, that is immediately effective and attaches to such
1454 assessments, revenues, contract, or other rights or assets,
1455 whether or not imposed or collected at the time the pledge or
1456 sale is made. Any such pledge or sale is effective, valid,
1457 binding, and enforceable against the association or other entity
1458 making such pledge or sale, and valid and binding against and
1459 superior to any competing claims or obligations owed to any other
1460 person or entity, including policyholders in this state,
1461 asserting rights in any such assessments, revenues, contract, or
1462 other rights or assets to the extent set forth in and in
1463 accordance with the terms of the pledge or sale contained in the
1464 applicable financing documents, whether or not any such person or
1465 entity has notice of such pledge or sale and without the need for
1466 any physical delivery, recordation, filing, or other action.

1467 f. There shall be no liability on the part of, and no cause
1468 of action of any nature shall arise against, any member insurer
1469 or its agents or employees, agents or employees of the
1470 association, members of the board of directors of the
1471 association, or the department or its representatives, for any
1472 action taken by them in the performance of their duties or
1473 responsibilities under this subsection. Such immunity does not
1474 apply to actions for breach of any contract or agreement
1475 pertaining to insurance, or any willful tort.

1476 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1477 (a)1. It is the public purpose of this subsection to ensure
1478 the existence of an orderly market for property insurance for
1479 Floridians and Florida businesses. The Legislature finds that

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1480 private insurers are unwilling or unable to provide affordable
1481 property insurance coverage in this state to the extent sought
1482 and needed. The absence of affordable property insurance
1483 threatens the public health, safety, and welfare and likewise
1484 threatens the economic health of the state. The state therefore
1485 has a compelling public interest and a public purpose to assist
1486 in assuring that property in the state is insured and that it is
1487 insured at affordable rates so as to facilitate the remediation,
1488 reconstruction, and replacement of damaged or destroyed property
1489 in order to reduce or avoid the negative effects otherwise
1490 resulting to the public health, safety, and welfare, to the
1491 economy of the state, and to the revenues of the state and local
1492 governments which are needed to provide for the public welfare.
1493 It is necessary, therefore, to provide affordable property
1494 insurance to applicants who are in good faith entitled to procure
1495 insurance through the voluntary market but are unable to do so.
1496 The Legislature intends by this subsection that affordable
1497 property insurance be provided and that it continue to be
1498 provided, as long as necessary, through Citizens Property
1499 Insurance Corporation, a government entity that is an integral
1500 part of the state, and that is not a private insurance company.
1501 To that end, Citizens Property Insurance Corporation shall strive
1502 to increase the availability of affordable property insurance in
1503 this state, while achieving efficiencies and economies, and while
1504 providing service to policyholders, applicants, and agents which
1505 is no less than the quality generally provided in the voluntary
1506 market, for the achievement of the foregoing public purposes.
1507 Because it is essential for this government entity to have the
1508 maximum financial resources to pay claims following a

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1509 catastrophic hurricane, it is the intent of the Legislature that
1510 Citizens Property Insurance Corporation continue to be an
1511 integral part of the state and that the income of the corporation
1512 be exempt from federal income taxation and that interest on the
1513 debt obligations issued by the corporation be exempt from federal
1514 income taxation.

1515 2. The Residential Property and Casualty Joint Underwriting
1516 Association originally created by this statute shall be known, as
1517 of July 1, 2002, as the Citizens Property Insurance Corporation.
1518 The corporation shall provide insurance for residential and
1519 commercial property, for applicants who are in good faith
1520 entitled, but are unable, to procure insurance through the
1521 voluntary market. The corporation shall operate pursuant to a
1522 plan of operation approved by order of the Financial Services
1523 Commission. The plan is subject to continuous review by the
1524 commission. The commission may, by order, withdraw approval of
1525 all or part of a plan if the commission determines that
1526 conditions have changed since approval was granted and that the
1527 purposes of the plan require changes in the plan. The corporation
1528 shall continue to operate pursuant to the plan of operation
1529 approved by the Office of Insurance Regulation until October 1,
1530 2006. For the purposes of this subsection, residential coverage
1531 includes both personal lines residential coverage, which consists
1532 of the type of coverage provided by homeowner's, mobile home
1533 owner's, dwelling, tenant's, condominium unit owner's, and
1534 similar policies, and commercial lines residential coverage,
1535 which consists of the type of coverage provided by condominium
1536 association, apartment building, and similar policies.

1537 ~~3. For the purposes of this subsection, the term "homestead~~

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1538 ~~property" means:~~

1539 ~~a. Property that has been granted a homestead exemption~~
1540 ~~under chapter 196;~~

1541 ~~b. Property for which the owner has a current, written~~
1542 ~~lease with a renter for a term of at least 7 months and for which~~
1543 ~~the dwelling is insured by the corporation for \$200,000 or less;~~

1544 ~~c. An owner-occupied mobile home or manufactured home, as~~
1545 ~~defined in s. 320.01, which is permanently affixed to real~~
1546 ~~property, is owned by a Florida resident, and has been granted a~~
1547 ~~homestead exemption under chapter 196 or, if the owner does not~~
1548 ~~own the real property, the owner certifies that the mobile home~~
1549 ~~or manufactured home is his or her principal place of residence;~~

1550 ~~d. Tenant's coverage;~~

1551 ~~e. Commercial lines residential property; or~~

1552 ~~f. Any county, district, or municipal hospital; a hospital~~
1553 ~~licensed by any not-for-profit corporation qualified under s.~~
1554 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
1555 ~~continuing care retirement community that is certified under~~
1556 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1557 ~~under chapter 196.~~

1558 ~~4. For the purposes of this subsection, the term~~
1559 ~~"nonhomestead property" means property that is not homestead~~
1560 ~~property.~~

1561 ~~5. Effective January 1, 2009, a personal lines residential~~
1562 ~~structure that has a dwelling replacement cost of \$1 million or~~
1563 ~~more, or a single condominium unit that has a combined dwelling~~
1564 ~~and content replacement cost of \$1 million or more is not~~
1565 ~~eligible for coverage by the corporation. Such dwellings insured~~
1566 ~~by the corporation on December 31, 2008, may continue to be~~

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1567 covered by the corporation until the end of the policy term.
1568 However, such dwellings that are insured by the corporation and
1569 become ineligible for coverage due to the provisions of this
1570 subparagraph may reapply and obtain coverage in the high-risk
1571 account and be considered "nonhomestead property" if the property
1572 owner provides the corporation with a sworn affidavit from one or
1573 more insurance agents, on a form provided by the corporation,
1574 stating that the agents have made their best efforts to obtain
1575 coverage and that the property has been rejected for coverage by
1576 at least one authorized insurer and at least three surplus lines
1577 insurers. If such conditions are met, the dwelling may be insured
1578 by the corporation for up to 3 years, after which time the
1579 dwelling is ineligible for coverage. The office shall approve the
1580 method used by the corporation for valuing the dwelling
1581 replacement cost for the purposes of this subparagraph. If a
1582 policyholder is insured by the corporation prior to being
1583 determined to be ineligible pursuant to this subparagraph and
1584 such policyholder files a lawsuit challenging the determination,
1585 the policyholder may remain insured by the corporation until the
1586 conclusion of the litigation.

1587 3.6. For properties constructed on or after January 1,
1588 2009, the corporation may not insure any property located within
1589 2,500 feet landward of the coastal construction control line
1590 created pursuant to s. 161.053 unless the property meets the
1591 requirements of the code-plus building standards developed by the
1592 Florida Building Commission.

1593 4.7. It is the intent of the Legislature that
1594 policyholders, applicants, and agents of the corporation receive
1595 service and treatment of the highest possible level but never

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1596 less than that generally provided in the voluntary market. It
1597 also is intended that the corporation be held to service
1598 standards no less than those applied to insurers in the voluntary
1599 market by the office with respect to responsiveness, timeliness,
1600 customer courtesy, and overall dealings with policyholders,
1601 applicants, or agents of the corporation.

1602 ~~5.8.~~ Effective January 1, 2009, a personal lines
1603 residential structure that is located in the "wind-borne debris
1604 region," as defined in s. 1609.2, International Building Code
1605 (2006), and that has an insured value on the structure of
1606 \$750,000 or more is not eligible for coverage by the corporation
1607 unless the structure has opening protections as required under
1608 the Florida Building Code for a newly constructed residential
1609 structure in that area. A residential structure shall be deemed
1610 to comply with the requirements of this subparagraph if it has
1611 shutters or opening protections on all openings and if such
1612 opening protections complied with the Florida Building Code at
1613 the time they were installed. Effective January 1, 2011, the
1614 requirements of this subparagraph apply to a personal lines
1615 residential structure that is located in the wind-borne debris
1616 region and that has an insured value on the structure of \$500,000
1617 or more.

1618 (b)1. All insurers authorized to write one or more subject
1619 lines of business in this state are subject to assessment by the
1620 corporation and, for the purposes of this subsection, are
1621 referred to collectively as "assessable insurers." Insurers
1622 writing one or more subject lines of business in this state
1623 pursuant to part VIII of chapter 626 are not assessable insurers,
1624 but insureds who procure one or more subject lines of business in

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1625 | this state pursuant to part VIII of chapter 626 are subject to
1626 | assessment by the corporation and are referred to collectively as
1627 | "assessable insureds." An authorized insurer's assessment
1628 | liability shall begin on the first day of the calendar year
1629 | following the year in which the insurer was issued a certificate
1630 | of authority to transact insurance for subject lines of business
1631 | in this state and shall terminate 1 year after the end of the
1632 | first calendar year during which the insurer no longer holds a
1633 | certificate of authority to transact insurance for subject lines
1634 | of business in this state.

1635 | 2.a. All revenues, assets, liabilities, losses, and
1636 | expenses of the corporation shall be divided into three separate
1637 | accounts as follows:

1638 | (I) A personal lines account for personal residential
1639 | policies issued by the corporation or issued by the Residential
1640 | Property and Casualty Joint Underwriting Association and renewed
1641 | by the corporation that provide comprehensive, multiperil
1642 | coverage on risks that are not located in areas eligible for
1643 | coverage in the Florida Windstorm Underwriting Association as
1644 | those areas were defined on January 1, 2002, and for such
1645 | policies that do not provide coverage for the peril of wind on
1646 | risks that are located in such areas;

1647 | (II) A commercial lines account for commercial residential
1648 | and commercial nonresidential policies issued by the corporation
1649 | or issued by the Residential Property and Casualty Joint
1650 | Underwriting Association and renewed by the corporation that
1651 | provide coverage for basic property perils on risks that are not
1652 | located in areas eligible for coverage in the Florida Windstorm
1653 | Underwriting Association as those areas were defined on January

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1654 | 1, 2002, and for such policies that do not provide coverage for
1655 | the peril of wind on risks that are located in such areas; and
1656 | (III) A high-risk account for personal residential policies
1657 | and commercial residential and commercial nonresidential property
1658 | policies issued by the corporation or transferred to the
1659 | corporation that provide coverage for the peril of wind on risks
1660 | that are located in areas eligible for coverage in the Florida
1661 | Windstorm Underwriting Association as those areas were defined on
1662 | January 1, 2002. ~~Subject to the approval of a business plan by~~
1663 | ~~the Financial Services Commission and Legislative Budget~~
1664 | ~~Commission as provided in this sub-sub-subparagraph, but no~~
1665 | ~~earlier than March 31, 2007,~~ The corporation shall ~~may~~ offer
1666 | policies that provide multiperil coverage and the corporation
1667 | shall ~~continue to~~ offer policies that provide coverage only for
1668 | the peril of wind for risks located in areas eligible for
1669 | coverage in the high-risk account. Beginning July 1, 2008, the
1670 | corporation may not issue new policies that provide coverage only
1671 | for the peril of wind, but may continue to renew such policies
1672 | that were in force on that date. In issuing multiperil coverage,
1673 | the corporation may use its approved policy forms and rates for
1674 | the personal lines account. An applicant or insured who is
1675 | eligible to purchase a multiperil policy from the corporation may
1676 | purchase a multiperil policy from an authorized insurer without
1677 | prejudice to the applicant's or insured's eligibility to
1678 | prospectively purchase a policy that provides coverage only for
1679 | the peril of wind from the corporation prior to July 1, 2008. An
1680 | applicant or insured who is eligible for a corporation policy
1681 | that provides coverage only for the peril of wind may elect to
1682 | purchase or retain such policy and also purchase or retain

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1683 coverage excluding wind from an authorized insurer without
1684 prejudice to the applicant's or insured's eligibility to
1685 prospectively purchase a policy that provides multiperil coverage
1686 from the corporation. It is the goal of the Legislature that
1687 there would be an overall average savings of 10 percent or more
1688 for a policyholder who currently has a wind-only policy with the
1689 corporation, and an ex-wind policy with a voluntary insurer or
1690 the corporation, and who then obtains a multiperil policy from
1691 the corporation. It is the intent of the Legislature that the
1692 offer of multiperil coverage in the high-risk account be made and
1693 implemented in a manner that does not adversely affect the tax-
1694 exempt status of the corporation or creditworthiness of or
1695 security for currently outstanding financing obligations or
1696 credit facilities of the high-risk account, the personal lines
1697 account, or the commercial lines account. ~~By March 1, 2007, the~~
1698 ~~corporation shall prepare and submit for approval by the~~
1699 ~~Financial Services Commission and Legislative Budget Commission a~~
1700 ~~report detailing the corporation's business plan for issuing~~
1701 ~~multiperil coverage in the high-risk account. The business plan~~
1702 ~~shall be approved or disapproved within 30 days after receipt, as~~
1703 ~~submitted or modified and resubmitted by the corporation. The~~
1704 ~~business plan must include: the impact of such multiperil~~
1705 ~~coverage on the corporation's financial resources, the impact of~~
1706 ~~such multiperil coverage on the corporation's tax exempt status,~~
1707 ~~the manner in which the corporation plans to implement the~~
1708 ~~processing of applications and policy forms for new and existing~~
1709 ~~policyholders, the impact of such multiperil coverage on the~~
1710 ~~corporation's ability to deliver customer service at the high~~
1711 ~~level required by this subsection, the ability of the corporation~~

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1712 ~~to process claims, the ability of the corporation to quote and~~
1713 ~~issue policies, the impact of such multiperil coverage on the~~
1714 ~~corporation's agents, the impact of such multiperil coverage on~~
1715 ~~the corporation's existing policyholders, and the impact of such~~
1716 ~~multiperil coverage on rates and premium.~~ The high-risk account
1717 must also include quota share primary insurance under
1718 subparagraph (c)2. The area eligible for coverage under the high-
1719 risk account also includes the area within Port Canaveral, which
1720 is bordered on the south by the City of Cape Canaveral, bordered
1721 on the west by the Banana River, and bordered on the north by
1722 Federal Government property.

