

By the Committees on General Government Appropriations; Banking and Insurance; and Senators Atwater, Geller, Fasano, Garcia, Jones and Gaetz

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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, for taking policies out of Citizens

11 Property Insurance Corporation, and for maintaining

12 certain surplus and reinsurance; establishing deadlines

13 for insurers to apply for funds; authorizing the State

14 Board of Administration to charge a late fee for payment

15 of remittances; requiring the board to submit semiannual

16 reports to the Legislature regarding the program;

17 providing that amendments made by the act do not affect

18 the terms of surplus notes approved prior to a specified

19 date, but authorizing the board and an insurer to

20 renegotiate such terms consistent with such amendments;

21 requiring the board to transfer to Citizens Property

22 Insurance Corporation any funds that have not been

23 reserved for insurers approved to receive such funds under

24 the program, from the funds that were appropriated from

25 Citizens; requiring the board to transfer to Citizens

26 interest and principal payments to Citizens Property

27 Insurance Corporation for surplus note funded from

28 appropriations from Citizens; requiring Citizens to

29 deposit such funds into accounts from which appropriations

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30 were made; amending s. 542.20, F.S.; subjecting the
31 business of insurance to the Florida Antitrust Act;
32 limiting enforcement to actions by the Attorney General or
33 a state attorney; providing exceptions; amending s.
34 624.3161, F.S.; authorizing the Office of Insurance
35 Regulation to require an insurer to file its claims
36 handling practices and procedures as a public record based
37 on findings of a market conduct examination; amending s.
38 624.4211, F.S.; increasing the maximum amounts of
39 administrative fines that may be imposed upon an insurer
40 by the Office of Insurance Regulation for nonwillful and
41 willful violations of an order or rule of the office or
42 any provision of the Florida Insurance Code; authorizing
43 the office to impose a fine for each day of noncompliance
44 up to a maximum amount; providing factors to consider when
45 determining the amount of the fine; creating s. 624.4213,
46 F.S.; specifying requirements for submission of a document
47 or information to the Office of Insurance Regulation or
48 the Department of Financial Services in order for a person
49 to claim that the document is a trade secret; requiring
50 each page or portion to be labeled as a trade secret and
51 be separated from non-trade secret material; requiring the
52 submitting party to include an affidavit certifying
53 certain information about the documents claimed to be
54 trade secrets; requiring the office or department to
55 notify persons who submit trade secret documents of any
56 public-records request and the opportunity to file a court
57 action to bar disclosure; specifying conditions for the
58 office to retain or release such documents; requiring an

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59 | award of attorney's fees against a person who certified a
60 | document as trade secret if a court or administrative
61 | tribunal finds that the document is not a trade secret;
62 | amending s. 626.9521, F.S.; increasing the maximum fines
63 | that may be imposed by the office or department for
64 | nonwillful and willful violations of state law regarding
65 | unfair methods of competition and unfair or deceptive acts
66 | or practices related to insurance; amending s. 626.9541,
67 | F.S.; prohibiting an insurer from considering certain
68 | factors when evaluating or adjusting a property insurance
69 | claim; prohibiting an insurer from failing to pay
70 | undisputed amounts of benefits owed under a property
71 | insurance policy within a certain period; amending s.
72 | 627.062, F.S.; requiring that an insurer seeking a rate
73 | for property insurance that is greater than the rate most
74 | recently approved by the Office of Insurance Regulation
75 | make a "file and use" filing for all such rate filings
76 | made after a specified date; revising the factors the
77 | office must consider in reviewing a rate filing;
78 | prohibiting the Office of Insurance Regulation from
79 | disapproving as excessive a rate solely because the
80 | insurer obtained reinsurance covering a specified probably
81 | maximum loss; allowing the office to disapprove a rate as
82 | excessive within 1 year after the rate has been approved
83 | under certain conditions related to nonrenewal of policies
84 | by the insurer; requiring the Division of Administrative
85 | Hearings to expedite a hearing request by an insurer and
86 | for the administrative law judge to commence the hearing
87 | within a specified time; establishing time limits for

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88 entry of a recommended order, for parties to submit
89 written exceptions, and for the office to enter a final
90 order, subject to waiver by all parties; authorizing an
91 insurer to request an expedited appellate review pursuant
92 to the Florida Rules of Appellate Procedure; expressing
93 legislative intent for an expedited appellate review;
94 requiring an administrative law judge in a hearing on an
95 insurance rate to grant a continuance if requested by a
96 party due to receiving additional information that was not
97 previously available; deleting provisions relating to the
98 submission of a disputed rate filing, other than a rate
99 filing for medical malpractice insurance, to an
100 arbitration panel in lieu of an administrative hearing if
101 the rate is filed before a specified date; requiring
102 certain officers and the chief actuary of a property
103 insurer to certify certain information as part of a rate
104 filing, subject to the penalty of perjury; amending s.
105 627.0613, F.S.; deleting cross-references to conform to
106 changes made by the act; amending s. 627.0628, F.S.;
107 requiring that with respect to rate filings, insurers must
108 use actuarial methods or models found to be accurate or
109 reliable by the Florida Commission on Hurricane Loss
110 Projection Methodology; deleting the requirement for the
111 Office of Insurance Regulation and the Consumer Advocate
112 to have access to all assumptions of a hurricane loss
113 model in order for a model that has been found to be
114 accurate and reliable by the Florida Commission on
115 Hurricane Loss Projection Methodology to be admissible in
116 a rate proceeding; deleting cross-references to conform to

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117 changes made by the act; amending s. 627.0629, F.S.;

118 requiring that the Office of Insurance Regulation develop

119 and make publicly available before a specified deadline a

120 proposed method for insurers to establish windstorm

121 mitigation premium discounts that correlate to the uniform

122 home rating scale; requiring that the Financial Services

123 Commission adopt rules before a specified deadline;

124 requiring insurers to make rate filings pursuant to such

125 method; authorizing the commission to make changes by rule

126 to the uniform home grading scale and specify by rule the

127 minimum required discounts, credits, or other rate

128 differentials; requiring that such rate differentials be

129 consistent with generally accepted actuarial principles

130 and wind loss mitigation studies; amending s. 627.351,

131 F.S., relating to Citizens Property Insurance Corporation;

132 deleting a provision to conform to changes made in the

133 act; deleting provisions defining the terms "homestead

134 property" and "nonhomestead property"; deleting a

135 provision providing for the classification of certain

136 dwellings as "nonhomestead property"; deleting provisions

137 making dwellings and condominium units that have a

138 replacement cost above a specified value ineligible for

139 coverage after a specified date; requiring certain

140 structures to have opening protections as a condition of

141 eligibility for coverage after a specified date; requiring

142 that the corporation cease issuance of new wind-only

143 coverage beginning on a specified date; deleting outdated

144 provisions requiring the corporation to submit a report

145 for approval of offering multiperil coverage; revising

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146 threshold amounts of deficits incurred in a calendar year
147 on which the decision to levy assessments and the types of
148 such assessments are based; revising the formula used to
149 calculate shares of assessments owed by certain assessable
150 insureds; requiring that the board of governors make
151 certain determinations before levying emergency
152 assessments; providing the board of governors with
153 discretion to set the amount of an emergency assessment
154 within specified limits; requiring the board of governors
155 to levy a Citizens policyholder surcharge under certain
156 conditions; deleting a provision requiring the levy of an
157 immediate assessment against certain policyholders under
158 such conditions; requiring that funds collected from the
159 levy of such surcharges be used for certain purposes;
160 providing that such surcharges are not considered premium
161 and are not subject to commissions, fees, or premium
162 taxes; requiring that the failure to pay such surcharges
163 be treated as failure to pay premium; requiring that the
164 amount of any assessment or surcharge which exceeds the
165 amount of deficits be remitted to and used by the
166 corporation for specified purposes; deleting provisions
167 requiring that the plan of operation of the corporation
168 provide for the levy of a Citizens policyholder surcharge
169 if regular deficit assessments are levied as a result of
170 deficits in certain accounts; deleting provisions related
171 to the calculation, classification, and nonpayment of such
172 surcharge; requiring that the corporation make an annual
173 filing for each personal or commercial line of business it
174 writes, beginning on a specified date; limiting the

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175 overall average statewide premium increase and the
176 increase for an individual policyholder to a specified
177 amount for rates established for certain policies during a
178 specified period; deleting a provision requiring an
179 insurer to purchase bonds that remain unsold; requiring
180 the corporation to make its database of policies available
181 to prospective take-out insurers under certain conditions;
182 requiring the corporation to require agents to accept or
183 decline appointment for any policy selected; requiring the
184 corporation to notify the policyholder of certain
185 information if an insurer selected his or her policy for a
186 take-out offer but the policyholder's agent refused to be
187 appointed; deleting provisions requiring the corporation
188 to make certain confidential underwriting and claims files
189 available to agents to conform to changes made by the act
190 relating to ineligibility of certain dwellings; amending
191 s. 627.4133, F.S.; increasing the required time period for
192 an insurer to notify a policyholder of cancellation or
193 nonrenewal of a personal lines or commercial residential
194 property insurance policy; making conforming changes;
195 creating s. 689.262, F.S.; requiring a purchaser of
196 residential property to be presented with the windstorm
197 mitigation rating of the structure; authorizing the
198 Financial Services Commission to adopt rules; amending s.
199 817.2341, F.S.; providing for criminal penalties to be
200 imposed under certain conditions against any person who
201 willfully files a materially false or misleading rate
202 filing; requiring Citizens Property Insurance Corporation
203 to transfer funds to the General Revenue Fund Revenue Fund

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204 if the losses due to a hurricane do not exceed a specified
205 amount; requiring the board of governors of Citizens
206 Property Insurance Corporation to make a reasonable
207 estimate of such losses by a certain date; making
208 nonrecurring appropriations for purposes of the Insurance
209 Capital Build-Up Incentive Program established pursuant to
210 s. 215.5595, F.S., as amended by the act; authorizing
211 costs and fees to be paid from funds appropriated, subject
212 to specified limitations; providing effective dates.
213

214 Be It Enacted by the Legislature of the State of Florida:
215

216 Section 1. Section 215.5595, Florida Statutes, is amended
217 to read:

218 215.5595 Insurance Capital Build-Up Incentive Program.--

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

221 (a) The losses in Florida from eight hurricanes in 2004 and
222 2005 have seriously strained the resources of both the voluntary
223 insurance market and the public sector mechanisms of Citizens
224 Property Insurance Corporation and the Florida Hurricane
225 Catastrophe Fund.

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

232 ~~(c) The Office of Insurance Regulation has reported that~~

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233 ~~the insolvency of certain insurers may be imminent.~~

234 ~~(d) Hurricane forecast experts predict that the 2006~~
235 ~~hurricane season will be an active hurricane season and that the~~
236 ~~Atlantic and Gulf Coast regions face an active hurricane cycle of~~
237 ~~10 to 20 years or longer.~~

238 (b)(e) Citizens Property Insurance Corporation has over 1.2
239 million policies in force, has the largest market share of any
240 insurer writing residential property insurer in the state, and
241 faces the threat of a catastrophic loss that ~~The number of~~
242 ~~cancellations or nonrenewals of residential property insurance~~
243 ~~policies is expected to increase and the number of new~~
244 ~~residential policies written in the voluntary market are likely~~
245 ~~to decrease, causing increased policy growth and exposure to the~~
246 ~~state insurer of last resort, Citizens Property Insurance~~
247 ~~Corporation, and threatening to increase the deficit of the~~
248 ~~corporation, currently estimated to be over \$1.7 billion. This~~
249 ~~deficit~~ must be funded by assessments against insurers and
250 policyholders, unless otherwise funded by the state.

251 (c)(f) Policyholders are subject to high ~~increased~~ premiums
252 and assessments that are increasingly making such coverage
253 unaffordable and that may force policyholders to sell their homes
254 and even leave the state.

255 (d)(g) The increased risk to the public sector and private
256 sector continues to pose ~~poses~~ a serious threat to the economy of
257 this state, particularly the building and financing of
258 residential structures, and existing mortgages may be placed in
259 default.

260 ~~(h) The losses from 2004 and 2005, combined with the~~
261 ~~expectation that the increase in hurricane activity will continue~~

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262 ~~for the foreseeable future, have caused both insurers and~~
263 ~~reinsurers to limit the capital they are willing to commit to~~
264 ~~covering the hurricane risk in Florida; attracting new capital to~~
265 ~~the Florida market is a critical priority; and providing a low-~~
266 ~~cost source of capital would enable insurers to write additional~~
267 ~~residential property insurance coverage and act to mitigate~~
268 ~~premium increases.~~

269 (e) ~~(i)~~ Appropriating state funds to be exchanged for ~~used~~
270 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
271 under conditions requiring the insurer to contribute additional
272 private sector capital and to write a minimum level of premiums
273 for residential hurricane coverage, is a valid and important
274 public purpose.