1723 b. The three separate accounts must be maintained as long
1724 as financing obligations entered into by the Florida Windstorm
1725 Underwriting Association or Residential Property and Casualty
1726 Joint Underwriting Association are outstanding, in accordance
1727 with the terms of the corresponding financing documents. When the
1728 financing obligations are no longer outstanding, in accordance
1729 with the terms of the corresponding financing documents, the
1730 corporation may use a single account for all revenues, assets,
1731 liabilities, losses, and expenses of the corporation. Consistent
1732 with the requirement of this subparagraph and prudent investment
1733 policies that minimize the cost of carrying debt, the board shall
1734 exercise its best efforts to retire existing debt or to obtain
1735 approval of necessary parties to amend the terms of existing
1736 debt, so as to structure the most efficient plan to consolidate
1737 the three separate accounts into a single account. By February 1,
1738 2007, the board shall submit a report to the Financial Services
1739 Commission, the President of the Senate, and the Speaker of the
1740 House of Representatives which includes an analysis of

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1741 consolidating the accounts, the actions the board has taken to
1742 minimize the cost of carrying debt, and its recommendations for
1743 executing the most efficient plan.

1744 c. Creditors of the Residential Property and Casualty Joint
1745 Underwriting Association and of the accounts specified in sub-
1746 sub-subparagraphs a.(I) and (II) may have a claim against, and
1747 recourse to, the accounts referred to in sub-sub-subparagraphs
1748 a.(I) and (II) and shall have no claim against, or recourse to,
1749 the account referred to in sub-sub-subparagraph a.(III).

1750 Creditors of the Florida Windstorm Underwriting Association shall
1751 have a claim against, and recourse to, the account referred to in
1752 sub-sub-subparagraph a.(III) and shall have no claim against, or
1753 recourse to, the accounts referred to in sub-sub-subparagraphs
1754 a.(I) and (II).

1755 d. Revenues, assets, liabilities, losses, and expenses not
1756 attributable to particular accounts shall be prorated among the
1757 accounts.

1758 e. The Legislature finds that the revenues of the
1759 corporation are revenues that are necessary to meet the
1760 requirements set forth in documents authorizing the issuance of
1761 bonds under this subsection.

1762 f. No part of the income of the corporation may inure to
1763 the benefit of any private person.

1764 3. With respect to a deficit in an account:

1765 a. When the deficit incurred in a particular calendar year
1766 is not greater than 8 ~~10~~ percent of the aggregate statewide
1767 direct written premium for the subject lines of business for the
1768 prior calendar year, the entire deficit shall be recovered
1769 through regular assessments of assessable insurers under

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1770 paragraph (p) and assessable insureds.

1771 b. When the deficit incurred in a particular calendar year
1772 exceeds 8 ~~10~~ percent of the aggregate statewide direct written
1773 premium for the subject lines of business for the prior calendar
1774 year, the corporation shall levy regular assessments on
1775 assessable insurers under paragraph (p) and on assessable
1776 insureds in an amount equal to the greater of 8 ~~10~~ percent of the
1777 deficit or 8 ~~10~~ percent of the aggregate statewide direct written
1778 premium for the subject lines of business for the prior calendar
1779 year. Any remaining deficit shall be recovered through emergency
1780 assessments under sub-subparagraph d.

1781 c. Each assessable insurer's share of the amount being
1782 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1783 be in the proportion that the assessable insurer's direct written
1784 premium for the subject lines of business for the year preceding
1785 the assessment bears to the aggregate statewide direct written
1786 premium for the subject lines of business for that year. The
1787 assessment percentage applicable to each assessable insured is
1788 the ratio of the amount being assessed under sub-subparagraph a.
1789 or sub-subparagraph b. to the aggregate statewide direct written
1790 premium for the subject lines of business for the prior year.
1791 Assessments levied by the corporation on assessable insurers
1792 under sub-subparagraphs a. and b. shall be paid as required by
1793 the corporation's plan of operation and paragraph (p).
1794 notwithstanding any other provision of this subsection, the
1795 aggregate amount of a regular assessment for a deficit incurred
1796 in a particular calendar year shall be reduced by the estimated
1797 amount to be received by the corporation from the Citizens
1798 policyholder surcharge ~~under subparagraph (c)10. and the amount~~

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1799 ~~collected or estimated to be collected from the assessment on~~
1800 ~~Citizens policyholders~~ pursuant to sub-subparagraph i.
1801 Assessments levied by the corporation on assessable insureds
1802 under sub-subparagraphs a. and b. shall be collected by the
1803 surplus lines agent at the time the surplus lines agent collects
1804 the surplus lines tax required by s. 626.932 and shall be paid to
1805 the Florida Surplus Lines Service Office at the time the surplus
1806 lines agent pays the surplus lines tax to the Florida Surplus
1807 Lines Service Office. Upon receipt of regular assessments from
1808 surplus lines agents, the Florida Surplus Lines Service Office
1809 shall transfer the assessments directly to the corporation as
1810 determined by the corporation.

1811 d. Upon a determination by the board of governors that a
1812 deficit in an account exceeds the amount that will be recovered
1813 through regular assessments under sub-subparagraph a. or sub-
1814 subparagraph b., plus the amount that is expected to be recovered
1815 through surcharges under sub-subparagraph i., as to the remaining
1816 projected deficit the board shall levy, after verification by the
1817 office, emergency assessments, for as many years as necessary to
1818 cover the deficits, to be collected by assessable insurers and
1819 the corporation and collected from assessable insureds upon
1820 issuance or renewal of policies for subject lines of business,
1821 excluding National Flood Insurance policies. The amount of the
1822 emergency assessment collected in a particular year shall be a
1823 uniform percentage of that year's direct written premium for
1824 subject lines of business and all accounts of the corporation,
1825 excluding National Flood Insurance Program policy premiums, as
1826 annually determined by the board and verified by the office. The
1827 office shall verify the arithmetic calculations involved in the

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1828 board's determination within 30 days after receipt of the
1829 information on which the determination was based. Notwithstanding
1830 any other provision of law, the corporation and each assessable
1831 insurer that writes subject lines of business shall collect
1832 emergency assessments from its policyholders without such
1833 obligation being affected by any credit, limitation, exemption,
1834 or deferment. Emergency assessments levied by the corporation on
1835 assessable insureds shall be collected by the surplus lines agent
1836 at the time the surplus lines agent collects the surplus lines
1837 tax required by s. 626.932 and shall be paid to the Florida
1838 Surplus Lines Service Office at the time the surplus lines agent
1839 pays the surplus lines tax to the Florida Surplus Lines Service
1840 Office. The emergency assessments so collected shall be
1841 transferred directly to the corporation on a periodic basis as
1842 determined by the corporation and shall be held by the
1843 corporation solely in the applicable account. The aggregate
1844 amount of emergency assessments levied for an account under this
1845 sub-subparagraph in any calendar year may, at the discretion of
1846 the board of governors, be less than but may not exceed the
1847 greater of 10 percent of the amount needed to cover the ~~original~~
1848 deficit, plus interest, fees, commissions, required reserves, and
1849 other costs associated with financing of the original deficit, or
1850 10 percent of the aggregate statewide direct written premium for
1851 subject lines of business and for all accounts of the corporation
1852 for the prior year, plus interest, fees, commissions, required
1853 reserves, and other costs associated with financing the ~~original~~
1854 deficit.

1855 e. The corporation may pledge the proceeds of assessments,
1856 projected recoveries from the Florida Hurricane Catastrophe Fund,

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1857 other insurance and reinsurance recoverables, policyholder
1858 surcharges and other surcharges, and other funds available to the
1859 corporation as the source of revenue for and to secure bonds
1860 issued under paragraph (p), bonds or other indebtedness issued
1861 under subparagraph (c)3., or lines of credit or other financing
1862 mechanisms issued or created under this subsection, or to retire
1863 any other debt incurred as a result of deficits or events giving
1864 rise to deficits, or in any other way that the board determines
1865 will efficiently recover such deficits. The purpose of the lines
1866 of credit or other financing mechanisms is to provide additional
1867 resources to assist the corporation in covering claims and
1868 expenses attributable to a catastrophe. As used in this
1869 subsection, the term "assessments" includes regular assessments
1870 under sub-subparagraph a., sub-subparagraph b., or subparagraph
1871 (p)1. and emergency assessments under sub-subparagraph d.
1872 Emergency assessments collected under sub-subparagraph d. are not
1873 part of an insurer's rates, are not premium, and are not subject
1874 to premium tax, fees, or commissions; however, failure to pay the
1875 emergency assessment shall be treated as failure to pay premium.
1876 The emergency assessments under sub-subparagraph d. shall
1877 continue as long as any bonds issued or other indebtedness
1878 incurred with respect to a deficit for which the assessment was
1879 imposed remain outstanding, unless adequate provision has been
1880 made for the payment of such bonds or other indebtedness pursuant
1881 to the documents governing such bonds or other indebtedness.

1882 f. As used in this subsection for purposes of any deficit
1883 incurred on or after January 25, 2007, the term "subject lines of
1884 business" means insurance written by assessable insurers or
1885 procured by assessable insureds for all property and casualty

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1886 lines of business in this state, but not including workers'
1887 compensation or medical malpractice. As used in the sub-
1888 subparagraph, the term "property and casualty lines of business"
1889 includes all lines of business identified on Form 2, Exhibit of
1890 Premiums and Losses, in the annual statement required of
1891 authorized insurers by s. 624.424 and any rule adopted under this
1892 section, except for those lines identified as accident and health
1893 insurance and except for policies written under the National
1894 Flood Insurance Program or the Federal Crop Insurance Program.
1895 For purposes of this sub-subparagraph, the term "workers'
1896 compensation" includes both workers' compensation insurance and
1897 excess workers' compensation insurance.

1898 g. The Florida Surplus Lines Service Office shall determine
1899 annually the aggregate statewide written premium in subject lines
1900 of business procured by assessable insureds and shall report that
1901 information to the corporation in a form and at a time the
1902 corporation specifies to ensure that the corporation can meet the
1903 requirements of this subsection and the corporation's financing
1904 obligations.

1905 h. The Florida Surplus Lines Service Office shall verify
1906 the proper application by surplus lines agents of assessment
1907 percentages for regular assessments and emergency assessments
1908 levied under this subparagraph on assessable insureds and shall
1909 assist the corporation in ensuring the accurate, timely
1910 collection and payment of assessments by surplus lines agents as
1911 required by the corporation.

1912 i. If a deficit is incurred in any account in 2008 or
1913 thereafter, the board of governors shall levy a Citizens
1914 policyholder surcharge ~~an immediate assessment against the~~

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1915 ~~premium of each nonhomestead property policyholder in all~~
1916 ~~accounts of the corporation, as a uniform percentage of the~~
1917 ~~premium of the policy of up to 10 percent of such premium, which~~
1918 ~~funds shall be used to offset the deficit. If this assessment is~~
1919 ~~insufficient to eliminate the deficit, the board of governors~~
1920 ~~shall levy an additional assessment against all policyholders of~~
1921 ~~the corporation for a 12-month period, which shall be collected~~
1922 ~~at the time of issuance or renewal of a policy, as a uniform~~
1923 ~~percentage of the premium for the policy of up to 10 percent of~~
1924 ~~such premium, which funds shall be used to ~~further~~ offset the~~
1925 ~~deficit and reduce the amount of the regular assessment as~~
1926 ~~provided in sub-subparagraphs a. and b. Citizens policyholder~~
1927 ~~surcharges under this sub-subparagraph are not considered premium~~
1928 ~~and are not subject to commissions, fees, or premium taxes.~~
1929 ~~However, failure to pay such surcharges shall be treated as~~
1930 ~~failure to pay premium.~~

1931 j. If the amount of any assessments or surcharges collected
1932 from corporation policyholders, assessable insurers or their
1933 policyholders, or assessable insureds exceeds the amount of the
1934 deficits, such excess amounts shall be remitted to and retained
1935 by the corporation in a reserve to be used by the corporation, as
1936 determined by the board of governors and approved by the office,
1937 to pay claims or reduce any past, present, or future plan-year
1938 deficits or to reduce outstanding debt. ~~The board of governors~~
1939 ~~shall maintain separate accounting records that consolidate data~~
1940 ~~for nonhomestead properties, including, but not limited to,~~
1941 ~~number of policies, insured values, premiums written, and losses.~~
1942 ~~The board of governors shall annually report to the office and~~
1943 ~~the Legislature a summary of such data.~~

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- 1944 (c) The plan of operation of the corporation:
- 1945 1. Must provide for adoption of residential property and
- 1946 casualty insurance policy forms and commercial residential and
- 1947 nonresidential property insurance forms, which forms must be
- 1948 approved by the office prior to use. The corporation shall adopt
- 1949 the following policy forms:
- 1950 a. Standard personal lines policy forms that are
- 1951 comprehensive multiperil policies providing full coverage of a
- 1952 residential property equivalent to the coverage provided in the
- 1953 private insurance market under an HO-3, HO-4, or HO-6 policy.
- 1954 b. Basic personal lines policy forms that are policies
- 1955 similar to an HO-8 policy or a dwelling fire policy that provide
- 1956 coverage meeting the requirements of the secondary mortgage
- 1957 market, but which coverage is more limited than the coverage
- 1958 under a standard policy.
- 1959 c. Commercial lines residential and nonresidential policy
- 1960 forms that are generally similar to the basic perils of full
- 1961 coverage obtainable for commercial residential structures and
- 1962 commercial nonresidential structures in the admitted voluntary
- 1963 market.
- 1964 d. Personal lines and commercial lines residential property
- 1965 insurance forms that cover the peril of wind only. The forms are
- 1966 applicable only to residential properties located in areas
- 1967 eligible for coverage under the high-risk account referred to in
- 1968 sub-subparagraph (b)2.a.
- 1969 e. Commercial lines nonresidential property insurance forms
- 1970 that cover the peril of wind only. The forms are applicable only
- 1971 to nonresidential properties located in areas eligible for
- 1972 coverage under the high-risk account referred to in sub-

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1973 | subparagraph (b)2.a.

1974 | f. The corporation may adopt variations of the policy forms
1975 | listed in sub-subparagraphs a.-e. that contain more restrictive
1976 | coverage.

1977 | 2.a. Must provide that the corporation adopt a program in
1978 | which the corporation and authorized insurers enter into quota
1979 | share primary insurance agreements for hurricane coverage, as
1980 | defined in s. 627.4025(2)(a), for eligible risks, and adopt
1981 | property insurance forms for eligible risks which cover the peril
1982 | of wind only. As used in this subsection, the term:

1983 | (I) "Quota share primary insurance" means an arrangement in
1984 | which the primary hurricane coverage of an eligible risk is
1985 | provided in specified percentages by the corporation and an
1986 | authorized insurer. The corporation and authorized insurer are
1987 | each solely responsible for a specified percentage of hurricane
1988 | coverage of an eligible risk as set forth in a quota share
1989 | primary insurance agreement between the corporation and an
1990 | authorized insurer and the insurance contract. The responsibility
1991 | of the corporation or authorized insurer to pay its specified
1992 | percentage of hurricane losses of an eligible risk, as set forth
1993 | in the quota share primary insurance agreement, may not be
1994 | altered by the inability of the other party to the agreement to
1995 | pay its specified percentage of hurricane losses. Eligible risks
1996 | that are provided hurricane coverage through a quota share
1997 | primary insurance arrangement must be provided policy forms that
1998 | set forth the obligations of the corporation and authorized
1999 | insurer under the arrangement, clearly specify the percentages of
2000 | quota share primary insurance provided by the corporation and
2001 | authorized insurer, and conspicuously and clearly state that

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2002 | neither the authorized insurer nor the corporation may be held
2003 | responsible beyond its specified percentage of coverage of
2004 | hurricane losses.

2005 | (II) "Eligible risks" means personal lines residential and
2006 | commercial lines residential risks that meet the underwriting
2007 | criteria of the corporation and are located in areas that were
2008 | eligible for coverage by the Florida Windstorm Underwriting
2009 | Association on January 1, 2002.

2010 | b. The corporation may enter into quota share primary
2011 | insurance agreements with authorized insurers at corporation
2012 | coverage levels of 90 percent and 50 percent.

2013 | c. If the corporation determines that additional coverage
2014 | levels are necessary to maximize participation in quota share
2015 | primary insurance agreements by authorized insurers, the
2016 | corporation may establish additional coverage levels. However,
2017 | the corporation's quota share primary insurance coverage level
2018 | may not exceed 90 percent.

2019 | d. Any quota share primary insurance agreement entered into
2020 | between an authorized insurer and the corporation must provide
2021 | for a uniform specified percentage of coverage of hurricane
2022 | losses, by county or territory as set forth by the corporation
2023 | board, for all eligible risks of the authorized insurer covered
2024 | under the quota share primary insurance agreement.

2025 | e. Any quota share primary insurance agreement entered into
2026 | between an authorized insurer and the corporation is subject to
2027 | review and approval by the office. However, such agreement shall
2028 | be authorized only as to insurance contracts entered into between
2029 | an authorized insurer and an insured who is already insured by
2030 | the corporation for wind coverage.

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2031 f. For all eligible risks covered under quota share primary
2032 insurance agreements, the exposure and coverage levels for both
2033 the corporation and authorized insurers shall be reported by the
2034 corporation to the Florida Hurricane Catastrophe Fund. For all
2035 policies of eligible risks covered under quota share primary
2036 insurance agreements, the corporation and the authorized insurer
2037 shall maintain complete and accurate records for the purpose of
2038 exposure and loss reimbursement audits as required by Florida
2039 Hurricane Catastrophe Fund rules. The corporation and the
2040 authorized insurer shall each maintain duplicate copies of policy
2041 declaration pages and supporting claims documents.

2042 g. The corporation board shall establish in its plan of
2043 operation standards for quota share agreements which ensure that
2044 there is no discriminatory application among insurers as to the
2045 terms of quota share agreements, pricing of quota share
2046 agreements, incentive provisions if any, and consideration paid
2047 for servicing policies or adjusting claims.

2048 h. The quota share primary insurance agreement between the
2049 corporation and an authorized insurer must set forth the specific
2050 terms under which coverage is provided, including, but not
2051 limited to, the sale and servicing of policies issued under the
2052 agreement by the insurance agent of the authorized insurer
2053 producing the business, the reporting of information concerning
2054 eligible risks, the payment of premium to the corporation, and
2055 arrangements for the adjustment and payment of hurricane claims
2056 incurred on eligible risks by the claims adjuster and personnel
2057 of the authorized insurer. Entering into a quota sharing
2058 insurance agreement between the corporation and an authorized
2059 insurer shall be voluntary and at the discretion of the

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2060 | authorized insurer.

2061 | 3. May provide that the corporation may employ or otherwise
2062 | contract with individuals or other entities to provide
2063 | administrative or professional services that may be appropriate
2064 | to effectuate the plan. The corporation shall have the power to
2065 | borrow funds, by issuing bonds or by incurring other
2066 | indebtedness, and shall have other powers reasonably necessary to
2067 | effectuate the requirements of this subsection, including,
2068 | without limitation, the power to issue bonds and incur other
2069 | indebtedness in order to refinance outstanding bonds or other
2070 | indebtedness. The corporation may, but is not required to, seek
2071 | judicial validation of its bonds or other indebtedness under
2072 | chapter 75. The corporation may issue bonds or incur other
2073 | indebtedness, or have bonds issued on its behalf by a unit of
2074 | local government pursuant to subparagraph (p)2., in the absence
2075 | of a hurricane or other weather-related event, upon a
2076 | determination by the corporation, subject to approval by the
2077 | office, that such action would enable it to efficiently meet the
2078 | financial obligations of the corporation and that such financings
2079 | are reasonably necessary to effectuate the requirements of this
2080 | subsection. The corporation is authorized to take all actions
2081 | needed to facilitate tax-free status for any such bonds or
2082 | indebtedness, including formation of trusts or other affiliated
2083 | entities. The corporation shall have the authority to pledge
2084 | assessments, projected recoveries from the Florida Hurricane
2085 | Catastrophe Fund, other reinsurance recoverables, market
2086 | equalization and other surcharges, and other funds available to
2087 | the corporation as security for bonds or other indebtedness. In
2088 | recognition of s. 10, Art. I of the State Constitution,

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2089 | prohibiting the impairment of obligations of contracts, it is the
2090 | intent of the Legislature that no action be taken whose purpose
2091 | is to impair any bond indenture or financing agreement or any
2092 | revenue source committed by contract to such bond or other
2093 | indebtedness.

2094 | 4.a. Must require that the corporation operate subject to
2095 | the supervision and approval of a board of governors consisting
2096 | of eight individuals who are residents of this state, from
2097 | different geographical areas of this state. The Governor, the
2098 | Chief Financial Officer, the President of the Senate, and the
2099 | Speaker of the House of Representatives shall each appoint two
2100 | members of the board. At least one of the two members appointed
2101 | by each appointing officer must have demonstrated expertise in
2102 | insurance. The Chief Financial Officer shall designate one of the
2103 | appointees as chair. All board members serve at the pleasure of
2104 | the appointing officer. All members of the board of governors are
2105 | subject to removal at will by the officers who appointed them.
2106 | All board members, including the chair, must be appointed to
2107 | serve for 3-year terms beginning annually on a date designated by
2108 | the plan. Any board vacancy shall be filled for the unexpired
2109 | term by the appointing officer. The Chief Financial Officer shall
2110 | appoint a technical advisory group to provide information and
2111 | advice to the board of governors in connection with the board's
2112 | duties under this subsection. The executive director and senior
2113 | managers of the corporation shall be engaged by the board and
2114 | serve at the pleasure of the board. Any executive director
2115 | appointed on or after July 1, 2006, is subject to confirmation by
2116 | the Senate. The executive director is responsible for employing
2117 | other staff as the corporation may require, subject to review and

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2118 concurrence by the board.

2119 b. The board shall create a Market Accountability Advisory
2120 Committee to assist the corporation in developing awareness of
2121 its rates and its customer and agent service levels in
2122 relationship to the voluntary market insurers writing similar
2123 coverage. The members of the advisory committee shall consist of
2124 the following 11 persons, one of whom must be elected chair by
2125 the members of the committee: four representatives, one appointed
2126 by the Florida Association of Insurance Agents, one by the
2127 Florida Association of Insurance and Financial Advisors, one by
2128 the Professional Insurance Agents of Florida, and one by the
2129 Latin American Association of Insurance Agencies; three
2130 representatives appointed by the insurers with the three highest
2131 voluntary market share of residential property insurance business
2132 in the state; one representative from the Office of Insurance
2133 Regulation; one consumer appointed by the board who is insured by
2134 the corporation at the time of appointment to the committee; one
2135 representative appointed by the Florida Association of Realtors;
2136 and one representative appointed by the Florida Bankers
2137 Association. All members must serve for 3-year terms and may
2138 serve for consecutive terms. The committee shall report to the
2139 corporation at each board meeting on insurance market issues
2140 which may include rates and rate competition with the voluntary
2141 market; service, including policy issuance, claims processing,
2142 and general responsiveness to policyholders, applicants, and
2143 agents; and matters relating to depopulation.

2144 5. Must provide a procedure for determining the eligibility
2145 of a risk for coverage, as follows:

2146 a. Subject to the provisions of s. 627.3517, with respect

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2147 | to personal lines residential risks, if the risk is offered
2148 | coverage from an authorized insurer at the insurer's approved
2149 | rate under either a standard policy including wind coverage or,
2150 | if consistent with the insurer's underwriting rules as filed with
2151 | the office, a basic policy including wind coverage, for a new
2152 | application to the corporation for coverage, the risk is not
2153 | eligible for any policy issued by the corporation unless the
2154 | premium for coverage from the authorized insurer is more than 15
2155 | percent greater than the premium for comparable coverage from the
2156 | corporation. If the risk is not able to obtain any such offer,
2157 | the risk is eligible for either a standard policy including wind
2158 | coverage or a basic policy including wind coverage issued by the
2159 | corporation; however, if the risk could not be insured under a
2160 | standard policy including wind coverage regardless of market
2161 | conditions, the risk shall be eligible for a basic policy
2162 | including wind coverage unless rejected under subparagraph 9.
2163 | However, with regard to a policyholder of the corporation or a
2164 | policyholder removed from the corporation through an assumption
2165 | agreement until the end of the assumption period, the
2166 | policyholder remains eligible for coverage from the corporation
2167 | regardless of any offer of coverage from an authorized insurer or
2168 | surplus lines insurer. The corporation shall determine the type
2169 | of policy to be provided on the basis of objective standards
2170 | specified in the underwriting manual and based on generally
2171 | accepted underwriting practices.