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

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

283 (a) The amount of state funds provided in exchange for a
284 ~~the~~ surplus note to ~~for~~ any insurer or insurer group, other than
285 an insurer writing only manufactured housing policies, may not
286 exceed \$25 million or 20 percent of the total amount of funds
287 appropriated for ~~available under~~ the program, whichever is
288 greater. The amount of the surplus note for any insurer or
289 insurer group writing residential property insurance covering
290 only manufactured housing may not exceed \$7 million.

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291 (b) The insurer must contribute an amount of new capital to
292 its surplus which is at least equal to the amount of the surplus
293 note and must apply to the board by October 1, 2008 ~~July 1, 2006~~.
294 ~~If an insurer applies after July 1, 2006, but before June 1,~~
295 ~~2007, the amount of the surplus note is limited to one-half of~~
296 ~~the new capital that the insurer contributes to its surplus,~~
297 ~~except that an insurer writing only manufactured housing policies~~
298 ~~is eligible to receive a surplus note of up to \$7 million. For~~
299 purposes of this section, new capital must be in the form of cash
300 or cash equivalents as specified in s. 625.012(1).

301 (c) The insurer's surplus, new capital, and the surplus
302 note must total at least \$50 million, except for insurers writing
303 residential property insurance covering only manufactured
304 housing. The insurer's surplus, new capital, and the surplus note
305 must total at least \$14 million for insurers writing only
306 residential property insurance covering manufactured housing
307 policies as provided in paragraph (a).

308 (d) The insurer must commit to increase its writings of
309 residential property insurance, including the peril of wind, and
310 to meet ~~meeting~~ a minimum writing ratio of net written premium to
311 surplus of at least 1:1 for the first year after receiving the
312 state funds, 1.5:1 for the second year, and 2:1 for the remaining
313 term of the surplus note. Alternatively, the insurer must meet a
314 minimum writing ratio of gross written premium to surplus of at
315 least 3:1 for the first year after receiving the state funds,
316 4.5:1 for the second year, and 6:1 for the remaining term of the
317 surplus note. The writing ratios, ~~which~~ shall be determined by
318 the Office of Insurance Regulation and certified quarterly to the
319 board. For this purpose, the term "premium" ~~"net written premium"~~

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320 means ~~net written~~ premium for residential property insurance in
321 Florida, including the peril of wind, and "surplus" refers to the
322 amount of the state funds provided to the insurer in exchange for
323 the surplus note plus the amount of new capital contributed by
324 the insurer in order to obtain the state funds ~~the entire surplus~~
325 ~~of the insurer~~. The insurer must also commit to writing at least
326 15 percent of its net or gross written premium for new policies,
327 not including renewal premiums, for policies taken out of
328 Citizens Property Insurance Corporation, during each of the first
329 3 years after receiving the state funds in exchange for the
330 surplus note, which shall be determined by the Office of
331 Insurance Regulation and certified annually to the board. The
332 removal of such policies must result in a reduction in the
333 probable maximum loss in the account from which the policies are
334 removed. The insurer must also commit to maintaining a level of
335 surplus and reinsurance sufficient to cover in excess of its 1-
336 in-100 year probable maximum loss, as determined by a hurricane
337 loss model accepted by the Florida Commission on Hurricane Loss
338 Projection Methodology, which shall be determined by the Office
339 of Insurance Regulation and certified annually the board. If the
340 board determines that the insurer has failed to meet any of the
341 requirements of this paragraph ~~required ratio is not maintained~~
342 during the term of the surplus note, the board may increase the
343 interest rate, accelerate the repayment of interest and
344 principal, or shorten the term of the surplus note, subject to
345 approval by the Commissioner of Insurance of payments by the
346 insurer of principal and interest as provided in paragraph (f).

347 (e) If the requirements of this section are met, the board
348 may approve an application by an insurer for funds in exchange

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349 | for issuance of a surplus note, unless the board determines that
350 | the financial condition of the insurer and its business plan for
351 | writing residential property insurance in Florida places an
352 | unreasonably high level of financial risk to the state of
353 | nonpayment in full of the interest and principal. The board shall
354 | consult with the Office of Insurance Regulation and may contract
355 | with independent financial and insurance consultants in making
356 | this determination.

357 | (f) The surplus note must be repayable to the state with a
358 | term of 20 years. The surplus note shall accrue interest on the
359 | unpaid principal balance at a rate equivalent to the 10-year U.S.
360 | Treasury Bond rate, require the payment only of interest during
361 | the first 3 years, and include such other terms as approved by
362 | the board. The board may charge late fees up to 5 percent for
363 | late payments or other late remittances. Payment of principal, ~~or~~
364 | interest, or late fees by the insurer on the surplus note must be
365 | approved by the Commissioner of Insurance, who shall approve such
366 | payment unless the commissioner determines that such payment will
367 | substantially impair the financial condition of the insurer. If
368 | such a determination is made, the commissioner shall approve such
369 | payment that will not substantially impair the financial
370 | condition of the insurer.

371 | (g) The total amount of funds available for the program is
372 | limited to the amount appropriated by the Legislature for this
373 | purpose. If the amount of surplus notes requested by insurers
374 | exceeds the amount of funds available, the board may prioritize
375 | insurers that are eligible and approved, with priority for
376 | funding given to insurers writing only manufactured housing
377 | policies, regardless of the date of application, based on the

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378 financial strength of the insurer, the viability of its proposed
379 business plan for writing additional residential property
380 insurance in the state, and the effect on competition in the
381 residential property insurance market. Between insurers writing
382 residential property insurance covering manufactured housing,
383 priority shall be given to the insurer writing the highest
384 percentage of its policies covering manufactured housing.

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

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

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

395 1. A Florida domiciled insurer that begins writing personal
396 lines residential manufactured housing policies in Florida after
397 March 1, 2007, and that removes a minimum of 50,000 policies from
398 Citizens Property Insurance Corporation without accepting a
399 bonus, provided at least 25 percent of its policies cover
400 manufactured housing. Such an insurer may count any funds above
401 the minimum capital and surplus requirement that were contributed
402 into the insurer after March 1, 2007, as new capital under this
403 section.

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

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

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

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

410 (4) The state funds provided to the insurer in exchange for
411 the A surplus note provided to an insurer pursuant to this
412 section are ~~is~~ considered borrowed surplus an asset of the
413 insurer pursuant to s. 628.401 ~~s. 625.012~~.

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

418 (6) The board shall adopt rules prescribing the procedures,
419 administration, and criteria for approving the applications of
420 insurers to receive funds in exchange for issuance of surplus
421 notes pursuant to this section, which may be adopted pursuant to
422 the procedures for emergency rules of chapter 120. Otherwise,
423 actions and determinations by the board pursuant to this section
424 are exempt from chapter 120.

425 (7) The board shall invest and reinvest the funds
426 appropriated for the program in accordance with s. 215.47 and
427 consistent with board policy.

428 (8) The board shall semiannually submit a report to the
429 President of the Senate and the Speaker of the House of
430 Representatives on February 1 and August 1 as to the results of
431 the program and each insurer's compliance with the terms of its
432 surplus note.

433 (9) The amendments to this section enacted in 2008 do not
434 affect the terms or conditions of the surplus notes that were
435 approved prior to January 1, 2008. However, the board may

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436 renegotiate the terms of any surplus note issued by an insurer
437 prior to January 2008 under this program upon the agreement of
438 the insurer and the board and consistent with the requirements of
439 this section as amended in 2008.

440 (10) On January 15, 2009, the State Board of Administration
441 shall transfer to Citizens Property Insurance Corporation any
442 funds that have not been committed or reserved for insurers
443 approved to receive such funds under the program, from the funds
444 that were appropriated from Citizens Property Insurance
445 Corporation in 2008-2009 for such purposes. Beginning July 1,
446 2009, and each quarter thereafter, the State Board of
447 Administration shall transfer any interest earned prior to
448 issuance of any surplus notes, interest paid, and principal
449 repaid to the state for any surplus notes issued by the program
450 after December 1, 2008, to the Citizens Property Insurance
451 Corporation. Such transfers shall be in the proportion that
452 surplus notes were funded from 2008-2009 appropriations from
453 Citizens Property Insurance Corporation and shall be made until
454 principal or interest is no longer due to the state on surplus
455 notes funded from such appropriations. Citizens Property
456 Insurance Corporation shall deposit the transferred funds into
457 each of its accounts in the proportion that moneys were
458 transferred out of those accounts to the General Revenue Fund in
459 December 2008.

460 Section 2. Section 542.20, Florida Statutes, is amended to
461 read:

462 542.20 Exemptions.--

463 (1) Any activity or conduct exempt under Florida statutory
464 or common law or exempt from the provisions of the antitrust laws

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465 of the United States is exempt from the provisions of this
466 chapter, except as provided in subsection (2).

467 (2) (a) The business of insurance is subject to the
468 provisions of this chapter. As applied to the business of
469 insurance, any legal action to seek penalties or damages for
470 violations or to otherwise enforce the provisions of this chapter
471 shall be brought only by the Attorney General or a state
472 attorney, as provided in this chapter, and another party may not
473 bring suit against a person engaged in the business of insurance,
474 notwithstanding any other provision of this chapter.

475 (b) This chapter does not prohibit a rating organization or
476 advisory organization from collecting claims, loss, or expense
477 data from insurers and filing rates or advisory rates with the
478 Office of Insurance Regulation.

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

481 624.3161 Market conduct examinations.--

482 (6) Based on the findings of a market conduct examination
483 that an insurer has exhibited a pattern or practice of willful
484 violations of an unfair insurance trade practice related to
485 claims-handling which caused harm to policyholders, as prohibited
486 by s. 626.9541(1) (i), the office may require an insurer to file
487 its claims-handling practices and procedures related to that line
488 of insurance with the office for review and inspection, to be
489 held by the office for the following 36-month period. Such
490 claims-handling practices and procedures are public records and
491 are not trade secrets or otherwise exempt from the provisions of
492 s. 119.07(1). As used in this section, "claims-handling practices
493 and procedures" are any policies, guidelines, rules, protocols,

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494 standard operating procedures, instructions, or directives that
495 govern or guide how and the manner in which an insured's claims
496 for benefits under any policy will be processed.

497 Section 4. Subsections (2) and (3) of section 624.4211,
498 Florida Statutes, are amended, and subsections (5) and (6) are
499 added to that section, to read:

500 624.4211 Administrative fine in lieu of suspension or
501 revocation.--

502 (2) With respect to any nonwillful violation, such fine may
503 ~~shall~~ not exceed \$25,000 ~~\$2,500~~ per violation. In no event shall
504 such fine exceed an aggregate amount equal to 1 percent of the
505 insurer's surplus, as determined by the most recent financial
506 statements filed with the office, of ~~\$10,000~~ for all nonwillful
507 violations arising out of the same action. If ~~When~~ an insurer
508 discovers a nonwillful violation, the insurer shall correct the
509 violation and, if restitution is due, make restitution to all
510 affected persons. Such restitution shall include interest at 12
511 percent per year from either the date of the violation or the
512 date of inception of the affected person's policy, at the
513 insurer's option. The restitution may be a credit against future
514 premiums due provided that ~~the interest~~ accumulates ~~shall~~
515 ~~accumulate~~ until the premiums are due. If the amount of
516 restitution due to any person is \$50 or more and the insurer
517 wishes to credit it against future premiums, it shall notify such
518 person that she or he may receive a check instead of a credit. If
519 the credit is on a policy that ~~which~~ is not renewed, the insurer
520 shall pay the restitution to the person to whom it is due.

521 (3) With respect to any knowing and willful violation of a
522 lawful order or rule of the office or commission or a provision

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523 of this code, the office may impose a fine upon the insurer in an
524 amount not to exceed \$100,000 ~~\$20,000~~ for each such violation. In
525 no event shall such fine exceed an aggregate amount equal to 5
526 percent of the insurer's surplus, as determined by the most
527 recent financial statements filed with the office, ~~of \$100,000~~
528 for all knowing and willful violations arising out of the same
529 action. In addition to such fines, the ~~such~~ insurer shall make
530 restitution when due in accordance with ~~the provisions of~~
531 subsection (2).