2172 | (I) If the risk accepts an offer of coverage through the
2173 | market assistance plan or an offer of coverage through a
2174 | mechanism established by the corporation before a policy is
2175 | issued to the risk by the corporation or during the first 30 days

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2176 of coverage by the corporation, and the producing agent who
2177 submitted the application to the plan or to the corporation is
2178 not currently appointed by the insurer, the insurer shall:

2179 (A) Pay to the producing agent of record of the policy, for
2180 the first year, an amount that is the greater of the insurer's
2181 usual and customary commission for the type of policy written or
2182 a fee equal to the usual and customary commission of the
2183 corporation; or

2184 (B) Offer to allow the producing agent of record of the
2185 policy to continue servicing the policy for a period of not less
2186 than 1 year and offer to pay the agent the greater of the
2187 insurer's or the corporation's usual and customary commission for
2188 the type of policy written.

2189
2190 If the producing agent is unwilling or unable to accept
2191 appointment, the new insurer shall pay the agent in accordance
2192 with sub-sub-sub-subparagraph (A).

2193 (II) When the corporation enters into a contractual
2194 agreement for a take-out plan, the producing agent of record of
2195 the corporation policy is entitled to retain any unearned
2196 commission on the policy, and the insurer shall:

2197 (A) Pay to the producing agent of record of the corporation
2198 policy, for the first year, an amount that is the greater of the
2199 insurer's usual and customary commission for the type of policy
2200 written or a fee equal to the usual and customary commission of
2201 the corporation; or

2202 (B) Offer to allow the producing agent of record of the
2203 corporation policy to continue servicing the policy for a period
2204 of not less than 1 year and offer to pay the agent the greater of

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2205 | the insurer's or the corporation's usual and customary commission
2206 | for the type of policy written.

2207

2208 | If the producing agent is unwilling or unable to accept
2209 | appointment, the new insurer shall pay the agent in accordance
2210 | with sub-sub-sub-subparagraph (A).

2211 | b. With respect to commercial lines residential risks, for
2212 | a new application to the corporation for coverage, if the risk is
2213 | offered coverage under a policy including wind coverage from an
2214 | authorized insurer at its approved rate, the risk is not eligible
2215 | for any policy issued by the corporation unless the premium for
2216 | coverage from the authorized insurer is more than 15 percent
2217 | greater than the premium for comparable coverage from the
2218 | corporation. If the risk is not able to obtain any such offer,
2219 | the risk is eligible for a policy including wind coverage issued
2220 | by the corporation. However, with regard to a policyholder of the
2221 | corporation or a policyholder removed from the corporation
2222 | through an assumption agreement until the end of the assumption
2223 | period, the policyholder remains eligible for coverage from the
2224 | corporation regardless of any offer of coverage from an
2225 | authorized insurer or surplus lines insurer.

2226 | (I) If the risk accepts an offer of coverage through the
2227 | market assistance plan or an offer of coverage through a
2228 | mechanism established by the corporation before a policy is
2229 | issued to the risk by the corporation or during the first 30 days
2230 | of coverage by the corporation, and the producing agent who
2231 | submitted the application to the plan or the corporation is not
2232 | currently appointed by the insurer, the insurer shall:

2233 | (A) Pay to the producing agent of record of the policy, for

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2234 the first year, an amount that is the greater of the insurer's
2235 usual and customary commission for the type of policy written or
2236 a fee equal to the usual and customary commission of the
2237 corporation; or

2238 (B) Offer to allow the producing agent of record of the
2239 policy to continue servicing the policy for a period of not less
2240 than 1 year and offer to pay the agent the greater of the
2241 insurer's or the corporation's usual and customary commission for
2242 the type of policy written.

2243

2244 If the producing agent is unwilling or unable to accept
2245 appointment, the new insurer shall pay the agent in accordance
2246 with sub-sub-sub-subparagraph (A).

2247 (II) When the corporation enters into a contractual
2248 agreement for a take-out plan, the producing agent of record of
2249 the corporation policy is entitled to retain any unearned
2250 commission on the policy, and the insurer shall:

2251 (A) Pay to the producing agent of record of the corporation
2252 policy, for the first year, an amount that is the greater of the
2253 insurer's usual and customary commission for the type of policy
2254 written or a fee equal to the usual and customary commission of
2255 the corporation; or

2256 (B) Offer to allow the producing agent of record of the
2257 corporation policy to continue servicing the policy for a period
2258 of not less than 1 year and offer to pay the agent the greater of
2259 the insurer's or the corporation's usual and customary commission
2260 for the type of policy written.

2261

2262 If the producing agent is unwilling or unable to accept

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2263 appointment, the new insurer shall pay the agent in accordance
2264 with sub-sub-sub-subparagraph (A).

2265 c. For purposes of determining comparable coverage under
2266 sub-subparagraphs a. and b., the comparison shall be based on
2267 those forms and coverages that are reasonably comparable. The
2268 corporation may rely on a determination of comparable coverage
2269 and premium made by the producing agent who submits the
2270 application to the corporation, made in the agent's capacity as
2271 the corporation's agent. A comparison may be made solely of the
2272 premium with respect to the main building or structure only on
2273 the following basis: the same coverage A or other building
2274 limits; the same percentage hurricane deductible that applies on
2275 an annual basis or that applies to each hurricane for commercial
2276 residential property; the same percentage of ordinance and law
2277 coverage, if the same limit is offered by both the corporation
2278 and the authorized insurer; the same mitigation credits, to the
2279 extent the same types of credits are offered both by the
2280 corporation and the authorized insurer; the same method for loss
2281 payment, such as replacement cost or actual cash value, if the
2282 same method is offered both by the corporation and the authorized
2283 insurer in accordance with underwriting rules; and any other form
2284 or coverage that is reasonably comparable as determined by the
2285 board. If an application is submitted to the corporation for
2286 wind-only coverage in the high-risk account, the premium for the
2287 corporation's wind-only policy plus the premium for the ex-wind
2288 policy that is offered by an authorized insurer to the applicant
2289 shall be compared to the premium for multiperil coverage offered
2290 by an authorized insurer, subject to the standards for comparison
2291 specified in this subparagraph. If the corporation or the

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2292 applicant requests from the authorized insurer a breakdown of the
2293 premium of the offer by types of coverage so that a comparison
2294 may be made by the corporation or its agent and the authorized
2295 insurer refuses or is unable to provide such information, the
2296 corporation may treat the offer as not being an offer of coverage
2297 from an authorized insurer at the insurer's approved rate.

2298 6. Must include rules for classifications of risks and
2299 rates therefor.

2300 7. Must provide that if premium and investment income for
2301 an account attributable to a particular calendar year are in
2302 excess of projected losses and expenses for the account
2303 attributable to that year, such excess shall be held in surplus
2304 in the account. Such surplus shall be available to defray
2305 deficits in that account as to future years and shall be used for
2306 that purpose prior to assessing assessable insurers and
2307 assessable insureds as to any calendar year.

2308 8. Must provide objective criteria and procedures to be
2309 uniformly applied for all applicants in determining whether an
2310 individual risk is so hazardous as to be uninsurable. In making
2311 this determination and in establishing the criteria and
2312 procedures, the following shall be considered:

2313 a. Whether the likelihood of a loss for the individual risk
2314 is substantially higher than for other risks of the same class;
2315 and

2316 b. Whether the uncertainty associated with the individual
2317 risk is such that an appropriate premium cannot be determined.

2318

2319 The acceptance or rejection of a risk by the corporation shall be
2320 construed as the private placement of insurance, and the

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2321 provisions of chapter 120 shall not apply.

2322 9. Must provide that the corporation shall make its best
2323 efforts to procure catastrophe reinsurance at reasonable rates,
2324 to cover its projected 100-year probable maximum loss as
2325 determined by the board of governors.

2326 ~~10. Must provide that in the event of regular deficit~~
2327 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2328 ~~(b)3.b., in the personal lines account, the commercial lines~~
2329 ~~residential account, or the high-risk account, the corporation~~
2330 ~~shall levy upon corporation policyholders in its next rate~~
2331 ~~filing, or by a separate rate filing solely for this purpose, a~~
2332 ~~Citizens policyholder surcharge arising from a regular assessment~~
2333 ~~in such account in a percentage equal to the total amount of such~~
2334 ~~regular assessments divided by the aggregate statewide direct~~
2335 ~~written premium for subject lines of business for the prior~~
2336 ~~calendar year. For purposes of calculating the Citizens~~
2337 ~~policyholder surcharge to be levied under this subparagraph, the~~
2338 ~~total amount of the regular assessment to which this surcharge is~~
2339 ~~related shall be determined as set forth in subparagraph (b)3.,~~
2340 ~~without deducting the estimated Citizens policyholder surcharge.~~
2341 ~~Citizens policyholder surcharges under this subparagraph are not~~
2342 ~~considered premium and are not subject to commissions, fees, or~~
2343 ~~premium taxes; however, failure to pay a market equalization~~
2344 ~~surcharge shall be treated as failure to pay premium.~~

2345 10.11. The policies issued by the corporation must provide
2346 that, if the corporation or the market assistance plan obtains an
2347 offer from an authorized insurer to cover the risk at its
2348 approved rates, the risk is no longer eligible for renewal
2349 through the corporation, except as otherwise provided in this

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2350 subsection.

2351 ~~11.12.~~ Corporation policies and applications must include a
2352 notice that the corporation policy could, under this section, be
2353 replaced with a policy issued by an authorized insurer that does
2354 not provide coverage identical to the coverage provided by the
2355 corporation. The notice shall also specify that acceptance of
2356 corporation coverage creates a conclusive presumption that the
2357 applicant or policyholder is aware of this potential.

2358 ~~12.13.~~ May establish, subject to approval by the office,
2359 different eligibility requirements and operational procedures for
2360 any line or type of coverage for any specified county or area if
2361 the board determines that such changes to the eligibility
2362 requirements and operational procedures are justified due to the
2363 voluntary market being sufficiently stable and competitive in
2364 such area or for such line or type of coverage and that consumers
2365 who, in good faith, are unable to obtain insurance through the
2366 voluntary market through ordinary methods would continue to have
2367 access to coverage from the corporation. When coverage is sought
2368 in connection with a real property transfer, such requirements
2369 and procedures shall not provide for an effective date of
2370 coverage later than the date of the closing of the transfer as
2371 established by the transferor, the transferee, and, if
2372 applicable, the lender.

2373 ~~13.14.~~ Must provide that, with respect to the high-risk
2374 account, any assessable insurer with a surplus as to
2375 policyholders of \$25 million or less writing 25 percent or more
2376 of its total countrywide property insurance premiums in this
2377 state may petition the office, within the first 90 days of each
2378 calendar year, to qualify as a limited apportionment company. A

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2379 regular assessment levied by the corporation on a limited
2380 apportionment company for a deficit incurred by the corporation
2381 for the high-risk account in 2006 or thereafter may be paid to
2382 the corporation on a monthly basis as the assessments are
2383 collected by the limited apportionment company from its insureds
2384 pursuant to s. 627.3512, but the regular assessment must be paid
2385 in full within 12 months after being levied by the corporation. A
2386 limited apportionment company shall collect from its
2387 policyholders any emergency assessment imposed under sub-
2388 subparagraph (b)3.d. The plan shall provide that, if the office
2389 determines that any regular assessment will result in an
2390 impairment of the surplus of a limited apportionment company, the
2391 office may direct that all or part of such assessment be deferred
2392 as provided in subparagraph (p)4. However, there shall be no
2393 limitation or deferment of an emergency assessment to be
2394 collected from policyholders under sub-subparagraph (b)3.d.

2395 14.15. Must provide that the corporation appoint as its
2396 licensed agents only those agents who also hold an appointment as
2397 defined in s. 626.015(3) with an insurer who at the time of the
2398 agent's initial appointment by the corporation is authorized to
2399 write and is actually writing personal lines residential property
2400 coverage, commercial residential property coverage, or commercial
2401 nonresidential property coverage within the state.

2402 15.16. Must provide, by July 1, 2007, a premium payment
2403 plan option to its policyholders which allows at a minimum for
2404 quarterly and semiannual payment of premiums. A monthly payment
2405 plan may, but is not required to, be offered.

2406 16.17. Must limit coverage on mobile homes or manufactured
2407 homes built prior to 1994 to actual cash value of the dwelling

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2408 rather than replacement costs of the dwelling.

2409 ~~17.18.~~ May provide such limits of coverage as the board
2410 determines, consistent with the requirements of this subsection.

2411 ~~18.19.~~ May require commercial property to meet specified
2412 hurricane mitigation construction features as a condition of
2413 eligibility for coverage.

2414 (d)1. All prospective employees for senior management
2415 positions, as defined by the plan of operation, are subject to
2416 background checks as a prerequisite for employment. The office
2417 shall conduct background checks on such prospective employees
2418 pursuant to ss. 624.34, 624.404(3), and 628.261.

2419 2. On or before July 1 of each year, employees of the
2420 corporation are required to sign and submit a statement attesting
2421 that they do not have a conflict of interest, as defined in part
2422 III of chapter 112. As a condition of employment, all prospective
2423 employees are required to sign and submit to the corporation a
2424 conflict-of-interest statement.

2425 3. Senior managers and members of the board of governors
2426 are subject to the provisions of part III of chapter 112,
2427 including, but not limited to, the code of ethics and public
2428 disclosure and reporting of financial interests, pursuant to s.
2429 112.3145. Senior managers and board members are also required to
2430 file such disclosures with the Commission on Ethics and the
2431 Office of Insurance Regulation. The executive director of the
2432 corporation or his or her designee shall notify each newly
2433 appointed and existing appointed member of the board of governors
2434 and senior managers of their duty to comply with the reporting
2435 requirements of part III of chapter 112. At least quarterly, the
2436 executive director or his or her designee shall submit to the

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2437 Commission on Ethics a list of names of the senior managers and
2438 members of the board of governors who are subject to the public
2439 disclosure requirements under s. 112.3145.

2440 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other
2441 provision of law, an employee or board member may not knowingly
2442 accept, directly or indirectly, any gift or expenditure from a
2443 person or entity, or an employee or representative of such person
2444 or entity, that has a contractual relationship with the
2445 corporation or who is under consideration for a contract. An
2446 employee or board member who fails to comply with subparagraph 3.
2447 or this subparagraph is subject to penalties provided under ss.
2448 112.317 and 112.3173.

2449 5. Any senior manager of the corporation who is employed on
2450 or after January 1, 2007, regardless of the date of hire, who
2451 subsequently retires or terminates employment is prohibited from
2452 representing another person or entity before the corporation for
2453 2 years after retirement or termination of employment from the
2454 corporation.

2455 6. Any senior manager of the corporation who is employed on
2456 or after January 1, 2007, regardless of the date of hire, who
2457 subsequently retires or terminates employment is prohibited from
2458 having any employment or contractual relationship for 2 years
2459 with an insurer that has entered into a take-out bonus agreement
2460 with the corporation.

2461 (e) Purchases that equal or exceed \$2,500, but are less
2462 than \$25,000, shall be made by receipt of written quotes, written
2463 record of telephone quotes, or informal bids, whenever practical.
2464 The procurement of goods or services valued at or over \$25,000
2465 shall be subject to competitive solicitation, except in

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2466 situations where the goods or services are provided by a sole
2467 source or are deemed an emergency purchase; the services are
2468 exempted from competitive solicitation requirements under s.
2469 287.057(5)(f); or the procurement of services is subject to s.
2470 627.3513. Justification for the sole-sourcing or emergency
2471 procurement must be documented. Contracts for goods or services
2472 valued at or over \$100,000 are subject to approval by the board.

2473 (f) The board shall determine whether it is more cost-
2474 effective and in the best interests of the corporation to use
2475 legal services provided by in-house attorneys employed by the
2476 corporation rather than contracting with outside counsel. In
2477 making such determination, the board shall document its findings
2478 and shall consider: the expertise needed; whether time
2479 commitments exceed in-house staff resources; whether local
2480 representation is needed; the travel, lodging and other costs
2481 associated with in-house representation; and such other factors
2482 that the board determines are relevant.

2483 (g) The corporation may not retain a lobbyist to represent
2484 it before the legislative branch or executive branch. However,
2485 full-time employees of the corporation may register as lobbyists
2486 and represent the corporation before the legislative branch or
2487 executive branch.

2488 (h)1. The Office of the Internal Auditor is established
2489 within the corporation to provide a central point for
2490 coordination of and responsibility for activities that promote
2491 accountability, integrity, and efficiency to the policyholders
2492 and to the taxpayers of this state. The internal auditor shall be
2493 appointed by the board of governors, shall report to and be under
2494 the general supervision of the board of governors, and is not

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2495 subject to supervision by any employee of the corporation.
2496 Administrative staff and support shall be provided by the
2497 corporation. The internal auditor shall be appointed without
2498 regard to political affiliation. It is the duty and
2499 responsibility of the internal auditor to:

2500 a. Provide direction for, supervise, conduct, and
2501 coordinate audits, investigations, and management reviews
2502 relating to the programs and operations of the corporation.

2503 b. Conduct, supervise, or coordinate other activities
2504 carried out or financed by the corporation for the purpose of
2505 promoting efficiency in the administration of, or preventing and
2506 detecting fraud, abuse, and mismanagement in, its programs and
2507 operations.

2508 c. Submit final audit reports, reviews, or investigative
2509 reports to the board of governors, the executive director, the
2510 members of the Financial Services Commission, and the President
2511 of the Senate and the Speaker of the House of Representatives.

2512 d. Keep the board of governors informed concerning fraud,
2513 abuses, and internal control deficiencies relating to programs
2514 and operations administered or financed by the corporation,
2515 recommend corrective action, and report on the progress made in
2516 implementing corrective action.

2517 e. Report expeditiously to the Department of Law
2518 Enforcement or other law enforcement agencies, as appropriate,
2519 whenever the internal auditor has reasonable grounds to believe
2520 there has been a violation of criminal law.

2521 2. On or before February 15, the internal auditor shall
2522 prepare an annual report evaluating the effectiveness of the
2523 internal controls of the corporation and providing

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2524 recommendations for corrective action, if necessary, and
2525 summarizing the audits, reviews, and investigations conducted by
2526 the office during the preceding fiscal year. The final report
2527 shall be furnished to the board of governors and the executive
2528 director, the President of the Senate, the Speaker of the House
2529 of Representatives, and the Financial Services Commission.

2530 (i) All records of the corporation, except as otherwise
2531 provided by law, are subject to the record retention requirements
2532 of s. 119.021.

2533 (j)1. The corporation shall establish and maintain a unit
2534 or division to investigate possible fraudulent claims by insureds
2535 or by persons making claims for services or repairs against
2536 policies held by insureds; or it may contract with others to
2537 investigate possible fraudulent claims for services or repairs
2538 against policies held by the corporation pursuant to s. 626.9891.
2539 The corporation must comply with reporting requirements of s.
2540 626.9891. An employee of the corporation shall notify the
2541 corporation's Office of the Internal Auditor and the Division of
2542 Insurance Fraud within 48 hours after having information that
2543 would lead a reasonable person to suspect that fraud may have
2544 been committed by any employee of the corporation.

2545 2. The corporation shall establish a unit or division
2546 responsible for receiving and responding to consumer complaints,
2547 which unit or division is the sole responsibility of a senior
2548 manager of the corporation.

2549 (k) The office shall conduct a comprehensive market conduct
2550 examination of the corporation every 2 years to determine
2551 compliance with its plan of operation and internal operations
2552 procedures. The first market conduct examination report shall be

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2553 submitted to the President of the Senate and the Speaker of the
2554 House of Representatives no later than February 1, 2009.
2555 Subsequent reports shall be submitted on or before February 1
2556 every 2 years thereafter.

2557 (l) The Auditor General shall conduct an operational audit
2558 of the corporation every 3 years to evaluate management's
2559 performance in administering laws, policies, and procedures
2560 governing the operations of the corporation in an efficient and
2561 effective manner. The scope of the review shall include, but is
2562 not limited to, evaluating claims handling, customer service,
2563 take-out programs and bonuses, financing arrangements,
2564 procurement of goods and services, internal controls, and the
2565 internal audit function. The initial audit must be completed by
2566 February 1, 2009.

2567 (m)1. Rates for coverage provided by the corporation shall
2568 be actuarially sound and subject to the requirements of s.
2569 627.062, except as otherwise provided in this paragraph. The
2570 corporation shall file its recommended rates with the office at
2571 least annually. The corporation shall provide any additional
2572 information regarding the rates which the office requires. The
2573 office shall consider the recommendations of the board and issue
2574 a final order establishing the rates for the corporation within
2575 45 days after the recommended rates are filed. The corporation
2576 may not pursue an administrative challenge or judicial review of
2577 the final order of the office.

2578 2. In addition to the rates otherwise determined pursuant
2579 to this paragraph, the corporation shall impose and collect an
2580 amount equal to the premium tax provided for in s. 624.509 to
2581 augment the financial resources of the corporation.

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2582 3. After the public hurricane loss-projection model under
2583 s. 627.06281 has been found to be accurate and reliable by the
2584 Florida Commission on Hurricane Loss Projection Methodology, that
2585 model shall serve as the minimum benchmark for determining the
2586 windstorm portion of the corporation's rates. This subparagraph
2587 does not require or allow the corporation to adopt rates lower
2588 than the rates otherwise required or allowed by this paragraph.

2589 4. The rate filings for the corporation which were approved
2590 by the office and which took effect January 1, 2007, are
2591 rescinded, except for those rates that were lowered. As soon as
2592 possible, the corporation shall begin using the lower rates that
2593 were in effect on December 31, 2006, and shall provide refunds to
2594 policyholders who have paid higher rates as a result of that rate
2595 filing. The rates in effect on December 31, 2006, shall remain in
2596 effect for the 2007, ~~and 2008,~~ and 2009 calendar years except for
2597 any rate change that results in a lower rate. The next rate
2598 change that may increase rates shall take effect no earlier than
2599 January 1, 2010 ~~January 1, 2009,~~ pursuant to a new rate filing
2600 recommended by the corporation and established by the office,
2601 subject to the requirements of this paragraph.

2602 5. The Legislature finds that it is in the public interest
2603 to ensure that increased rates for coverage by the corporation be
2604 implemented incrementally in order to provide rate stability and
2605 predictability to its policyholders.

2606 a. Beginning on or after January 1, 2010, the corporation
2607 must make an annual filing for each personal and commercial line
2608 of business it writes.

2609 b. For the years 2010 through 2012, rates established by
2610 the office for the corporation for its personal residential

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2611 multiperil policies, its commercial residential multiperil
2612 policies, and its commercial nonresidential multiperil policies
2613 may not result in any year in an overall average statewide
2614 premium increase of more than 10 percent or an increase for any
2615 single policyholder of more than 10 percent, excluding coverage
2616 changes and surcharges.

2617 c. For the years 2010 through 2012, rates established by
2618 the office for the corporation for its personal residential wind-
2619 only policies, its commercial residential wind-only policies, and
2620 its commercial nonresidential wind-only policies may not result
2621 in any year in an overall average statewide premium increase of
2622 more than 15 percent or an increase for any single policyholder
2623 of more than 15 percent, excluding coverage changes and
2624 surcharges.

2625 (n) If coverage in an account is deactivated pursuant to
2626 paragraph (o), coverage through the corporation shall be
2627 reactivated by order of the office only under one of the
2628 following circumstances:

2629 1. If the market assistance plan receives a minimum of 100
2630 applications for coverage within a 3-month period, or 200
2631 applications for coverage within a 1-year period or less for
2632 residential coverage, unless the market assistance plan provides
2633 a quotation from admitted carriers at their filed rates for at
2634 least 90 percent of such applicants. Any market assistance plan
2635 application that is rejected because an individual risk is so
2636 hazardous as to be uninsurable using the criteria specified in
2637 subparagraph (c)9. shall not be included in the minimum
2638 percentage calculation provided herein. In the event that there
2639 is a legal or administrative challenge to a determination by the

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2640 office that the conditions of this subparagraph have been met for
2641 eligibility for coverage in the corporation, any eligible risk
2642 may obtain coverage during the pendency of such challenge.

2643 2. In response to a state of emergency declared by the
2644 Governor under s. 252.36, the office may activate coverage by
2645 order for the period of the emergency upon a finding by the
2646 office that the emergency significantly affects the availability
2647 of residential property insurance.

2648 (o)1. The corporation shall file with the office quarterly
2649 statements of financial condition, an annual statement of
2650 financial condition, and audited financial statements in the
2651 manner prescribed by law. In addition, the corporation shall
2652 report to the office monthly on the types, premium, exposure, and
2653 distribution by county of its policies in force, and shall submit
2654 other reports as the office requires to carry out its oversight
2655 of the corporation.

2656 2. The activities of the corporation shall be reviewed at
2657 least annually by the office to determine whether coverage shall
2658 be deactivated in an account on the basis that the conditions
2659 giving rise to its activation no longer exist.