532 (5) The office may impose an administrative fine for each
533 day the insurer is not in compliance with the Florida Insurance
534 Code up to a maximum of \$25,000 per violation per day, beginning
535 with the 10th day of noncompliance, not to exceed an aggregate
536 amount equal to 5 percent of the insurer's surplus, as determined
537 by the most recent financial statements filed with the office.
538 This aggregate cap includes all fines imposed by the office under
539 this section.

540 (6) In determining the amount of the fine, the office shall
541 consider:

542 (a) The degree of consumer harm caused or potentially
543 caused by the violation;

544 (b) Whether the violation constitutes an immediate danger
545 to the public;

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

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

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

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

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552 Section 5. Section 624.4213, Florida Statutes, is created
553 to read:

554 624.4213 Trade secret documents.--

555 (1) If any person who is required to submit documents or
556 other information to the office or department pursuant to the
557 Insurance Code or by rule or order of the office, department, or
558 commission claims that such submission contains a trade secret,
559 such person may file with the office or department a notice of
560 trade secret as provided in this section. Failure to do so
561 constitutes a waiver of any claim by such person that the
562 document or information is a trade secret.

563 (a) Each page of such document or specific portion of a
564 document claimed to be a trade secret must be clearly marked as
565 "trade secret."

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

569 (c) In submitting a notice of trade secret to the office or
570 department, the submitting party must include an affidavit
571 certifying under oath to the truth of the following statements
572 concerning all documents or information that are claimed to be
573 trade secrets:

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

578 2. [I have/My company has] taken measures to prevent the
579 disclosure of the information to anyone other than those who have
580 been selected to have access for limited purposes, and [I

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581 | intend/my company intends] to continue to take such measures.

582 | 3. The information is not, and has not been, reasonably
583 | obtainable without [my/our] consent by other persons by use of
584 | legitimate means.

585 | 4. The information is not publicly available elsewhere.

586 | (2) If the office or department receives a public-records
587 | request for a document or information that is marked and
588 | certified as a trade secret, the office or department shall
589 | promptly notify the person that certified the document as a trade
590 | secret. The notice shall inform such person that he or she or his
591 | or her company has 30 days following receipt of such notice to
592 | file an action in circuit court seeking a determination whether
593 | the document in question contains trade secrets and an order
594 | barring public disclosure of the document. If that person or
595 | company files an action within 30 days after receipt of notice of
596 | the public-records request, the office or department may not
597 | release the documents pending the outcome of the legal action.
598 | The failure to file an action within 30 days constitutes a waiver
599 | of any claim of confidentiality and the office or department
600 | shall release the document as requested.

601 | (3) If a court or administrative tribunal finds that any
602 | document or information certified as a trade secret, submitted to
603 | the office or department under this section, and subsequently
604 | requested by a third party is not a trade secret, the company or
605 | the person certifying such document or information as a trade
606 | secret is liable for an award of reasonable attorney's fees and
607 | costs to the third party seeking access to such documents and to
608 | the office or department.

609 | (4) The office or department may disclose a trade secret,

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610 together with the claim that it is a trade secret, to an officer
611 or employee of another governmental agency whose use of the trade
612 secret is within the scope of his or her employment.

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

615 626.9521 Unfair methods of competition and unfair or
616 deceptive acts or practices prohibited; penalties.--

617 (2) Any person who violates any provision of this part
618 shall be subject to a fine in an amount not greater than \$25,000
619 ~~\$2,500~~ for each nonwillful violation and not greater than
620 \$100,000 ~~\$20,000~~ for each willful violation. Fines under this
621 subsection imposed against an insurer may not exceed an aggregate
622 amount equal to 1 percent of the insurer's surplus ~~of \$10,000~~ for
623 all nonwillful violations arising out of the same action or an
624 aggregate amount equal to 5 percent of the insurer's surplus ~~of~~
625 ~~\$100,000~~ for all willful violations arising out of the same
626 action, as surplus is determined by the insurer's most recent
627 financial statements filed with the office. The fines authorized
628 by this subsection may be imposed in addition to any other
629 applicable penalty.

630 Section 7. Paragraph (i) of subsection (1) of section
631 626.9541, Florida Statutes, is amended to read:

632 626.9541 Unfair methods of competition and unfair or
633 deceptive acts or practices defined.--

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

637 (i) Unfair claim settlement practices.--

638 1. Attempting to settle claims on the basis of an

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639 application, ~~when~~ serving as a binder or intended to become a
640 part of the policy, or any other material document that is ~~which~~
641 ~~was~~ altered without notice to, or knowledge or consent of, the
642 insured;

643 2. A material misrepresentation made to an insured or any
644 other person having an interest in the proceeds payable under a
645 ~~such~~ contract or policy, for the purpose and with the intent of
646 effecting settlement of such claims, loss, or damage under such
647 contract or policy on less favorable terms than those provided
648 in, and contemplated by, the ~~such~~ contract or policy; ~~or~~

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

651 a. Failing to adopt and implement standards for the proper
652 investigation of claims.†

653 b. Misrepresenting pertinent facts or insurance policy
654 provisions relating to coverages at issue.†

655 c. Failing to acknowledge and act promptly upon
656 communications with respect to claims.†

657 d. Denying claims without conducting reasonable
658 investigations based upon available information.†

659 e. Failing to affirm or deny full or partial coverage of
660 claims, and, as to partial coverage, the dollar amount or extent
661 of coverage, or failing to provide a written statement that the
662 claim is being investigated, upon the written request of the
663 insured within 30 days after proof-of-loss statements have been
664 completed.†

665 f. Failing to promptly provide a reasonable explanation in
666 writing to the insured of the basis in the insurance policy, in
667 relation to the facts or applicable law, for denial of a claim or

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668 for the offer of a compromise settlement.~~†~~

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

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

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

677 5. Failing to pay undisputed amounts of partial or full
678 benefits owed under first-party property insurance policies
679 within 90 days after determining the amounts of partial or full
680 benefits and agreeing to coverage.

681 Section 8. Paragraphs (a), (b), and (g) of subsection (2),
682 and subsections (6) and (9) of section 627.062, Florida Statutes,
683 are amended to read:

684 627.062 Rate standards.--

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

686 (a) Insurers or rating organizations shall establish and
687 use rates, rating schedules, or rating manuals to allow the
688 insurer a reasonable rate of return on such classes of insurance
689 written in this state. A copy of rates, rating schedules, rating
690 manuals, premium credits or discount schedules, and surcharge
691 schedules, and changes thereto, shall be filed with the office
692 under one of the following procedures except as provided in
693 subparagraph 3.:

694 1. If the filing is made at least 90 days before the
695 proposed effective date and the filing is not implemented during
696 the office's review of the filing and any proceeding and judicial

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697 review, then such filing shall be considered a "file and use"
698 filing. In such case, the office shall finalize its review by
699 issuance of a notice of intent to approve or a notice of intent
700 to disapprove within 90 days after receipt of the filing. The
701 notice of intent to approve and the notice of intent to
702 disapprove constitute agency action for purposes of the
703 Administrative Procedure Act. Requests for supporting
704 information, requests for mathematical or mechanical corrections,
705 or notification to the insurer by the office of its preliminary
706 findings shall not toll the 90-day period during any such
707 proceedings and subsequent judicial review. The rate shall be
708 deemed approved if the office does not issue a notice of intent
709 to approve or a notice of intent to disapprove within 90 days
710 after receipt of the filing.

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

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

725 (b) Upon receiving a rate filing, the office shall review

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726 | the rate filing to determine if a rate is excessive, inadequate,
727 | or unfairly discriminatory. In making that determination, the
728 | office shall, in accordance with generally accepted and
729 | reasonable actuarial techniques, consider the following factors:

730 | 1. Past and prospective loss experience within and without
731 | this state.

732 | 2. Past and prospective expenses.

733 | 3. The degree of competition among insurers for the risk
734 | insured.

735 | 4. Investment income reasonably expected by the insurer,
736 | consistent with the insurer's investment practices, from
737 | investable premiums anticipated in the filing, plus any other
738 | expected income from currently invested assets representing the
739 | amount expected on unearned premium reserves and loss reserves.

740 | The commission may adopt rules using ~~utilizing~~ reasonable
741 | techniques of actuarial science and economics to specify the
742 | manner in which insurers shall calculate investment income
743 | attributable to such classes of insurance written in this state
744 | and the manner in which such investment income shall be used to
745 | calculate ~~in the calculation of~~ insurance rates. Such manner
746 | shall contemplate allowances for an underwriting profit factor
747 | and full consideration of investment income which produce a
748 | reasonable rate of return; however, investment income from
749 | invested surplus may ~~shall~~ not be considered.

750 | 5. The reasonableness of the judgment reflected in the
751 | filing.

752 | 6. Dividends, savings, or unabsorbed premium deposits
753 | allowed or returned to Florida policyholders, members, or
754 | subscribers.

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- 755 7. The adequacy of loss reserves.
- 756 8. The cost of reinsurance. The office shall not disapprove
757 a rate as excessive solely due to the insurer having obtained
758 catastrophic reinsurance to cover the insurer's estimated 250-
759 year probable maximum loss or any lower level of loss.
- 760 9. Trend factors, including trends in actual losses per
761 insured unit for the insurer making the filing.
- 762 10. Conflagration and catastrophe hazards, if applicable.
- 763 11. Projected hurricane losses, if applicable, which must
764 be estimated using a model or method found to be acceptable or
765 reliable by the Florida Commission on Hurricane Loss Projection
766 Methodology, and as further provided in s. 627.0628.
- 767 ~~12.11.~~ A reasonable margin for underwriting profit and
768 contingencies. For that portion of the rate covering the risk of
769 hurricanes and other catastrophic losses for which the insurer
770 has not purchased reinsurance and has exposed its capital and
771 surplus to such risk, the office must approve a rating factor
772 that provides the insurer a reasonable rate of return that is
773 commensurate with such risk.
- 774 ~~13.12.~~ The cost of medical services, if applicable.
- 775 ~~14.13.~~ Other relevant factors which impact upon the
776 frequency or severity of claims or upon expenses.
- 777 (g) The office may at any time review a rate, rating
778 schedule, rating manual, or rate change; the pertinent records of
779 the insurer; and market conditions. If the office finds on a
780 preliminary basis that a rate may be excessive, inadequate, or
781 unfairly discriminatory, the office shall initiate proceedings to
782 disapprove the rate and shall so notify the insurer. However, the
783 office may not disapprove as excessive any rate for which it has

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784 | given final approval or which has been deemed approved for a
785 | period of 1 year after the effective date of the filing unless
786 | the office finds that a material misrepresentation or material
787 | error was made by the insurer or was contained in the filing, or
788 | unless the insurer has nonrenewed a number or percentage of
789 | policies which the office determines may result in the insurer
790 | having an excessive rate. Upon being so notified, the insurer or
791 | rating organization shall, within 60 days, file with the office
792 | all information which, in the belief of the insurer or
793 | organization, proves the reasonableness, adequacy, and fairness
794 | of the rate or rate change. The office shall issue a notice of
795 | intent to approve or a notice of intent to disapprove pursuant to
796 | the procedures of paragraph (a) within 90 days after receipt of
797 | the insurer's initial response. In such instances and in any
798 | administrative proceeding relating to the legality of the rate,
799 | the insurer or rating organization shall carry the burden of
800 | proof by a preponderance of the evidence to show that the rate is
801 | not excessive, inadequate, or unfairly discriminatory. After the
802 | office notifies an insurer that a rate may be excessive,
803 | inadequate, or unfairly discriminatory, unless the office
804 | withdraws the notification, the insurer shall not alter the rate
805 | except to conform with the office's notice until the earlier of
806 | 120 days after the date the notification was provided or 180 days
807 | after the date of the implementation of the rate. The office may,
808 | subject to chapter 120, disapprove without the 60-day
809 | notification any rate increase filed by an insurer within the
810 | prohibited time period or during the time that the legality of
811 | the increased rate is being contested.

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813 The provisions of this subsection shall not apply to workers'
814 compensation and employer's liability insurance and to motor
815 vehicle insurance.

816 (6) (a) If an insurer requests an administrative hearing
817 pursuant to s. 120.57 related to a rate filing under this
818 section, the director of the Division of Administrative Hearings
819 shall expedite the hearing and assign an administrative law judge
820 who shall commence the hearing within 30 days after the receipt
821 of the formal request and shall enter a recommended order within
822 30 days after the hearing or within 30 days after receipt of the
823 hearing transcript by the administrative law judge, whichever is
824 later. Each party shall be allowed 10 days in which to submit
825 written exceptions to the recommended order. The office shall
826 enter a final order within 30 days after the entry of the
827 recommended order. The provisions of this paragraph may be waived
828 upon stipulation of all parties.