2660 (p)1. The corporation shall certify to the office its needs
2661 for annual assessments as to a particular calendar year, and for
2662 any interim assessments that it deems to be necessary to sustain
2663 operations as to a particular year pending the receipt of annual
2664 assessments. Upon verification, the office shall approve such
2665 certification, and the corporation shall levy such annual or
2666 interim assessments. Such assessments shall be prorated as
2667 provided in paragraph (b). The corporation shall take all
2668 reasonable and prudent steps necessary to collect the amount of

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2669 | assessment due from each assessable insurer, including, if
2670 | prudent, filing suit to collect such assessment. If the
2671 | corporation is unable to collect an assessment from any
2672 | assessable insurer, the uncollected assessments shall be levied
2673 | as an additional assessment against the assessable insurers and
2674 | any assessable insurer required to pay an additional assessment
2675 | as a result of such failure to pay shall have a cause of action
2676 | against such nonpaying assessable insurer. Assessments shall be
2677 | included as an appropriate factor in the making of rates. The
2678 | failure of a surplus lines agent to collect and remit any regular
2679 | or emergency assessment levied by the corporation is considered
2680 | to be a violation of s. 626.936 and subjects the surplus lines
2681 | agent to the penalties provided in that section.

2682 | 2. The governing body of any unit of local government, any
2683 | residents of which are insured by the corporation, may issue
2684 | bonds as defined in s. 125.013 or s. 166.101 from time to time to
2685 | fund an assistance program, in conjunction with the corporation,
2686 | for the purpose of defraying deficits of the corporation. In
2687 | order to avoid needless and indiscriminate proliferation,
2688 | duplication, and fragmentation of such assistance programs, any
2689 | unit of local government, any residents of which are insured by
2690 | the corporation, may provide for the payment of losses,
2691 | regardless of whether or not the losses occurred within or
2692 | outside of the territorial jurisdiction of the local government.
2693 | Revenue bonds under this subparagraph may not be issued until
2694 | validated pursuant to chapter 75, unless a state of emergency is
2695 | declared by executive order or proclamation of the Governor
2696 | pursuant to s. 252.36 making such findings as are necessary to
2697 | determine that it is in the best interests of, and necessary for,

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2698 | the protection of the public health, safety, and general welfare
2699 | of residents of this state and declaring it an essential public
2700 | purpose to permit certain municipalities or counties to issue
2701 | such bonds as will permit relief to claimants and policyholders
2702 | of the corporation. Any such unit of local government may enter
2703 | into such contracts with the corporation and with any other
2704 | entity created pursuant to this subsection as are necessary to
2705 | carry out this paragraph. Any bonds issued under this
2706 | subparagraph shall be payable from and secured by moneys received
2707 | by the corporation from emergency assessments under sub-
2708 | subparagraph (b)3.d., and assigned and pledged to or on behalf of
2709 | the unit of local government for the benefit of the holders of
2710 | such bonds. The funds, credit, property, and taxing power of the
2711 | state or of the unit of local government shall not be pledged for
2712 | the payment of such bonds. ~~If any of the bonds remain unsold 60~~
2713 | ~~days after issuance, the office shall require all insurers~~
2714 | ~~subject to assessment to purchase the bonds, which shall be~~
2715 | ~~treated as admitted assets; each insurer shall be required to~~
2716 | ~~purchase that percentage of the unsold portion of the bond issue~~
2717 | ~~that equals the insurer's relative share of assessment liability~~
2718 | ~~under this subsection. An insurer shall not be required to~~
2719 | ~~purchase the bonds to the extent that the office determines that~~
2720 | ~~the purchase would endanger or impair the solvency of the~~
2721 | ~~insurer.~~

2722 | 3.a. The corporation shall adopt one or more programs
2723 | subject to approval by the office for the reduction of both new
2724 | and renewal writings in the corporation. Beginning January 1,
2725 | 2008, any program the corporation adopts for the payment of
2726 | bonuses to an insurer for each risk the insurer removes from the

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2727 corporation shall comply with s. 627.3511(2) and may not exceed
2728 the amount referenced in s. 627.3511(2) for each risk removed.
2729 The corporation may consider any prudent and not unfairly
2730 discriminatory approach to reducing corporation writings, and may
2731 adopt a credit against assessment liability or other liability
2732 that provides an incentive for insurers to take risks out of the
2733 corporation and to keep risks out of the corporation by
2734 maintaining or increasing voluntary writings in counties or areas
2735 in which corporation risks are highly concentrated and a program
2736 to provide a formula under which an insurer voluntarily taking
2737 risks out of the corporation by maintaining or increasing
2738 voluntary writings will be relieved wholly or partially from
2739 assessments under sub-subparagraphs (b)3.a. and b. However, any
2740 "take-out bonus" or payment to an insurer must be conditioned on
2741 the property being insured for at least 5 years by the insurer,
2742 unless canceled or nonrenewed by the policyholder. If the policy
2743 is canceled or nonrenewed by the policyholder before the end of
2744 the 5-year period, the amount of the take-out bonus must be
2745 prorated for the time period the policy was insured. When the
2746 corporation enters into a contractual agreement for a take-out
2747 plan, the producing agent of record of the corporation policy is
2748 entitled to retain any unearned commission on such policy, and
2749 the insurer shall either:

2750 (I) Pay to the producing agent of record of the policy, for
2751 the first year, an amount which is the greater of the insurer's
2752 usual and customary commission for the type of policy written or
2753 a policy fee equal to the usual and customary commission of the
2754 corporation; or

2755 (II) Offer to allow the producing agent of record of the

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2756 | policy to continue servicing the policy for a period of not less
2757 | than 1 year and offer to pay the agent the insurer's usual and
2758 | customary commission for the type of policy written. If the
2759 | producing agent is unwilling or unable to accept appointment by
2760 | the new insurer, the new insurer shall pay the agent in
2761 | accordance with sub-sub-subparagraph (I).

2762 | b. Any credit or exemption from regular assessments adopted
2763 | under this subparagraph shall last no longer than the 3 years
2764 | following the cancellation or expiration of the policy by the
2765 | corporation. With the approval of the office, the board may
2766 | extend such credits for an additional year if the insurer
2767 | guarantees an additional year of renewability for all policies
2768 | removed from the corporation, or for 2 additional years if the
2769 | insurer guarantees 2 additional years of renewability for all
2770 | policies so removed.

2771 | c. There shall be no credit, limitation, exemption, or
2772 | deferment from emergency assessments to be collected from
2773 | policyholders pursuant to sub-subparagraph (b)3.d.

2774 | d. Subject to the execution of the confidentiality
2775 | agreement required by paragraph (w), the corporation shall make
2776 | its database of policies available to prospective take-out
2777 | insurers considering underwriting a risk insured by the
2778 | corporation, without categorically eliminating policies from
2779 | eligibility for removal. The corporation may not instruct or
2780 | encourage prospective take-out insurers to avoid the selection of
2781 | policies for which the agent has disapproved policy removals. The
2782 | corporation must require agents to accept or decline appointment
2783 | for any policy selected and, in the case of a declination, must
2784 | notify the policyholder that an insurer, identified by name,

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2785 selected his or her policy for a take-out offer, but that the
2786 policyholder's agent refused to be appointed by the insurer. The
2787 notice must also provide the policyholder with the take-out
2788 insurer's contact information so that the policyholder may
2789 contact the company directly and make his or her own
2790 determination of whether to seek coverage from the take-out
2791 insurer.

2792 4. The plan shall provide for the deferment, in whole or in
2793 part, of the assessment of an assessable insurer, other than an
2794 emergency assessment collected from policyholders pursuant to
2795 sub-subparagraph (b)3.d., if the office finds that payment of the
2796 assessment would endanger or impair the solvency of the insurer.
2797 In the event an assessment against an assessable insurer is
2798 deferred in whole or in part, the amount by which such assessment
2799 is deferred may be assessed against the other assessable insurers
2800 in a manner consistent with the basis for assessments set forth
2801 in paragraph (b).

2802 5. Effective July 1, 2007, in order to evaluate the costs
2803 and benefits of approved take-out plans, if the corporation pays
2804 a bonus or other payment to an insurer for an approved take-out
2805 plan, it shall maintain a record of the address or such other
2806 identifying information on the property or risk removed in order
2807 to track if and when the property or risk is later insured by the
2808 corporation.

2809 6. Any policy taken out, assumed, or removed from the
2810 corporation is, as of the effective date of the take-out,
2811 assumption, or removal, direct insurance issued by the insurer
2812 and not by the corporation, even if the corporation continues to
2813 service the policies. This subparagraph applies to policies of

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2814 the corporation and not policies taken out, assumed, or removed
2815 from any other entity.

2816 (q) Nothing in this subsection shall be construed to
2817 preclude the issuance of residential property insurance coverage
2818 pursuant to part VIII of chapter 626.

2819 (r)1. There shall be no liability on the part of, and no
2820 cause of action of any nature shall arise against, any assessable
2821 insurer or its agents or employees, the corporation or its agents
2822 or employees, members of the board of governors or their
2823 respective designees at a board meeting, corporation committee
2824 members, or the office or its representatives, for any action
2825 taken by them in the performance of their duties or
2826 responsibilities under this subsection. Such immunity does not
2827 apply to:

2828 a. Any of the foregoing persons or entities for any willful
2829 tort;

2830 b. The corporation or its producing agents for breach of
2831 any contract or agreement pertaining to insurance coverage;

2832 c. The corporation with respect to issuance or payment of
2833 debt;

2834 d. Any assessable insurer with respect to any action to
2835 enforce an assessable insurer's obligations to the corporation
2836 under this subsection; or

2837 e. The corporation in any pending or future action for
2838 breach of contract or for benefits under a policy issued by the
2839 corporation; in any such action, the corporation shall be liable
2840 to the policyholders and beneficiaries for attorney's fees under
2841 s. 627.428.

2842 2. The corporation shall manage its claim employees,

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2843 independent adjusters, and others who handle claims to ensure
2844 they carry out the corporation's duty to its policyholders to
2845 handle claims carefully, timely, diligently, and in good faith,
2846 balanced against the corporation's duty to the state to manage
2847 its assets responsibly to minimize its assessment potential.

2848 (s) For the purposes of s. 199.183(1), the corporation
2849 shall be considered a political subdivision of the state and
2850 shall be exempt from the corporate income tax. The premiums,
2851 assessments, investment income, and other revenue of the
2852 corporation are funds received for providing property insurance
2853 coverage as required by this subsection, paying claims for
2854 Florida citizens insured by the corporation, securing and
2855 repaying debt obligations issued by the corporation, and
2856 conducting all other activities of the corporation, and shall not
2857 be considered taxes, fees, licenses, or charges for services
2858 imposed by the Legislature on individuals, businesses, or
2859 agencies outside state government. Bonds and other debt
2860 obligations issued by or on behalf of the corporation are not to
2861 be considered "state bonds" within the meaning of s. 215.58(8).
2862 The corporation is not subject to the procurement provisions of
2863 chapter 287, and policies and decisions of the corporation
2864 relating to incurring debt, levying of assessments and the sale,
2865 issuance, continuation, terms and claims under corporation
2866 policies, and all services relating thereto, are not subject to
2867 the provisions of chapter 120. The corporation is not required to
2868 obtain or to hold a certificate of authority issued by the
2869 office, nor is it required to participate as a member insurer of
2870 the Florida Insurance Guaranty Association. However, the
2871 corporation is required to pay, in the same manner as an

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2872 authorized insurer, assessments levied by the Florida Insurance
2873 Guaranty Association. It is the intent of the Legislature that
2874 the tax exemptions provided in this paragraph will augment the
2875 financial resources of the corporation to better enable the
2876 corporation to fulfill its public purposes. Any debt obligations
2877 issued by the corporation, their transfer, and the income
2878 therefrom, including any profit made on the sale thereof, shall
2879 at all times be free from taxation of every kind by the state and
2880 any political subdivision or local unit or other instrumentality
2881 thereof; however, this exemption does not apply to any tax
2882 imposed by chapter 220 on interest, income, or profits on debt
2883 obligations owned by corporations other than the corporation.

2884 (t) Upon a determination by the office that the conditions
2885 giving rise to the establishment and activation of the
2886 corporation no longer exist, the corporation is dissolved. Upon
2887 dissolution, the assets of the corporation shall be applied first
2888 to pay all debts, liabilities, and obligations of the
2889 corporation, including the establishment of reasonable reserves
2890 for any contingent liabilities or obligations, and all remaining
2891 assets of the corporation shall become property of the state and
2892 shall be deposited in the Florida Hurricane Catastrophe Fund.
2893 However, no dissolution shall take effect as long as the
2894 corporation has bonds or other financial obligations outstanding
2895 unless adequate provision has been made for the payment of the
2896 bonds or other financial obligations pursuant to the documents
2897 authorizing the issuance of the bonds or other financial
2898 obligations.

2899 (u)1. Effective July 1, 2002, policies of the Residential
2900 Property and Casualty Joint Underwriting Association shall become

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2901 | policies of the corporation. All obligations, rights, assets and
2902 | liabilities of the Residential Property and Casualty Joint
2903 | Underwriting Association, including bonds, note and debt
2904 | obligations, and the financing documents pertaining to them
2905 | become those of the corporation as of July 1, 2002. The
2906 | corporation is not required to issue endorsements or certificates
2907 | of assumption to insureds during the remaining term of in-force
2908 | transferred policies.