829 (b) Upon entry of a final order, the insurer may request a
830 expedited appellate review pursuant to the Florida Rules of
831 Appellate Procedure. It is the intent of the Legislature that the
832 First District Court of Appeal grant an insurer's request for an
833 expedited appellate review.

834 (c) If, in any administrative hearing under s. 120.57, any
835 additional information related to a rate filing, other than
836 expert opinion, is offered or presented by the insurer to justify
837 the rate, or offered or presented by the office to challenge the
838 rate, which was not received by the other party prior to the date
839 that the office issues a notice of intent to disapprove the
840 filing, the administrative law judge shall grant a continuance of
841 at least 30 days if requested by the party that had not

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842 previously received the information. ~~After any action with~~
843 ~~respect to a rate filing that constitutes agency action for~~
844 ~~purposes of the Administrative Procedure Act, except for a rate~~
845 ~~filing for medical malpractice, an insurer may, in lieu of~~
846 ~~demanding a hearing under s. 120.57, require arbitration of the~~
847 ~~rate filing. However, the arbitration option provision in this~~
848 ~~subsection does not apply to a rate filing that is made on or~~
849 ~~after the effective date of this act until January 1, 2009.~~
850 ~~Arbitration shall be conducted by a board of arbitrators~~
851 ~~consisting of an arbitrator selected by the office, an arbitrator~~
852 ~~selected by the insurer, and an arbitrator selected jointly by~~
853 ~~the other two arbitrators. Each arbitrator must be certified by~~
854 ~~the American Arbitration Association. A decision is valid only~~
855 ~~upon the affirmative vote of at least two of the arbitrators. No~~
856 ~~arbitrator may be an employee of any insurance regulator or~~
857 ~~regulatory body or of any insurer, regardless of whether or not~~
858 ~~the employing insurer does business in this state. The office and~~
859 ~~the insurer must treat the decision of the arbitrators as the~~
860 ~~final approval of a rate filing. Costs of arbitration shall be~~
861 ~~paid by the insurer.~~

862 ~~(b) Arbitration under this subsection shall be conducted~~
863 ~~pursuant to the procedures specified in ss. 682.06-682.10. Either~~
864 ~~party may apply to the circuit court to vacate or modify the~~
865 ~~decision pursuant to s. 682.13 or s. 682.14. The commission shall~~
866 ~~adopt rules for arbitration under this subsection, which rules~~
867 ~~may not be inconsistent with the arbitration rules of the~~
868 ~~American Arbitration Association as of January 1, 1996.~~

869 ~~(c) Upon initiation of the arbitration process, the insurer~~
870 ~~waives all rights to challenge the action of the office under the~~

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871 ~~Administrative Procedure Act or any other provision of law;~~
872 ~~however, such rights are restored to the insurer if the~~
873 ~~arbitrators fail to render a decision within 90 days after~~
874 ~~initiation of the arbitration process.~~

875 (9) (a) ~~Effective March 1, 2007,~~ The chief executive officer
876 or chief financial officer of a property insurer and the chief
877 actuary of a property insurer must certify under oath and subject
878 to the penalty of perjury, on a form approved by the commission,
879 the following information, which must accompany a rate filing:

880 1. The signing officer and actuary have reviewed the rate
881 filing;

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

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

892 4. Based on the signing officer's and actuary's knowledge,
893 the rate filing reflects all premium savings that are reasonably
894 expected to result from legislative enactments and are in
895 accordance with generally accepted and reasonable actuarial
896 techniques; ~~-~~

897 5. Based on the signing officer's and actuary's knowledge,
898 the actuary responsible for preparing the rate filing reviewed
899 the rate indications used by the office in approving the

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900 insurer's last rate filing, if made available to the insurer for
901 review, and identified factors used in the current rate filing
902 which are inconsistent with the factors used by the office in
903 developing such rate indications; and

904 6. Based on the signing officer's and actuary's knowledge,
905 the number and type of policies that the insurer intends to
906 nonrenew during the year following the proposed effective date of
907 the rate filing, and that the rate filing reflects the reduced
908 risk of loss associated with such nonrenewals.

909 (b) A signing officer or actuary knowingly making a false
910 certification under this subsection commits a violation of s.
911 626.9541(1)(e) and is subject to the penalties under s. 626.9521.

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

915 (d) The commission may adopt rules and forms pursuant to
916 ss. 120.536(1) and 120.54 to administer this subsection.

917 Section 9. Subsection (1) of section 627.0613, Florida
918 Statutes, is amended to read:

919 627.0613 Consumer advocate.--The Chief Financial Officer
920 must appoint a consumer advocate who must represent the general
921 public of the state before the department and the office. The
922 consumer advocate must report directly to the Chief Financial
923 Officer, but is not otherwise under the authority of the
924 department or of any employee of the department. The consumer
925 advocate has such powers as are necessary to carry out the duties
926 of the office of consumer advocate, including, but not limited
927 to, the powers to:

928 (1) Recommend to the department or office, by petition, the

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929 commencement of any proceeding or action; appear in any
930 proceeding or action before the department or office; or appear
931 in any proceeding before the Division of Administrative Hearings
932 ~~or arbitration panel specified in s. 627.062(6)~~ relating to
933 subject matter under the jurisdiction of the department or
934 office.

935 Section 10. Paragraph (c) of subsection (1) and paragraph
936 (c) of subsection (3) of section 627.0628, Florida Statutes, are
937 amended to read:

938 627.0628 Florida Commission on Hurricane Loss Projection
939 Methodology; public records exemption; public meetings
940 exemption.--

941 (1) LEGISLATIVE FINDINGS AND INTENT.--

942 (c) It is the intent of the Legislature to create the
943 Florida Commission on Hurricane Loss Projection Methodology as a
944 panel of experts to provide the most actuarially sophisticated
945 guidelines and standards for projection of hurricane losses
946 possible, given the current state of actuarial science. It is the
947 further intent of the Legislature that such standards and
948 guidelines must be used by the State Board of Administration in
949 developing reimbursement premium rates for the Florida Hurricane
950 Catastrophe Fund, and, subject to paragraph (3)(c), must ~~may~~ be
951 used by insurers in rate filings under s. 627.062 unless the way
952 in which such standards and guidelines were applied by the
953 insurer was erroneous, as shown by a preponderance of the
954 evidence.

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

956 (c) With respect to a rate filing under s. 627.062, an
957 insurer must ~~may~~ employ and may not modify or adjust actuarial

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958 | methods, principles, standards, models, or output ranges found by
959 | the commission to be accurate or reliable in determining ~~to~~
960 | ~~determine~~ hurricane loss factors used for use in a rate filing
961 | and in determining probable maximum loss levels for reinsurance
962 | costs included in a rate filing under s. 627.062. Such findings
963 | ~~and factors are admissible and relevant in consideration of a~~
964 | ~~rate filing by the office or in any arbitration or administrative~~
965 | ~~or judicial review only if the office and the consumer advocate~~
966 | ~~appointed pursuant to s. 627.0613 have access to all of the~~
967 | ~~assumptions and factors that were used in developing the~~
968 | ~~actuarial methods, principles, standards, models, or output~~
969 | ~~ranges, and are not precluded from disclosing such information in~~
970 | ~~a rate proceeding. In any rate hearing under s. 120.57 or in any~~
971 | ~~arbitration proceeding under s. 627.062(6), the hearing officer,~~
972 | ~~judge, or arbitration panel may determine whether the office and~~
973 | ~~the consumer advocate were provided with access to all of the~~
974 | ~~assumptions and factors that were used in developing the~~
975 | ~~actuarial methods, principles, standards, models, or output~~
976 | ~~ranges and to determine their admissibility.~~

977 | Section 11. Subsection (1) of section 627.0629, Florida
978 | Statutes, is amended to read:

979 | 627.0629 Residential property insurance; rate filings.--

980 | (1) (a) It is the intent of the Legislature that insurers
981 | must provide savings to consumers who install or implement
982 | windstorm damage mitigation techniques, alterations, or solutions
983 | to their properties to prevent windstorm losses. A rate filing
984 | for residential property insurance must include actuarially
985 | reasonable discounts, credits, or other rate differentials, or
986 | appropriate reductions in deductibles, for properties on which

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987 fixtures or construction techniques demonstrated to reduce the
988 amount of loss in a windstorm have been installed or implemented.
989 The fixtures or construction techniques shall include, but not be
990 limited to, fixtures or construction techniques which enhance
991 roof strength, roof covering performance, roof-to-wall strength,
992 wall-to-floor-to-foundation strength, opening protection, and
993 window, door, and skylight strength. Credits, discounts, or other
994 rate differentials, or appropriate reductions in deductibles, for
995 fixtures and construction techniques which meet the minimum
996 requirements of the Florida Building Code must be included in the
997 rate filing. All insurance companies must make a rate filing
998 which includes the credits, discounts, or other rate
999 differentials or reductions in deductibles by February 28, 2003.
1000 By July 1, 2007, the office shall reevaluate the discounts,
1001 credits, other rate differentials, and appropriate reductions in
1002 deductibles for fixtures and construction techniques that meet
1003 the minimum requirements of the Florida Building Code, based upon
1004 actual experience or any other loss relativity studies available
1005 to the office. The office shall determine the discounts, credits,
1006 other rate differentials, and appropriate reductions in
1007 deductibles that reflect the full actuarial value of such
1008 revaluation, which may be used by insurers in rate filings.

1009 (b) By February 1, 2009, the Office of Insurance
1010 Regulation, in consultation with the Department of Financial
1011 Services and the Department of Community Affairs, shall develop
1012 and make publicly available a proposed method for insurers to
1013 establish discounts, credits, or other rate differentials for
1014 hurricane mitigation measures which directly correlate to the
1015 numerical rating assigned to a structure pursuant to the uniform

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1016 home grading scale adopted by the Financial Services Commission
1017 pursuant to s. 215.55865, including any proposed changes to the
1018 uniform home grading scale. By October 1, 2009, the commission
1019 shall adopt rules requiring insurers to make rate filings for
1020 residential property insurance which revise insurers' discounts,
1021 credits, or other rate differentials for hurricane mitigation
1022 measures so that such rate differentials correlate directly to
1023 the uniform home grading scale. The rules may include such
1024 changes to the uniform home grading scale as the commission
1025 determines are necessary, and may specify the minimum required
1026 discounts, credits, or other rate differentials. Such rate
1027 differentials must be consistent with generally accepted
1028 actuarial principles and wind-loss mitigation studies. The rules
1029 shall allow a period of at least 2 years after the effective date
1030 of the revised mitigation discounts, credits, or other rate
1031 differentials for a property owner to obtain an inspection or
1032 otherwise qualify for the revised credit, during which time the
1033 insurer shall continue to apply the mitigation credit that was
1034 applied immediately prior to the effective date of the revised
1035 credit.

1036 Section 12. Paragraph (b) of subsection (2) and paragraphs
1037 (a), (b), (c), (m), (p), (dd), (ee), and (ff) of subsection (6)
1038 of section 627.351, Florida Statutes, are amended to read:

1039 627.351 Insurance risk apportionment plans.--

1040 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

1041 (b) The department shall require all insurers holding a
1042 certificate of authority to transact property insurance on a
1043 direct basis in this state, other than joint underwriting
1044 associations and other entities formed pursuant to this section,

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1045 to provide windstorm coverage to applicants from areas determined
1046 to be eligible pursuant to paragraph (c) who in good faith are
1047 entitled to, but are unable to procure, such coverage through
1048 ordinary means; or it shall adopt a reasonable plan or plans for
1049 the equitable apportionment or sharing among such insurers of
1050 windstorm coverage, which may include formation of an association
1051 for this purpose. As used in this subsection, the term "property
1052 insurance" means insurance on real or personal property, as
1053 defined in s. 624.604, including insurance for fire, industrial
1054 fire, allied lines, farmowners multiperil, homeowners'
1055 multiperil, commercial multiperil, and mobile homes, and
1056 including liability coverages on all such insurance, but
1057 excluding inland marine as defined in s. 624.607(3) and excluding
1058 vehicle insurance as defined in s. 624.605(1)(a) other than
1059 insurance on mobile homes used as permanent dwellings. The
1060 department shall adopt rules that provide a formula for the
1061 recovery and repayment of any deferred assessments.

1062 1. For the purpose of this section, properties eligible for
1063 such windstorm coverage are defined as dwellings, buildings, and
1064 other structures, including mobile homes which are used as
1065 dwellings and which are tied down in compliance with mobile home
1066 tie-down requirements prescribed by the Department of Highway
1067 Safety and Motor Vehicles pursuant to s. 320.8325, and the
1068 contents of all such properties. An applicant or policyholder is
1069 eligible for coverage only if an offer of coverage cannot be
1070 obtained by or for the applicant or policyholder from an admitted
1071 insurer at approved rates.