2909 | 2. Effective July 1, 2002, policies of the Florida
2910 | Windstorm Underwriting Association are transferred to the
2911 | corporation and shall become policies of the corporation. All
2912 | obligations, rights, assets, and liabilities of the Florida
2913 | Windstorm Underwriting Association, including bonds, note and
2914 | debt obligations, and the financing documents pertaining to them
2915 | are transferred to and assumed by the corporation on July 1,
2916 | 2002. The corporation is not required to issue endorsements or
2917 | certificates of assumption to insureds during the remaining term
2918 | of in-force transferred policies.

2919 | 3. The Florida Windstorm Underwriting Association and the
2920 | Residential Property and Casualty Joint Underwriting Association
2921 | shall take all actions as may be proper to further evidence the
2922 | transfers and shall provide the documents and instruments of
2923 | further assurance as may reasonably be requested by the
2924 | corporation for that purpose. The corporation shall execute
2925 | assumptions and instruments as the trustees or other parties to
2926 | the financing documents of the Florida Windstorm Underwriting
2927 | Association or the Residential Property and Casualty Joint
2928 | Underwriting Association may reasonably request to further
2929 | evidence the transfers and assumptions, which transfers and

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2930 assumptions, however, are effective on the date provided under
2931 this paragraph whether or not, and regardless of the date on
2932 which, the assumptions or instruments are executed by the
2933 corporation. Subject to the relevant financing documents
2934 pertaining to their outstanding bonds, notes, indebtedness, or
2935 other financing obligations, the moneys, investments,
2936 receivables, choses in action, and other intangibles of the
2937 Florida Windstorm Underwriting Association shall be credited to
2938 the high-risk account of the corporation, and those of the
2939 personal lines residential coverage account and the commercial
2940 lines residential coverage account of the Residential Property
2941 and Casualty Joint Underwriting Association shall be credited to
2942 the personal lines account and the commercial lines account,
2943 respectively, of the corporation.

2944 4. Effective July 1, 2002, a new applicant for property
2945 insurance coverage who would otherwise have been eligible for
2946 coverage in the Florida Windstorm Underwriting Association is
2947 eligible for coverage from the corporation as provided in this
2948 subsection.

2949 5. The transfer of all policies, obligations, rights,
2950 assets, and liabilities from the Florida Windstorm Underwriting
2951 Association to the corporation and the renaming of the
2952 Residential Property and Casualty Joint Underwriting Association
2953 as the corporation shall in no way affect the coverage with
2954 respect to covered policies as defined in s. 215.555(2)(c)
2955 provided to these entities by the Florida Hurricane Catastrophe
2956 Fund. The coverage provided by the Florida Hurricane Catastrophe
2957 Fund to the Florida Windstorm Underwriting Association based on
2958 its exposures as of June 30, 2002, and each June 30 thereafter

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2959 | shall be redesignated as coverage for the high-risk account of
2960 | the corporation. Notwithstanding any other provision of law, the
2961 | coverage provided by the Florida Hurricane Catastrophe Fund to
2962 | the Residential Property and Casualty Joint Underwriting
2963 | Association based on its exposures as of June 30, 2002, and each
2964 | June 30 thereafter shall be transferred to the personal lines
2965 | account and the commercial lines account of the corporation.
2966 | Notwithstanding any other provision of law, the high-risk account
2967 | shall be treated, for all Florida Hurricane Catastrophe Fund
2968 | purposes, as if it were a separate participating insurer with its
2969 | own exposures, reimbursement premium, and loss reimbursement.
2970 | Likewise, the personal lines and commercial lines accounts shall
2971 | be viewed together, for all Florida Hurricane Catastrophe Fund
2972 | purposes, as if the two accounts were one and represent a single,
2973 | separate participating insurer with its own exposures,
2974 | reimbursement premium, and loss reimbursement. The coverage
2975 | provided by the Florida Hurricane Catastrophe Fund to the
2976 | corporation shall constitute and operate as a full transfer of
2977 | coverage from the Florida Windstorm Underwriting Association and
2978 | Residential Property and Casualty Joint Underwriting to the
2979 | corporation.

2980 | (v) Notwithstanding any other provision of law:

2981 | 1. The pledge or sale of, the lien upon, and the security
2982 | interest in any rights, revenues, or other assets of the
2983 | corporation created or purported to be created pursuant to any
2984 | financing documents to secure any bonds or other indebtedness of
2985 | the corporation shall be and remain valid and enforceable,
2986 | notwithstanding the commencement of and during the continuation
2987 | of, and after, any rehabilitation, insolvency, liquidation,

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2988 bankruptcy, receivership, conservatorship, reorganization, or
2989 similar proceeding against the corporation under the laws of this
2990 state.

2991 2. No such proceeding shall relieve the corporation of its
2992 obligation, or otherwise affect its ability to perform its
2993 obligation, to continue to collect, or levy and collect,
2994 assessments, market equalization or other surcharges under
2995 subparagraph (c)11., or any other rights, revenues, or other
2996 assets of the corporation pledged pursuant to any financing
2997 documents.

2998 3. Each such pledge or sale of, lien upon, and security
2999 interest in, including the priority of such pledge, lien, or
3000 security interest, any such assessments, market equalization or
3001 other surcharges, or other rights, revenues, or other assets
3002 which are collected, or levied and collected, after the
3003 commencement of and during the pendency of, or after, any such
3004 proceeding shall continue unaffected by such proceeding. As used
3005 in this subsection, the term "financing documents" means any
3006 agreement or agreements, instrument or instruments, or other
3007 document or documents now existing or hereafter created
3008 evidencing any bonds or other indebtedness of the corporation or
3009 pursuant to which any such bonds or other indebtedness has been
3010 or may be issued and pursuant to which any rights, revenues, or
3011 other assets of the corporation are pledged or sold to secure the
3012 repayment of such bonds or indebtedness, together with the
3013 payment of interest on such bonds or such indebtedness, or the
3014 payment of any other obligation or financial product, as defined
3015 in the plan of operation of the corporation related to such bonds
3016 or indebtedness.

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3017 4. Any such pledge or sale of assessments, revenues,
3018 contract rights, or other rights or assets of the corporation
3019 shall constitute a lien and security interest, or sale, as the
3020 case may be, that is immediately effective and attaches to such
3021 assessments, revenues, or contract rights or other rights or
3022 assets, whether or not imposed or collected at the time the
3023 pledge or sale is made. Any such pledge or sale is effective,
3024 valid, binding, and enforceable against the corporation or other
3025 entity making such pledge or sale, and valid and binding against
3026 and superior to any competing claims or obligations owed to any
3027 other person or entity, including policyholders in this state,
3028 asserting rights in any such assessments, revenues, or contract
3029 rights or other rights or assets to the extent set forth in and
3030 in accordance with the terms of the pledge or sale contained in
3031 the applicable financing documents, whether or not any such
3032 person or entity has notice of such pledge or sale and without
3033 the need for any physical delivery, recordation, filing, or other
3034 action.

3035 5. As long as the corporation has any bonds outstanding,
3036 the corporation may not file a voluntary petition under chapter 9
3037 of the federal Bankruptcy Code or such corresponding chapter or
3038 sections as may be in effect, from time to time, and a public
3039 officer or any organization, entity, or other person may not
3040 authorize the corporation to be or become a debtor under chapter
3041 9 of the federal Bankruptcy Code or such corresponding chapter or
3042 sections as may be in effect, from time to time, during any such
3043 period.

3044 6. If ordered by a court of competent jurisdiction, the
3045 corporation may assume policies or otherwise provide coverage for

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3046 policyholders of an insurer placed in liquidation under chapter
3047 631, under such forms, rates, terms, and conditions as the
3048 corporation deems appropriate, subject to approval by the office.

3049 (w)1. The following records of the corporation are
3050 confidential and exempt from the provisions of s. 119.07(1) and
3051 s. 24(a), Art. I of the State Constitution:

3052 a. Underwriting files, except that a policyholder or an
3053 applicant shall have access to his or her own underwriting files.

3054 b. Claims files, until termination of all litigation and
3055 settlement of all claims arising out of the same incident,
3056 although portions of the claims files may remain exempt, as
3057 otherwise provided by law. Confidential and exempt claims file
3058 records may be released to other governmental agencies upon
3059 written request and demonstration of need; such records held by
3060 the receiving agency remain confidential and exempt as provided
3061 for herein.

3062 c. Records obtained or generated by an internal auditor
3063 pursuant to a routine audit, until the audit is completed, or if
3064 the audit is conducted as part of an investigation, until the
3065 investigation is closed or ceases to be active. An investigation
3066 is considered "active" while the investigation is being conducted
3067 with a reasonable, good faith belief that it could lead to the
3068 filing of administrative, civil, or criminal proceedings.

3069 d. Matters reasonably encompassed in privileged attorney-
3070 client communications.

3071 e. Proprietary information licensed to the corporation
3072 under contract and the contract provides for the confidentiality
3073 of such proprietary information.

3074 f. All information relating to the medical condition or

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3075 | medical status of a corporation employee which is not relevant to
3076 | the employee's capacity to perform his or her duties, except as
3077 | otherwise provided in this paragraph. Information which is exempt
3078 | shall include, but is not limited to, information relating to
3079 | workers' compensation, insurance benefits, and retirement or
3080 | disability benefits.

3081 | g. Upon an employee's entrance into the employee assistance
3082 | program, a program to assist any employee who has a behavioral or
3083 | medical disorder, substance abuse problem, or emotional
3084 | difficulty which affects the employee's job performance, all
3085 | records relative to that participation shall be confidential and
3086 | exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
3087 | of the State Constitution, except as otherwise provided in s.
3088 | 112.0455(11).

3089 | h. Information relating to negotiations for financing,
3090 | reinsurance, depopulation, or contractual services, until the
3091 | conclusion of the negotiations.

3092 | i. Minutes of closed meetings regarding underwriting files,
3093 | and minutes of closed meetings regarding an open claims file
3094 | until termination of all litigation and settlement of all claims
3095 | with regard to that claim, except that information otherwise
3096 | confidential or exempt by law will be redacted.

3097 |
3098 | When an authorized insurer is considering underwriting a risk
3099 | insured by the corporation, relevant underwriting files and
3100 | confidential claims files may be released to the insurer provided
3101 | the insurer agrees in writing, notarized and under oath, to
3102 | maintain the confidentiality of such files. When a file is
3103 | transferred to an insurer that file is no longer a public record

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3104 | because it is not held by an agency subject to the provisions of
3105 | the public records law. Underwriting files and confidential
3106 | claims files may also be released to staff of and the board of
3107 | governors of the market assistance plan established pursuant to
3108 | s. 627.3515, who must retain the confidentiality of such files,
3109 | except such files may be released to authorized insurers that are
3110 | considering assuming the risks to which the files apply, provided
3111 | the insurer agrees in writing, notarized and under oath, to
3112 | maintain the confidentiality of such files. Finally, the
3113 | corporation or the board or staff of the market assistance plan
3114 | may make the following information obtained from underwriting
3115 | files and confidential claims files available to licensed general
3116 | lines insurance agents: name, address, and telephone number of
3117 | the residential property owner or insured; location of the risk;
3118 | rating information; loss history; and policy type. The receiving
3119 | licensed general lines insurance agent must retain the
3120 | confidentiality of the information received.

3121 | 2. Portions of meetings of the corporation are exempt from
3122 | the provisions of s. 286.011 and s. 24(b), Art. I of the State
3123 | Constitution wherein confidential underwriting files or
3124 | confidential open claims files are discussed. All portions of
3125 | corporation meetings which are closed to the public shall be
3126 | recorded by a court reporter. The court reporter shall record the
3127 | times of commencement and termination of the meeting, all
3128 | discussion and proceedings, the names of all persons present at
3129 | any time, and the names of all persons speaking. No portion of
3130 | any closed meeting shall be off the record. Subject to the
3131 | provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
3132 | notes of any closed meeting shall be retained by the corporation

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3133 | for a minimum of 5 years. A copy of the transcript, less any
3134 | exempt matters, of any closed meeting wherein claims are
3135 | discussed shall become public as to individual claims after
3136 | settlement of the claim.

3137 | (x) It is the intent of the Legislature that the amendments
3138 | to this subsection enacted in 2002 should, over time, reduce the
3139 | probable maximum windstorm losses in the residual markets and
3140 | should reduce the potential assessments to be levied on property
3141 | insurers and policyholders statewide. In furtherance of this
3142 | intent:

3143 | 1. The board shall, on or before February 1 of each year,
3144 | provide a report to the President of the Senate and the Speaker
3145 | of the House of Representatives showing the reduction or increase
3146 | in the 100-year probable maximum loss attributable to wind-only
3147 | coverages and the quota share program under this subsection
3148 | combined, as compared to the benchmark 100-year probable maximum
3149 | loss of the Florida Windstorm Underwriting Association. For
3150 | purposes of this paragraph, the benchmark 100-year probable
3151 | maximum loss of the Florida Windstorm Underwriting Association
3152 | shall be the calculation dated February 2001 and based on
3153 | November 30, 2000, exposures. In order to ensure comparability of
3154 | data, the board shall use the same methods for calculating its
3155 | probable maximum loss as were used to calculate the benchmark
3156 | probable maximum loss.

3157 | 2. Beginning February 1, 2010, if the report under
3158 | subparagraph 1. for any year indicates that the 100-year probable
3159 | maximum loss attributable to wind-only coverages and the quota
3160 | share program combined does not reflect a reduction of at least
3161 | 25 percent from the benchmark, the board shall reduce the

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3162 | boundaries of the high-risk area eligible for wind-only coverages
3163 | under this subsection in a manner calculated to reduce such
3164 | probable maximum loss to an amount at least 25 percent below the
3165 | benchmark.

3166 | 3. Beginning February 1, 2015, if the report under
3167 | subparagraph 1. for any year indicates that the 100-year probable
3168 | maximum loss attributable to wind-only coverages and the quota
3169 | share program combined does not reflect a reduction of at least
3170 | 50 percent from the benchmark, the boundaries of the high-risk
3171 | area eligible for wind-only coverages under this subsection shall
3172 | be reduced by the elimination of any area that is not seaward of
3173 | a line 1,000 feet inland from the Intracoastal Waterway.

3174 | (y) In enacting the provisions of this section, the
3175 | Legislature recognizes that both the Florida Windstorm
3176 | Underwriting Association and the Residential Property and
3177 | Casualty Joint Underwriting Association have entered into
3178 | financing arrangements that obligate each entity to service its
3179 | debts and maintain the capacity to repay funds secured under
3180 | these financing arrangements. It is the intent of the Legislature
3181 | that nothing in this section be construed to compromise,
3182 | diminish, or interfere with the rights of creditors under such
3183 | financing arrangements. It is further the intent of the
3184 | Legislature to preserve the obligations of the Florida Windstorm
3185 | Underwriting Association and Residential Property and Casualty
3186 | Joint Underwriting Association with regard to outstanding
3187 | financing arrangements, with such obligations passing entirely
3188 | and unchanged to the corporation and, specifically, to the
3189 | applicable account of the corporation. So long as any bonds,
3190 | notes, indebtedness, or other financing obligations of the

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3191 Florida Windstorm Underwriting Association or the Residential
3192 Property and Casualty Joint Underwriting Association are
3193 outstanding, under the terms of the financing documents
3194 pertaining to them, the governing board of the corporation shall
3195 have and shall exercise the authority to levy, charge, collect,
3196 and receive all premiums, assessments, surcharges, charges,
3197 revenues, and receipts that the associations had authority to
3198 levy, charge, collect, or receive under the provisions of
3199 subsection (2) and this subsection, respectively, as they existed
3200 on January 1, 2002, to provide moneys, without exercise of the
3201 authority provided by this subsection, in at least the amounts,
3202 and by the times, as would be provided under those former
3203 provisions of subsection (2) or this subsection, respectively, so
3204 that the value, amount, and collectability of any assets,
3205 revenues, or revenue source pledged or committed to, or any lien
3206 thereon securing such outstanding bonds, notes, indebtedness, or
3207 other financing obligations will not be diminished, impaired, or
3208 adversely affected by the amendments made by this act and to
3209 permit compliance with all provisions of financing documents
3210 pertaining to such bonds, notes, indebtedness, or other financing
3211 obligations, or the security or credit enhancement for them, and
3212 any reference in this subsection to bonds, notes, indebtedness,
3213 financing obligations, or similar obligations, of the corporation
3214 shall include like instruments or contracts of the Florida
3215 Windstorm Underwriting Association and the Residential Property
3216 and Casualty Joint Underwriting Association to the extent not
3217 inconsistent with the provisions of the financing documents
3218 pertaining to them.

3219 (z) The corporation shall not require the securing of flood

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3220 insurance as a condition of coverage if the insured or applicant
3221 executes a form approved by the office affirming that flood
3222 insurance is not provided by the corporation and that if flood
3223 insurance is not secured by the applicant or insured in addition
3224 to coverage by the corporation, the risk will not be covered for
3225 flood damage. A corporation policyholder electing not to secure
3226 flood insurance and executing a form as provided herein making a
3227 claim for water damage against the corporation shall have the
3228 burden of proving the damage was not caused by flooding.
3229 Notwithstanding other provisions of this subsection, the
3230 corporation may deny coverage to an applicant or insured who
3231 refuses to execute the form described herein.

3232 (aa) A salaried employee of the corporation who performs
3233 policy administration services subsequent to the effectuation of
3234 a corporation policy is not required to be licensed as an agent
3235 under the provisions of s. 626.112.

3236 (bb) By February 1, 2007, the corporation shall submit a
3237 report to the President of the Senate, the Speaker of the House
3238 of Representatives, the minority party leaders of the Senate and
3239 the House of Representatives, and the chairs of the standing
3240 committees of the Senate and the House of Representatives having
3241 jurisdiction over matters relating to property and casualty
3242 insurance. In preparing the report, the corporation shall consult
3243 with the Office of Insurance Regulation, the Department of
3244 Financial Services, and any other party the corporation
3245 determines appropriate. The report must include all findings and
3246 recommendations on the feasibility of requiring authorized
3247 insurers that issue and service personal and commercial
3248 residential policies and commercial nonresidential policies that

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3249 provide coverage for basic property perils except for the peril
3250 of wind to issue and service for a fee personal and commercial
3251 residential policies and commercial nonresidential policies
3252 providing coverage for the peril of wind issued by the
3253 corporation. The report must include:

3254 1. The expense savings to the corporation of issuing and
3255 servicing such policies as determined by a cost-benefit analysis.

3256 2. The expenses and liability to authorized insurers
3257 associated with issuing and servicing such policies.

3258 3. The effect on service to policyholders of the
3259 corporation relating to issuing and servicing such policies.

3260 4. The effect on the producing agent of the corporation of
3261 issuing and servicing such policies.

3262 5. Recommendations as to the amount of the fee which should
3263 be paid to authorized insurers for issuing and servicing such
3264 policies.

3265 6. The effect that issuing and servicing such policies will
3266 have on the corporation's number of policies, total insured
3267 value, and probable maximum loss.

3268 (cc) There shall be no liability on the part of, and no
3269 cause of action of any nature shall arise against, producing
3270 agents of record of the corporation or employees of such agents
3271 for insolvency of any take-out insurer.

3272 ~~(dd)1. For policies subject to nonrenewal as a result of~~
3273 ~~the risk being no longer eligible for coverage due to being~~
3274 ~~valued at \$1 million or more, the corporation shall, directly or~~
3275 ~~through the market assistance plan, make information from~~
3276 ~~confidential underwriting and claims files of policyholders~~
3277 ~~available only to licensed general lines agents who register with~~

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3278 ~~the corporation to receive such information according to the~~
3279 ~~following procedures:~~

3280 ~~2. By August 1, 2006, the corporation shall provide such~~
3281 ~~policyholders who are not eligible for renewal the opportunity to~~
3282 ~~request in writing, within 30 days after the notification is~~
3283 ~~sent, that information from their confidential underwriting and~~
3284 ~~claims files not be released to licensed general lines agents~~
3285 ~~registered pursuant to this paragraph.~~

3286 ~~3. By August 1, 2006, the corporation shall make available~~
3287 ~~to licensed general lines agents the registration procedures to~~
3288 ~~be used to obtain confidential information from underwriting and~~
3289 ~~claims files for such policies not eligible for renewal. As a~~
3290 ~~condition of registration, the corporation shall require the~~
3291 ~~licensed general lines agent to attest that the agent has the~~
3292 ~~experience and relationships with authorized or surplus lines~~
3293 ~~carriers to attempt to offer replacement coverage for such~~
3294 ~~policies.~~

3295 ~~4. By September 1, 2006, the corporation shall make~~
3296 ~~available through a secured website to licensed general lines~~
3297 ~~agents registered pursuant to this paragraph application, rating,~~
3298 ~~loss history, mitigation, and policy type information relating to~~
3299 ~~such policies not eligible for renewal and for which the~~
3300 ~~policyholder has not requested the corporation withhold such~~
3301 ~~information. The registered licensed general lines agent may use~~
3302 ~~such information to contact and assist the policyholder in~~
3303 ~~securing replacement policies, and the agent may disclose to the~~
3304 ~~policyholder that such information was obtained from the~~
3305 ~~corporation.~~

3306 (dd)~~(ee)~~ The assets of the corporation may be invested and

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3307 managed by the State Board of Administration.

3308 (ee)~~(ff)~~ The office may establish a pilot program to offer
3309 optional sinkhole coverage in one or more counties or other
3310 territories of the corporation for the purpose of implementing s.
3311 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.
3312 Under the pilot program, the corporation is not required to issue
3313 a notice of nonrenewal to exclude sinkhole coverage upon the
3314 renewal of existing policies, but may exclude such coverage using
3315 a notice of coverage change.

3316 Section 16. Effective October 1, 2008, and applicable to
3317 policies issued or renewed on or after that date, section
3318 627.714, Florida Statutes, is created to read:

3319 627.714 Guaranteed renewability for mitigated homes.--A
3320 personal lines residential insurance policy shall be guaranteed
3321 renewable for at least 3 years if the dwelling has been built or
3322 retrofitted to meet the wind-borne-debris protection requirements
3323 of Florida Building Code which apply to the wind-borne-debris
3324 region as defined in the Florida Building Code.

3325 Section 17. Effective January 1, 2011, section 689.262,
3326 Florida Statutes, is created to read:

3327 689.262 Sale of residential property; disclosure of
3328 windstorm mitigation rating.--A purchaser of residential property
3329 must be informed of the windstorm mitigation rating of the
3330 structure, based on the uniform home grading scale adopted
3331 pursuant to s. 215.55865. The rating must be included in the
3332 contract for sale or as a separate document attached to the
3333 contract for sale. The Financial Services Commission may adopt
3334 rules, consistent with other state laws, to administer this
3335 section, including the form of the disclosure and the

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3336 requirements for the windstorm mitigation inspection or report
3337 that is required for purposes of determining the rating.

3338 Section 18. Effective October 1, 2008, section 817.2341,
3339 Florida Statutes, is amended to read:

3340 817.2341 False or misleading statements or supporting
3341 documents; corrupt obstruction of the lawful regulation of
3342 insurance; penalty.--

3343 (1) Any person who willfully files with the department or
3344 office, or who willfully signs for filing with the department or
3345 office, a materially false or materially misleading financial
3346 statement or document in support of such statement required by
3347 law or rule, or a materially false or materially misleading rate
3348 filing, with intent to deceive and with knowledge that the
3349 statement or document is materially false or materially
3350 misleading, commits a felony of the third degree, punishable as
3351 provided in s. 775.082, s. 775.083, or s. 775.084.

3352 (2) (a) Any person who makes a false entry of a material
3353 fact in any book, report, or statement relating to a transaction
3354 of an insurer or entity organized pursuant to chapter 624 or
3355 chapter 641, intending to deceive any person about the financial
3356 condition or solvency of the insurer or entity, commits a felony
3357 of the third degree, punishable as provided in s. 775.082, s.
3358 775.083, or s. 775.084.

3359 (b) If the false entry of a material fact is made with the
3360 intent to deceive any person as to the impairment of capital, as
3361 defined in s. 631.011(12), of the insurer or entity or is the
3362 significant cause of the insurer or entity being placed in
3363 conservation, rehabilitation, or liquidation by a court, the
3364 person commits a felony of the first degree, punishable as

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3365 provided in s. 775.082, s. 775.083, or s. 775.084.

3366 (3) (a) Any person who knowingly makes a material false
3367 statement or report to the department or office or any agent of
3368 the department or office, or knowingly and materially overvalues
3369 any property in any document or report prepared to be presented
3370 to the department or office or any agent of the department or
3371 office, commits a felony of the third degree, punishable as
3372 provided in s. 775.082, s. 775.083, or s. 775.084.

3373 (b) If the material false statement or report or the
3374 material overvaluation is made with the intent to deceive any
3375 person as to the impairment of capital, as defined in s.
3376 631.011(12), of an insurer or entity organized pursuant to
3377 chapter 624 or chapter 641, or is the significant cause of the
3378 insurer or entity being placed in receivership by a court, the
3379 person commits a felony of the first degree, punishable as
3380 provided in s. 775.082, s. 775.083, or s. 775.084.

3381 (4) Any person who attempts to corruptly influence,
3382 obstruct, or impede the lawful regulation of the business of
3383 insurance by the department or office, or by any agent or
3384 examiner appointed by the department or office, commits a felony
3385 of the third degree, punishable as provided in s. 775.082, s.
3386 775.083, or s. 775.084.

3387 Section 19. Except as otherwise expressly provided in this
3388 act, this act shall take effect upon becoming a law.