1072 2.a.(I) All insurers required to be members of such
1073 association shall participate in its writings, expenses, and

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1074 losses. Surplus of the association shall be retained for the
1075 payment of claims and shall not be distributed to the member
1076 insurers. Such participation by member insurers shall be in the
1077 proportion that the net direct premiums of each member insurer
1078 written for property insurance in this state during the preceding
1079 calendar year bear to the aggregate net direct premiums for
1080 property insurance of all member insurers, as reduced by any
1081 credits for voluntary writings, in this state during the
1082 preceding calendar year. For the purposes of this subsection, the
1083 term "net direct premiums" means direct written premiums for
1084 property insurance, reduced by premium for liability coverage and
1085 for the following if included in allied lines: rain and hail on
1086 growing crops; livestock; association direct premiums booked;
1087 National Flood Insurance Program direct premiums; and similar
1088 deductions specifically authorized by the plan of operation and
1089 approved by the department. A member's participation shall begin
1090 on the first day of the calendar year following the year in which
1091 it is issued a certificate of authority to transact property
1092 insurance in the state and shall terminate 1 year after the end
1093 of the calendar year during which it no longer holds a
1094 certificate of authority to transact property insurance in the
1095 state. The commissioner, after review of annual statements, other
1096 reports, and any other statistics that the commissioner deems
1097 necessary, shall certify to the association the aggregate direct
1098 premiums written for property insurance in this state by all
1099 member insurers.

1100 (II) Effective July 1, 2002, the association shall operate
1101 subject to the supervision and approval of a board of governors
1102 who are the same individuals that have been appointed by the

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1103 Treasurer to serve on the board of governors of the Citizens
1104 Property Insurance Corporation.

1105 (III) The plan of operation shall provide a formula whereby
1106 a company voluntarily providing windstorm coverage in affected
1107 areas will be relieved wholly or partially from apportionment of
1108 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
1109 sub-sub-subparagraph d.(II).

1110 (IV) A company which is a member of a group of companies
1111 under common management may elect to have its credits applied on
1112 a group basis, and any company or group may elect to have its
1113 credits applied to any other company or group.

1114 (V) There shall be no credits or relief from apportionment
1115 to a company for emergency assessments collected from its
1116 policyholders under sub-sub-subparagraph d.(III).

1117 (VI) The plan of operation may also provide for the award
1118 of credits, for a period not to exceed 3 years, from a regular
1119 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
1120 subparagraph d.(II) as an incentive for taking policies out of
1121 the Residential Property and Casualty Joint Underwriting
1122 Association. In order to qualify for the exemption under this
1123 sub-sub-subparagraph, the take-out plan must provide that at
1124 least 40 percent of the policies removed from the Residential
1125 Property and Casualty Joint Underwriting Association cover risks
1126 located in Dade, Broward, and Palm Beach Counties or at least 30
1127 percent of the policies so removed cover risks located in Dade,
1128 Broward, and Palm Beach Counties and an additional 50 percent of
1129 the policies so removed cover risks located in other coastal
1130 counties, and must also provide that no more than 15 percent of
1131 the policies so removed may exclude windstorm coverage. With the

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1132 approval of the department, the association may waive these
1133 geographic criteria for a take-out plan that removes at least the
1134 lesser of 100,000 Residential Property and Casualty Joint
1135 Underwriting Association policies or 15 percent of the total
1136 number of Residential Property and Casualty Joint Underwriting
1137 Association policies, provided the governing board of the
1138 Residential Property and Casualty Joint Underwriting Association
1139 certifies that the take-out plan will materially reduce the
1140 Residential Property and Casualty Joint Underwriting
1141 Association's 100-year probable maximum loss from hurricanes.
1142 With the approval of the department, the board may extend such
1143 credits for an additional year if the insurer guarantees an
1144 additional year of renewability for all policies removed from the
1145 Residential Property and Casualty Joint Underwriting Association,
1146 or for 2 additional years if the insurer guarantees 2 additional
1147 years of renewability for all policies removed from the
1148 Residential Property and Casualty Joint Underwriting Association.

1149 b. Assessments to pay deficits in the association under
1150 this subparagraph shall be included as an appropriate factor in
1151 the making of rates as provided in s. 627.3512.

1152 c. The Legislature finds that the potential for unlimited
1153 deficit assessments under this subparagraph may induce insurers
1154 to attempt to reduce their writings in the voluntary market, and
1155 that such actions would worsen the availability problems that the
1156 association was created to remedy. It is the intent of the
1157 Legislature that insurers remain fully responsible for paying
1158 regular assessments and collecting emergency assessments for any
1159 deficits of the association; however, it is also the intent of
1160 the Legislature to provide a means by which assessment

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1161 liabilities may be amortized over a period of years.

1162 d.(I) When the deficit incurred in a particular calendar
1163 year is 10 percent or less of the aggregate statewide direct
1164 written premium for property insurance for the prior calendar
1165 year for all member insurers, the association shall levy an
1166 assessment on member insurers in an amount equal to the deficit.

1167 (II) When the deficit incurred in a particular calendar
1168 year exceeds 10 percent of the aggregate statewide direct written
1169 premium for property insurance for the prior calendar year for
1170 all member insurers, the association shall levy an assessment on
1171 member insurers in an amount equal to the greater of 10 percent
1172 of the deficit or 10 percent of the aggregate statewide direct
1173 written premium for property insurance for the prior calendar
1174 year for member insurers. Any remaining deficit shall be
1175 recovered through emergency assessments under sub-sub-
1176 subparagraph (III).

1177 (III) Upon a determination by the board of directors that a
1178 deficit exceeds the amount that will be recovered through regular
1179 assessments on member insurers, pursuant to sub-sub-subparagraph
1180 (I) or sub-sub-subparagraph (II), the board shall levy, after
1181 verification by the department, emergency assessments to be
1182 collected by member insurers and by underwriting associations
1183 created pursuant to this section which write property insurance,
1184 upon issuance or renewal of property insurance policies other
1185 than National Flood Insurance policies in the year or years
1186 following levy of the regular assessments. The amount of the
1187 emergency assessment collected in a particular year shall be a
1188 uniform percentage of that year's direct written premium for
1189 property insurance for all member insurers and underwriting

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1190 associations, excluding National Flood Insurance policy premiums,
1191 as annually determined by the board and verified by the
1192 department. The department shall verify the arithmetic
1193 calculations involved in the board's determination within 30 days
1194 after receipt of the information on which the determination was
1195 based. Notwithstanding any other provision of law, each member
1196 insurer and each underwriting association created pursuant to
1197 this section shall collect emergency assessments from its
1198 policyholders without such obligation being affected by any
1199 credit, limitation, exemption, or deferment. The emergency
1200 assessments so collected shall be transferred directly to the
1201 association on a periodic basis as determined by the association.
1202 The aggregate amount of emergency assessments levied under this
1203 sub-sub-subparagraph in any calendar year may not exceed the
1204 greater of 10 percent of the amount needed to cover the original
1205 deficit, plus interest, fees, commissions, required reserves, and
1206 other costs associated with financing of the original deficit, or
1207 10 percent of the aggregate statewide direct written premium for
1208 property insurance written by member insurers and underwriting
1209 associations for the prior year, plus interest, fees,
1210 commissions, required reserves, and other costs associated with
1211 financing the original deficit. The board may pledge the proceeds
1212 of the emergency assessments under this sub-sub-subparagraph as
1213 the source of revenue for bonds, to retire any other debt
1214 incurred as a result of the deficit or events giving rise to the
1215 deficit, or in any other way that the board determines will
1216 efficiently recover the deficit. The emergency assessments under
1217 this sub-sub-subparagraph shall continue as long as any bonds
1218 issued or other indebtedness incurred with respect to a deficit

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1219 | for which the assessment was imposed remain outstanding, unless
1220 | adequate provision has been made for the payment of such bonds or
1221 | other indebtedness pursuant to the document governing such bonds
1222 | or other indebtedness. Emergency assessments collected under this
1223 | sub-sub-subparagraph are not part of an insurer's rates, are not
1224 | premium, and are not subject to premium tax, fees, or
1225 | commissions; however, failure to pay the emergency assessment
1226 | shall be treated as failure to pay premium.

1227 | (IV) Each member insurer's share of the total regular
1228 | assessments under sub-sub-subparagraph (I) or sub-sub-
1229 | subparagraph (II) shall be in the proportion that the insurer's
1230 | net direct premium for property insurance in this state, for the
1231 | year preceding the assessment bears to the aggregate statewide
1232 | net direct premium for property insurance of all member insurers,
1233 | as reduced by any credits for voluntary writings for that year.

1234 | (V) If regular deficit assessments are made under sub-sub-
1235 | subparagraph (I) or sub-sub-subparagraph (II), or by the
1236 | Residential Property and Casualty Joint Underwriting Association
1237 | under sub-subparagraph (6)(b)3.a. or sub-subparagraph (6)(b)3.b.,
1238 | the association shall levy upon the association's policyholders,
1239 | as part of its next rate filing, or by a separate rate filing
1240 | solely for this purpose, a market equalization surcharge in a
1241 | percentage equal to the total amount of such regular assessments
1242 | divided by the aggregate statewide direct written premium for
1243 | property insurance for member insurers for the prior calendar
1244 | year. Market equalization surcharges under this sub-sub-
1245 | subparagraph are not considered premium and are not subject to
1246 | commissions, fees, or premium taxes; however, failure to pay a
1247 | market equalization surcharge shall be treated as failure to pay

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1248 premium.

1249 e. The governing body of any unit of local government, any
1250 residents of which are insured under the plan, may issue bonds as
1251 defined in s. 125.013 or s. 166.101 to fund an assistance
1252 program, in conjunction with the association, for the purpose of
1253 defraying deficits of the association. In order to avoid needless
1254 and indiscriminate proliferation, duplication, and fragmentation
1255 of such assistance programs, any unit of local government, any
1256 residents of which are insured by the association, may provide
1257 for the payment of losses, regardless of whether or not the
1258 losses occurred within or outside of the territorial jurisdiction
1259 of the local government. Revenue bonds may not be issued until
1260 validated pursuant to chapter 75, unless a state of emergency is
1261 declared by executive order or proclamation of the Governor
1262 pursuant to s. 252.36 making such findings as are necessary to
1263 determine that it is in the best interests of, and necessary for,
1264 the protection of the public health, safety, and general welfare
1265 of residents of this state and the protection and preservation of
1266 the economic stability of insurers operating in this state, and
1267 declaring it an essential public purpose to permit certain
1268 municipalities or counties to issue bonds as will provide relief
1269 to claimants and policyholders of the association and insurers
1270 responsible for apportionment of plan losses. Any such unit of
1271 local government may enter into such contracts with the
1272 association and with any other entity created pursuant to this
1273 subsection as are necessary to carry out this paragraph. Any
1274 bonds issued under this sub-subparagraph shall be payable from
1275 and secured by moneys received by the association from
1276 assessments under this subparagraph, and assigned and pledged to

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1277 or on behalf of the unit of local government for the benefit of
1278 the holders of such bonds. The funds, credit, property, and
1279 taxing power of the state or of the unit of local government
1280 shall not be pledged for the payment of such bonds. If any of the
1281 bonds remain unsold 60 days after issuance, the department shall
1282 require all insurers subject to assessment to purchase the bonds,
1283 which shall be treated as admitted assets; each insurer shall be
1284 required to purchase that percentage of the unsold portion of the
1285 bond issue that equals the insurer's relative share of assessment
1286 liability under this subsection. An insurer shall not be required
1287 to purchase the bonds to the extent that the department
1288 determines that the purchase would endanger or impair the
1289 solvency of the insurer. The authority granted by this sub-
1290 subparagraph is additional to any bonding authority granted by
1291 subparagraph 6.

1292 3. The plan shall also provide that any member with a
1293 surplus as to policyholders of \$20 million or less writing 25
1294 percent or more of its total countrywide property insurance
1295 premiums in this state may petition the department, within the
1296 first 90 days of each calendar year, to qualify as a limited
1297 apportionment company. The apportionment of such a member company
1298 in any calendar year for which it is qualified shall not exceed
1299 its gross participation, which shall not be affected by the
1300 formula for voluntary writings. In no event shall a limited
1301 apportionment company be required to participate in any
1302 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1303 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
1304 \$50 million after payment of available plan funds in any calendar
1305 year. However, a limited apportionment company shall collect from

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1306 its policyholders any emergency assessment imposed under sub-sub-
1307 subparagraph 2.d.(III). The plan shall provide that, if the
1308 department determines that any regular assessment will result in
1309 an impairment of the surplus of a limited apportionment company,
1310 the department may direct that all or part of such assessment be
1311 deferred. However, there shall be no limitation or deferment of
1312 an emergency assessment to be collected from policyholders under
1313 sub-sub-subparagraph 2.d.(III).

1314 4. The plan shall provide for the deferment, in whole or in
1315 part, of a regular assessment of a member insurer under sub-sub-
1316 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not
1317 for an emergency assessment collected from policyholders under
1318 sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1319 commissioner, payment of such regular assessment would endanger
1320 or impair the solvency of the member insurer. In the event a
1321 regular assessment against a member insurer is deferred in whole
1322 or in part, the amount by which such assessment is deferred may
1323 be assessed against the other member insurers in a manner
1324 consistent with the basis for assessments set forth in sub-sub-
1325 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1326 5.a. The plan of operation may include deductibles and
1327 rules for classification of risks and rate modifications
1328 consistent with the objective of providing and maintaining funds
1329 sufficient to pay catastrophe losses.

1330 ~~b. The association may require arbitration of a rate filing~~
1331 ~~under s. 627.062(6).~~ It is the intent of the Legislature that the
1332 rates for coverage provided by the association be actuarially
1333 sound and not competitive with approved rates charged in the
1334 admitted voluntary market such that the association functions as

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1335 a residual market mechanism to provide insurance only when the
1336 insurance cannot be procured in the voluntary market. The plan of
1337 operation shall provide a mechanism to assure that, beginning no
1338 later than January 1, 1999, the rates charged by the association
1339 for each line of business are reflective of approved rates in the
1340 voluntary market for hurricane coverage for each line of business
1341 in the various areas eligible for association coverage.

1342 c. The association shall provide for windstorm coverage on
1343 residential properties in limits up to \$10 million for commercial
1344 lines residential risks and up to \$1 million for personal lines
1345 residential risks. If coverage with the association is sought for
1346 a residential risk valued in excess of these limits, coverage
1347 shall be available to the risk up to the replacement cost or
1348 actual cash value of the property, at the option of the insured,
1349 if coverage for the risk cannot be located in the authorized
1350 market. The association must accept a commercial lines
1351 residential risk with limits above \$10 million or a personal
1352 lines residential risk with limits above \$1 million if coverage
1353 is not available in the authorized market. The association may
1354 write coverage above the limits specified in this subparagraph
1355 with or without facultative or other reinsurance coverage, as the
1356 association determines appropriate.

1357 d. The plan of operation must provide objective criteria
1358 and procedures, approved by the department, to be uniformly
1359 applied for all applicants in determining whether an individual
1360 risk is so hazardous as to be uninsurable. In making this
1361 determination and in establishing the criteria and procedures,
1362 the following shall be considered:

1363 (I) Whether the likelihood of a loss for the individual

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1364 risk is substantially higher than for other risks of the same
1365 class; and

1366 (II) Whether the uncertainty associated with the individual
1367 risk is such that an appropriate premium cannot be determined.

1368
1369 The acceptance or rejection of a risk by the association pursuant
1370 to such criteria and procedures must be construed as the private
1371 placement of insurance, and the provisions of chapter 120 do not
1372 apply.

1373 e. If the risk accepts an offer of coverage through the
1374 market assistance program or through a mechanism established by
1375 the association, either before the policy is issued by the
1376 association or during the first 30 days of coverage by the
1377 association, and the producing agent who submitted the
1378 application to the association is not currently appointed by the
1379 insurer, the insurer shall:

1380 (I) Pay to the producing agent of record of the policy, for
1381 the first year, an amount that is the greater of the insurer's
1382 usual and customary commission for the type of policy written or
1383 a fee equal to the usual and customary commission of the
1384 association; or

1385 (II) Offer to allow the producing agent of record of the
1386 policy to continue servicing the policy for a period of not less
1387 than 1 year and offer to pay the agent the greater of the
1388 insurer's or the association's usual and customary commission for
1389 the type of policy written.

1390
1391 If the producing agent is unwilling or unable to accept
1392 appointment, the new insurer shall pay the agent in accordance

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1393 with sub-sub-subparagraph (I). Subject to the provisions of s.
1394 627.3517, the policies issued by the association must provide
1395 that if the association obtains an offer from an authorized
1396 insurer to cover the risk at its approved rates under either a
1397 standard policy including wind coverage or, if consistent with
1398 the insurer's underwriting rules as filed with the department, a
1399 basic policy including wind coverage, the risk is no longer
1400 eligible for coverage through the association. Upon termination
1401 of eligibility, the association shall provide written notice to
1402 the policyholder and agent of record stating that the association
1403 policy must be canceled as of 60 days after the date of the
1404 notice because of the offer of coverage from an authorized
1405 insurer. Other provisions of the insurance code relating to
1406 cancellation and notice of cancellation do not apply to actions
1407 under this sub-subparagraph.

1408 f. When the association enters into a contractual agreement
1409 for a take-out plan, the producing agent of record of the
1410 association policy is entitled to retain any unearned commission
1411 on the policy, and the insurer shall:

1412 (I) Pay to the producing agent of record of the association
1413 policy, for the first year, an amount that is the greater of the
1414 insurer's usual and customary commission for the type of policy
1415 written or a fee equal to the usual and customary commission of
1416 the association; or

1417 (II) Offer to allow the producing agent of record of the
1418 association policy to continue servicing the policy for a period
1419 of not less than 1 year and offer to pay the agent the greater of
1420 the insurer's or the association's usual and customary commission
1421 for the type of policy written.

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1422
1423 If the producing agent is unwilling or unable to accept
1424 appointment, the new insurer shall pay the agent in accordance
1425 with sub-sub-subparagraph (I).

1426 6.a. The plan of operation may authorize the formation of a
1427 private nonprofit corporation, a private nonprofit unincorporated
1428 association, a partnership, a trust, a limited liability company,
1429 or a nonprofit mutual company which may be empowered, among other
1430 things, to borrow money by issuing bonds or by incurring other
1431 indebtedness and to accumulate reserves or funds to be used for
1432 the payment of insured catastrophe losses. The plan may authorize
1433 all actions necessary to facilitate the issuance of bonds,
1434 including the pledging of assessments or other revenues.

1435 b. Any entity created under this subsection, or any entity
1436 formed for the purposes of this subsection, may sue and be sued,
1437 may borrow money; issue bonds, notes, or debt instruments; pledge
1438 or sell assessments, market equalization surcharges and other
1439 surcharges, rights, premiums, contractual rights, projected
1440 recoveries from the Florida Hurricane Catastrophe Fund, other
1441 reinsurance recoverables, and other assets as security for such
1442 bonds, notes, or debt instruments; enter into any contracts or
1443 agreements necessary or proper to accomplish such borrowings; and
1444 take other actions necessary to carry out the purposes of this
1445 subsection. The association may issue bonds or incur other
1446 indebtedness, or have bonds issued on its behalf by a unit of
1447 local government pursuant to subparagraph (6)(p)2., in the
1448 absence of a hurricane or other weather-related event, upon a
1449 determination by the association subject to approval by the
1450 department that such action would enable it to efficiently meet

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1451 | the financial obligations of the association and that such
1452 | financings are reasonably necessary to effectuate the
1453 | requirements of this subsection. Any such entity may accumulate
1454 | reserves and retain surpluses as of the end of any association
1455 | year to provide for the payment of losses incurred by the
1456 | association during that year or any future year. The association
1457 | shall incorporate and continue the plan of operation and articles
1458 | of agreement in effect on the effective date of chapter 76-96,
1459 | Laws of Florida, to the extent that it is not inconsistent with
1460 | chapter 76-96, and as subsequently modified consistent with
1461 | chapter 76-96. The board of directors and officers currently
1462 | serving shall continue to serve until their successors are duly
1463 | qualified as provided under the plan. The assets and obligations
1464 | of the plan in effect immediately prior to the effective date of
1465 | chapter 76-96 shall be construed to be the assets and obligations
1466 | of the successor plan created herein.

1467 | c. In recognition of s. 10, Art. I of the State
1468 | Constitution, prohibiting the impairment of obligations of
1469 | contracts, it is the intent of the Legislature that no action be
1470 | taken whose purpose is to impair any bond indenture or financing
1471 | agreement or any revenue source committed by contract to such
1472 | bond or other indebtedness issued or incurred by the association
1473 | or any other entity created under this subsection.

1474 | 7. On such coverage, an agent's remuneration shall be that
1475 | amount of money payable to the agent by the terms of his or her
1476 | contract with the company with which the business is placed.
1477 | However, no commission will be paid on that portion of the
1478 | premium which is in excess of the standard premium of that
1479 | company.

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1480 8. Subject to approval by the department, the association
1481 may establish different eligibility requirements and operational
1482 procedures for any line or type of coverage for any specified
1483 eligible area or portion of an eligible area if the board
1484 determines that such changes to the eligibility requirements and
1485 operational procedures are justified due to the voluntary market
1486 being sufficiently stable and competitive in such area or for
1487 such line or type of coverage and that consumers who, in good
1488 faith, are unable to obtain insurance through the voluntary
1489 market through ordinary methods would continue to have access to
1490 coverage from the association. When coverage is sought in
1491 connection with a real property transfer, such requirements and
1492 procedures shall not provide for an effective date of coverage
1493 later than the date of the closing of the transfer as established
1494 by the transferor, the transferee, and, if applicable, the
1495 lender.

1496 9. Notwithstanding any other provision of law:

1497 a. The pledge or sale of, the lien upon, and the security
1498 interest in any rights, revenues, or other assets of the
1499 association created or purported to be created pursuant to any
1500 financing documents to secure any bonds or other indebtedness of
1501 the association shall be and remain valid and enforceable,
1502 notwithstanding the commencement of and during the continuation
1503 of, and after, any rehabilitation, insolvency, liquidation,
1504 bankruptcy, receivership, conservatorship, reorganization, or
1505 similar proceeding against the association under the laws of this
1506 state or any other applicable laws.

1507 b. No such proceeding shall relieve the association of its
1508 obligation, or otherwise affect its ability to perform its

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1509 obligation, to continue to collect, or levy and collect,
1510 assessments, market equalization or other surcharges, projected
1511 recoveries from the Florida Hurricane Catastrophe Fund,
1512 reinsurance recoverables, or any other rights, revenues, or other
1513 assets of the association pledged.

1514 c. Each such pledge or sale of, lien upon, and security
1515 interest in, including the priority of such pledge, lien, or
1516 security interest, any such assessments, emergency assessments,
1517 market equalization or renewal surcharges, projected recoveries
1518 from the Florida Hurricane Catastrophe Fund, reinsurance
1519 recoverables, or other rights, revenues, or other assets which
1520 are collected, or levied and collected, after the commencement of
1521 and during the pendency of or after any such proceeding shall
1522 continue unaffected by such proceeding.

1523 d. As used in this subsection, the term "financing
1524 documents" means any agreement, instrument, or other document now
1525 existing or hereafter created evidencing any bonds or other
1526 indebtedness of the association or pursuant to which any such
1527 bonds or other indebtedness has been or may be issued and
1528 pursuant to which any rights, revenues, or other assets of the
1529 association are pledged or sold to secure the repayment of such
1530 bonds or indebtedness, together with the payment of interest on
1531 such bonds or such indebtedness, or the payment of any other
1532 obligation of the association related to such bonds or
1533 indebtedness.

1534 e. Any such pledge or sale of assessments, revenues,
1535 contract rights or other rights or assets of the association
1536 shall constitute a lien and security interest, or sale, as the
1537 case may be, that is immediately effective and attaches to such

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1538 assessments, revenues, contract, or other rights or assets,
1539 whether or not imposed or collected at the time the pledge or
1540 sale is made. Any such pledge or sale is effective, valid,
1541 binding, and enforceable against the association or other entity
1542 making such pledge or sale, and valid and binding against and
1543 superior to any competing claims or obligations owed to any other
1544 person or entity, including policyholders in this state,
1545 asserting rights in any such assessments, revenues, contract, or
1546 other rights or assets to the extent set forth in and in
1547 accordance with the terms of the pledge or sale contained in the
1548 applicable financing documents, whether or not any such person or
1549 entity has notice of such pledge or sale and without the need for
1550 any physical delivery, recordation, filing, or other action.

1551 f. There shall be no liability on the part of, and no cause
1552 of action of any nature shall arise against, any member insurer
1553 or its agents or employees, agents or employees of the
1554 association, members of the board of directors of the
1555 association, or the department or its representatives, for any
1556 action taken by them in the performance of their duties or
1557 responsibilities under this subsection. Such immunity does not
1558 apply to actions for breach of any contract or agreement
1559 pertaining to insurance, or any willful tort.

1560 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1561 (a)1. It is the public purpose of this subsection to ensure
1562 the existence of an orderly market for property insurance for
1563 Floridians and Florida businesses. The Legislature finds that
1564 private insurers are unwilling or unable to provide affordable
1565 property insurance coverage in this state to the extent sought
1566 and needed. The absence of affordable property insurance

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1567 | threatens the public health, safety, and welfare and likewise
1568 | threatens the economic health of the state. The state therefore
1569 | has a compelling public interest and a public purpose to assist
1570 | in assuring that property in the state is insured and that it is
1571 | insured at affordable rates so as to facilitate the remediation,
1572 | reconstruction, and replacement of damaged or destroyed property
1573 | in order to reduce or avoid the negative effects otherwise
1574 | resulting to the public health, safety, and welfare, to the
1575 | economy of the state, and to the revenues of the state and local
1576 | governments which are needed to provide for the public welfare.
1577 | It is necessary, therefore, to provide affordable property
1578 | insurance to applicants who are in good faith entitled to procure
1579 | insurance through the voluntary market but are unable to do so.
1580 | The Legislature intends by this subsection that affordable
1581 | property insurance be provided and that it continue to be
1582 | provided, as long as necessary, through Citizens Property
1583 | Insurance Corporation, a government entity that is an integral
1584 | part of the state, and that is not a private insurance company.
1585 | To that end, Citizens Property Insurance Corporation shall strive
1586 | to increase the availability of affordable property insurance in
1587 | this state, while achieving efficiencies and economies, and while
1588 | providing service to policyholders, applicants, and agents which
1589 | is no less than the quality generally provided in the voluntary
1590 | market, for the achievement of the foregoing public purposes.
1591 | Because it is essential for this government entity to have the
1592 | maximum financial resources to pay claims following a
1593 | catastrophic hurricane, it is the intent of the Legislature that
1594 | Citizens Property Insurance Corporation continue to be an
1595 | integral part of the state and that the income of the corporation

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1596 | be exempt from federal income taxation and that interest on the
1597 | debt obligations issued by the corporation be exempt from federal
1598 | income taxation.

1599 | 2. The Residential Property and Casualty Joint Underwriting
1600 | Association originally created by this statute shall be known, as
1601 | of July 1, 2002, as the Citizens Property Insurance Corporation.
1602 | The corporation shall provide insurance for residential and
1603 | commercial property, for applicants who are in good faith
1604 | entitled, but are unable, to procure insurance through the
1605 | voluntary market. The corporation shall operate pursuant to a
1606 | plan of operation approved by order of the Financial Services
1607 | Commission. The plan is subject to continuous review by the
1608 | commission. The commission may, by order, withdraw approval of
1609 | all or part of a plan if the commission determines that
1610 | conditions have changed since approval was granted and that the
1611 | purposes of the plan require changes in the plan. The corporation
1612 | shall continue to operate pursuant to the plan of operation
1613 | approved by the Office of Insurance Regulation until October 1,
1614 | 2006. For the purposes of this subsection, residential coverage
1615 | includes both personal lines residential coverage, which consists
1616 | of the type of coverage provided by homeowner's, mobile home
1617 | owner's, dwelling, tenant's, condominium unit owner's, and
1618 | similar policies, and commercial lines residential coverage,
1619 | which consists of the type of coverage provided by condominium
1620 | association, apartment building, and similar policies.

1621 | ~~3. For the purposes of this subsection, the term "homestead~~
1622 | ~~property" means:~~

1623 | ~~a. Property that has been granted a homestead exemption~~
1624 | ~~under chapter 196;~~

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1625 ~~b. Property for which the owner has a current, written~~
1626 ~~lease with a renter for a term of at least 7 months and for which~~
1627 ~~the dwelling is insured by the corporation for \$200,000 or less;~~

1628 ~~e. An owner-occupied mobile home or manufactured home, as~~
1629 ~~defined in s. 320.01, which is permanently affixed to real~~
1630 ~~property, is owned by a Florida resident, and has been granted a~~
1631 ~~homestead exemption under chapter 196 or, if the owner does not~~
1632 ~~own the real property, the owner certifies that the mobile home~~
1633 ~~or manufactured home is his or her principal place of residence;~~

1634 ~~d. Tenant's coverage;~~

1635 ~~e. Commercial lines residential property; or~~

1636 ~~f. Any county, district, or municipal hospital; a hospital~~
1637 ~~licensed by any not-for-profit corporation qualified under s.~~
1638 ~~501(e)(3) of the United States Internal Revenue Code; or a~~
1639 ~~continuing care retirement community that is certified under~~
1640 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1641 ~~under chapter 196.~~

1642 ~~4. For the purposes of this subsection, the term~~
1643 ~~"nonhomestead property" means property that is not homestead~~
1644 ~~property.~~

1645 ~~5. Effective January 1, 2009, a personal lines residential~~
1646 ~~structure that has a dwelling replacement cost of \$1 million or~~
1647 ~~more, or a single condominium unit that has a combined dwelling~~
1648 ~~and content replacement cost of \$1 million or more is not~~
1649 ~~eligible for coverage by the corporation. Such dwellings insured~~
1650 ~~by the corporation on December 31, 2008, may continue to be~~
1651 ~~covered by the corporation until the end of the policy term.~~
1652 ~~However, such dwellings that are insured by the corporation and~~
1653 ~~become ineligible for coverage due to the provisions of this~~

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1654 ~~subparagraph may reapply and obtain coverage in the high-risk~~
1655 ~~account and be considered "nonhomestead property" if the property~~
1656 ~~owner provides the corporation with a sworn affidavit from one or~~
1657 ~~more insurance agents, on a form provided by the corporation,~~
1658 ~~stating that the agents have made their best efforts to obtain~~
1659 ~~coverage and that the property has been rejected for coverage by~~
1660 ~~at least one authorized insurer and at least three surplus lines~~
1661 ~~insurers. If such conditions are met, the dwelling may be insured~~
1662 ~~by the corporation for up to 3 years, after which time the~~
1663 ~~dwelling is ineligible for coverage. The office shall approve the~~
1664 ~~method used by the corporation for valuing the dwelling~~
1665 ~~replacement cost for the purposes of this subparagraph. If a~~
1666 ~~policyholder is insured by the corporation prior to being~~
1667 ~~determined to be ineligible pursuant to this subparagraph and~~
1668 ~~such policyholder files a lawsuit challenging the determination,~~
1669 ~~the policyholder may remain insured by the corporation until the~~
1670 ~~conclusion of the litigation.~~

1671 3.6. For properties constructed on or after January 1,
1672 2009, the corporation may not insure any property located within
1673 2,500 feet landward of the coastal construction control line
1674 created pursuant to s. 161.053 unless the property meets the
1675 requirements of the code-plus building standards developed by the
1676 Florida Building Commission.

1677 4.7. It is the intent of the Legislature that
1678 policyholders, applicants, and agents of the corporation receive
1679 service and treatment of the highest possible level but never
1680 less than that generally provided in the voluntary market. It
1681 also is intended that the corporation be held to service
1682 standards no less than those applied to insurers in the voluntary

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1683 market by the office with respect to responsiveness, timeliness,
1684 customer courtesy, and overall dealings with policyholders,
1685 applicants, or agents of the corporation.

1686 ~~5.8.~~ Effective January 1, 2009, a personal lines
1687 residential structure that is located in the "wind-borne debris
1688 region," as defined in s. 1609.2, International Building Code
1689 (2006), and that has an insured value on the structure of
1690 \$750,000 or more is not eligible for coverage by the corporation
1691 unless the structure has opening protections as required under
1692 the Florida Building Code for a newly constructed residential
1693 structure in that area. A residential structure shall be deemed
1694 to comply with the requirements of this subparagraph if it has
1695 shutters or opening protections on all openings and if such
1696 opening protections complied with the Florida Building Code at
1697 the time they were installed. Effective January 1, 2011, the
1698 requirements of this subparagraph apply to a personal lines
1699 residential structure that is located in the wind-borne debris
1700 region and that has an insured value on the structure of \$500,000
1701 or more.

1702 (b)1. All insurers authorized to write one or more subject
1703 lines of business in this state are subject to assessment by the
1704 corporation and, for the purposes of this subsection, are
1705 referred to collectively as "assessable insurers." Insurers
1706 writing one or more subject lines of business in this state
1707 pursuant to part VIII of chapter 626 are not assessable insurers,
1708 but insureds who procure one or more subject lines of business in
1709 this state pursuant to part VIII of chapter 626 are subject to
1710 assessment by the corporation and are referred to collectively as
1711 "assessable insureds." An authorized insurer's assessment

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1712 liability shall begin on the first day of the calendar year
1713 following the year in which the insurer was issued a certificate
1714 of authority to transact insurance for subject lines of business
1715 in this state and shall terminate 1 year after the end of the
1716 first calendar year during which the insurer no longer holds a
1717 certificate of authority to transact insurance for subject lines
1718 of business in this state.

1719 2.a. All revenues, assets, liabilities, losses, and
1720 expenses of the corporation shall be divided into three separate
1721 accounts as follows:

1722 (I) A personal lines account for personal residential
1723 policies issued by the corporation or issued by the Residential
1724 Property and Casualty Joint Underwriting Association and renewed
1725 by the corporation that provide comprehensive, multiperil
1726 coverage on risks that are not located in areas eligible for
1727 coverage in the Florida Windstorm Underwriting Association as
1728 those areas were defined on January 1, 2002, and for such
1729 policies that do not provide coverage for the peril of wind on
1730 risks that are located in such areas;

1731 (II) A commercial lines account for commercial residential
1732 and commercial nonresidential policies issued by the corporation
1733 or issued by the Residential Property and Casualty Joint
1734 Underwriting Association and renewed by the corporation that
1735 provide coverage for basic property perils on risks that are not
1736 located in areas eligible for coverage in the Florida Windstorm
1737 Underwriting Association as those areas were defined on January
1738 1, 2002, and for such policies that do not provide coverage for
1739 the peril of wind on risks that are located in such areas; and

1740 (III) A high-risk account for personal residential policies

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1741 and commercial residential and commercial nonresidential property
1742 policies issued by the corporation or transferred to the
1743 corporation that provide coverage for the peril of wind on risks
1744 that are located in areas eligible for coverage in the Florida
1745 Windstorm Underwriting Association as those areas were defined on
1746 January 1, 2002. ~~Subject to the approval of a business plan by~~
1747 ~~the Financial Services Commission and Legislative Budget~~
1748 ~~Commission as provided in this sub-sub-subparagraph, but no~~
1749 ~~earlier than March 31, 2007,~~ The corporation shall ~~may~~ offer
1750 policies that provide multiperil coverage and the corporation
1751 shall ~~continue to~~ offer policies that provide coverage only for
1752 the peril of wind for risks located in areas eligible for
1753 coverage in the high-risk account. Beginning July 1, 2008, the
1754 corporation may not issue new policies that provide coverage only
1755 for the peril of wind, but may continue to renew such policies
1756 that were in force on that date. In issuing multiperil coverage,
1757 the corporation may use its approved policy forms and rates for
1758 the personal lines account. An applicant or insured who is
1759 eligible to purchase a multiperil policy from the corporation may
1760 purchase a multiperil policy from an authorized insurer without
1761 prejudice to the applicant's or insured's eligibility to
1762 prospectively purchase a policy that provides coverage only for
1763 the peril of wind from the corporation prior to July 1, 2008. An
1764 applicant or insured who is eligible for a corporation policy
1765 that provides coverage only for the peril of wind may elect to
1766 purchase or retain such policy and also purchase or retain
1767 coverage excluding wind from an authorized insurer without
1768 prejudice to the applicant's or insured's eligibility to
1769 prospectively purchase a policy that provides multiperil coverage

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1770 from the corporation. It is the goal of the Legislature that
1771 there would be an overall average savings of 10 percent or more
1772 for a policyholder who currently has a wind-only policy with the
1773 corporation, and an ex-wind policy with a voluntary insurer or
1774 the corporation, and who then obtains a multiperil policy from
1775 the corporation. It is the intent of the Legislature that the
1776 offer of multiperil coverage in the high-risk account be made and
1777 implemented in a manner that does not adversely affect the tax-
1778 exempt status of the corporation or creditworthiness of or
1779 security for currently outstanding financing obligations or
1780 credit facilities of the high-risk account, the personal lines
1781 account, or the commercial lines account. ~~By March 1, 2007, the~~
1782 ~~corporation shall prepare and submit for approval by the~~
1783 ~~Financial Services Commission and Legislative Budget Commission a~~
1784 ~~report detailing the corporation's business plan for issuing~~
1785 ~~multiperil coverage in the high-risk account. The business plan~~
1786 ~~shall be approved or disapproved within 30 days after receipt, as~~
1787 ~~submitted or modified and resubmitted by the corporation. The~~
1788 ~~business plan must include: the impact of such multiperil~~
1789 ~~coverage on the corporation's financial resources, the impact of~~
1790 ~~such multiperil coverage on the corporation's tax-exempt status,~~
1791 ~~the manner in which the corporation plans to implement the~~
1792 ~~processing of applications and policy forms for new and existing~~
1793 ~~policyholders, the impact of such multiperil coverage on the~~
1794 ~~corporation's ability to deliver customer service at the high~~
1795 ~~level required by this subsection, the ability of the corporation~~
1796 ~~to process claims, the ability of the corporation to quote and~~
1797 ~~issue policies, the impact of such multiperil coverage on the~~
1798 ~~corporation's agents, the impact of such multiperil coverage on~~

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1799 ~~the corporation's existing policyholders, and the impact of such~~
1800 ~~multi-peril coverage on rates and premium.~~ The high-risk account
1801 must also include quota share primary insurance under
1802 subparagraph (c)2. The area eligible for coverage under the high-
1803 risk account also includes the area within Port Canaveral, which
1804 is bordered on the south by the City of Cape Canaveral, bordered
1805 on the west by the Banana River, and bordered on the north by
1806 Federal Government property.

1807 b. The three separate accounts must be maintained as long
1808 as financing obligations entered into by the Florida Windstorm
1809 Underwriting Association or Residential Property and Casualty
1810 Joint Underwriting Association are outstanding, in accordance
1811 with the terms of the corresponding financing documents. When the
1812 financing obligations are no longer outstanding, in accordance
1813 with the terms of the corresponding financing documents, the
1814 corporation may use a single account for all revenues, assets,
1815 liabilities, losses, and expenses of the corporation. Consistent
1816 with the requirement of this subparagraph and prudent investment
1817 policies that minimize the cost of carrying debt, the board shall
1818 exercise its best efforts to retire existing debt or to obtain
1819 approval of necessary parties to amend the terms of existing
1820 debt, so as to structure the most efficient plan to consolidate
1821 the three separate accounts into a single account. By February 1,
1822 2007, the board shall submit a report to the Financial Services
1823 Commission, the President of the Senate, and the Speaker of the
1824 House of Representatives which includes an analysis of
1825 consolidating the accounts, the actions the board has taken to
1826 minimize the cost of carrying debt, and its recommendations for
1827 executing the most efficient plan.

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1828 c. Creditors of the Residential Property and Casualty Joint
1829 Underwriting Association and of the accounts specified in sub-
1830 sub-subparagraphs a.(I) and (II) may have a claim against, and
1831 recourse to, the accounts referred to in sub-sub-subparagraphs
1832 a.(I) and (II) and shall have no claim against, or recourse to,
1833 the account referred to in sub-sub-subparagraph a.(III).

1834 Creditors of the Florida Windstorm Underwriting Association shall
1835 have a claim against, and recourse to, the account referred to in
1836 sub-sub-subparagraph a.(III) and shall have no claim against, or
1837 recourse to, the accounts referred to in sub-sub-subparagraphs
1838 a.(I) and (II).

1839 d. Revenues, assets, liabilities, losses, and expenses not
1840 attributable to particular accounts shall be prorated among the
1841 accounts.

1842 e. The Legislature finds that the revenues of the
1843 corporation are revenues that are necessary to meet the
1844 requirements set forth in documents authorizing the issuance of
1845 bonds under this subsection.

1846 f. No part of the income of the corporation may inure to
1847 the benefit of any private person.

1848 3. With respect to a deficit in an account:

1849 a. When the deficit incurred in a particular calendar year
1850 is not greater than 8 ~~10~~ percent of the aggregate statewide
1851 direct written premium for the subject lines of business for the
1852 prior calendar year, the entire deficit shall be recovered
1853 through regular assessments of assessable insurers under
1854 paragraph (p) and assessable insureds.

1855 b. When the deficit incurred in a particular calendar year
1856 exceeds 8 ~~10~~ percent of the aggregate statewide direct written

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1857 premium for the subject lines of business for the prior calendar
1858 year, the corporation shall levy regular assessments on
1859 assessable insurers under paragraph (p) and on assessable
1860 insureds in an amount equal to the greater of 8 ~~10~~ percent of the
1861 deficit or 8 ~~10~~ percent of the aggregate statewide direct written
1862 premium for the subject lines of business for the prior calendar
1863 year. Any remaining deficit shall be recovered through emergency
1864 assessments under sub-subparagraph d.

1865 c. Each assessable insurer's share of the amount being
1866 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1867 be in the proportion that the assessable insurer's direct written
1868 premium for the subject lines of business for the year preceding
1869 the assessment bears to the aggregate statewide direct written
1870 premium for the subject lines of business for that year. The
1871 assessment percentage applicable to each assessable insured is
1872 the ratio of the amount being assessed under sub-subparagraph a.
1873 or sub-subparagraph b. to the aggregate statewide direct written
1874 premium for the subject lines of business for the prior year.
1875 Assessments levied by the corporation on assessable insurers
1876 under sub-subparagraphs a. and b. shall be paid as required by
1877 the corporation's plan of operation and paragraph (p).
1878 notwithstanding any other provision of this subsection, the
1879 aggregate amount of a regular assessment for a deficit incurred
1880 in a particular calendar year shall be reduced by the estimated
1881 amount to be received by the corporation from the Citizens
1882 policyholder surcharge ~~under subparagraph (c)10. and the amount~~
1883 ~~collected or estimated to be collected from the assessment on~~
1884 ~~Citizens policyholders~~ pursuant to sub-subparagraph i.
1885 Assessments levied by the corporation on assessable insureds

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1886 under sub-subparagraphs a. and b. shall be collected by the
1887 surplus lines agent at the time the surplus lines agent collects
1888 the surplus lines tax required by s. 626.932 and shall be paid to
1889 the Florida Surplus Lines Service Office at the time the surplus
1890 lines agent pays the surplus lines tax to the Florida Surplus
1891 Lines Service Office. Upon receipt of regular assessments from
1892 surplus lines agents, the Florida Surplus Lines Service Office
1893 shall transfer the assessments directly to the corporation as
1894 determined by the corporation.

1895 d. Upon a determination by the board of governors that a
1896 deficit in an account exceeds the amount that will be recovered
1897 through regular assessments under sub-subparagraph a. or sub-
1898 subparagraph b., plus the amount that is expected to be recovered
1899 through surcharges under sub-subparagraph i., as to the remaining
1900 projected deficit the board shall levy, after verification by the
1901 office, emergency assessments, for as many years as necessary to
1902 cover the deficits, to be collected by assessable insurers and
1903 the corporation and collected from assessable insureds upon
1904 issuance or renewal of policies for subject lines of business,
1905 excluding National Flood Insurance policies. The amount of the
1906 emergency assessment collected in a particular year shall be a
1907 uniform percentage of that year's direct written premium for
1908 subject lines of business and all accounts of the corporation,
1909 excluding National Flood Insurance Program policy premiums, as
1910 annually determined by the board and verified by the office. The
1911 office shall verify the arithmetic calculations involved in the
1912 board's determination within 30 days after receipt of the
1913 information on which the determination was based. Notwithstanding
1914 any other provision of law, the corporation and each assessable

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1915 insurer that writes subject lines of business shall collect
1916 emergency assessments from its policyholders without such
1917 obligation being affected by any credit, limitation, exemption,
1918 or deferment. Emergency assessments levied by the corporation on
1919 assessable insureds shall be collected by the surplus lines agent
1920 at the time the surplus lines agent collects the surplus lines
1921 tax required by s. 626.932 and shall be paid to the Florida
1922 Surplus Lines Service Office at the time the surplus lines agent
1923 pays the surplus lines tax to the Florida Surplus Lines Service
1924 Office. The emergency assessments so collected shall be
1925 transferred directly to the corporation on a periodic basis as
1926 determined by the corporation and shall be held by the
1927 corporation solely in the applicable account. The aggregate
1928 amount of emergency assessments levied for an account under this
1929 sub-subparagraph in any calendar year may, at the discretion of
1930 the board of governors, be less than but may not exceed the
1931 greater of 10 percent of the amount needed to cover the ~~original~~
1932 deficit, plus interest, fees, commissions, required reserves, and
1933 other costs associated with financing of the original deficit, or
1934 10 percent of the aggregate statewide direct written premium for
1935 subject lines of business and for all accounts of the corporation
1936 for the prior year, plus interest, fees, commissions, required
1937 reserves, and other costs associated with financing the ~~original~~
1938 deficit.

1939 e. The corporation may pledge the proceeds of assessments,
1940 projected recoveries from the Florida Hurricane Catastrophe Fund,
1941 other insurance and reinsurance recoverables, policyholder
1942 surcharges and other surcharges, and other funds available to the
1943 corporation as the source of revenue for and to secure bonds

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1944 issued under paragraph (p), bonds or other indebtedness issued
1945 under subparagraph (c)3., or lines of credit or other financing
1946 mechanisms issued or created under this subsection, or to retire
1947 any other debt incurred as a result of deficits or events giving
1948 rise to deficits, or in any other way that the board determines
1949 will efficiently recover such deficits. The purpose of the lines
1950 of credit or other financing mechanisms is to provide additional
1951 resources to assist the corporation in covering claims and
1952 expenses attributable to a catastrophe. As used in this
1953 subsection, the term "assessments" includes regular assessments
1954 under sub-subparagraph a., sub-subparagraph b., or subparagraph
1955 (p)1. and emergency assessments under sub-subparagraph d.
1956 Emergency assessments collected under sub-subparagraph d. are not
1957 part of an insurer's rates, are not premium, and are not subject
1958 to premium tax, fees, or commissions; however, failure to pay the
1959 emergency assessment shall be treated as failure to pay premium.
1960 The emergency assessments under sub-subparagraph d. shall
1961 continue as long as any bonds issued or other indebtedness
1962 incurred with respect to a deficit for which the assessment was
1963 imposed remain outstanding, unless adequate provision has been
1964 made for the payment of such bonds or other indebtedness pursuant
1965 to the documents governing such bonds or other indebtedness.

1966 f. As used in this subsection for purposes of any deficit
1967 incurred on or after January 25, 2007, the term "subject lines of
1968 business" means insurance written by assessable insurers or
1969 procured by assessable insureds for all property and casualty
1970 lines of business in this state, but not including workers'
1971 compensation or medical malpractice. As used in the sub-
1972 subparagraph, the term "property and casualty lines of business"

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1973 includes all lines of business identified on Form 2, Exhibit of
1974 Premiums and Losses, in the annual statement required of
1975 authorized insurers by s. 624.424 and any rule adopted under this
1976 section, except for those lines identified as accident and health
1977 insurance and except for policies written under the National
1978 Flood Insurance Program or the Federal Crop Insurance Program.
1979 For purposes of this sub-subparagraph, the term "workers'
1980 compensation" includes both workers' compensation insurance and
1981 excess workers' compensation insurance.

1982 g. The Florida Surplus Lines Service Office shall determine
1983 annually the aggregate statewide written premium in subject lines
1984 of business procured by assessable insureds and shall report that
1985 information to the corporation in a form and at a time the
1986 corporation specifies to ensure that the corporation can meet the
1987 requirements of this subsection and the corporation's financing
1988 obligations.

1989 h. The Florida Surplus Lines Service Office shall verify
1990 the proper application by surplus lines agents of assessment
1991 percentages for regular assessments and emergency assessments
1992 levied under this subparagraph on assessable insureds and shall
1993 assist the corporation in ensuring the accurate, timely
1994 collection and payment of assessments by surplus lines agents as
1995 required by the corporation.

1996 i. If a deficit is incurred in any account in 2008 or
1997 thereafter, the board of governors shall levy a Citizens
1998 policyholder surcharge ~~an immediate assessment against the~~
1999 ~~premium of each nonhomestead property policyholder in all~~
2000 ~~accounts of the corporation, as a uniform percentage of the~~
2001 ~~premium of the policy of up to 10 percent of such premium, which~~

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2002 ~~funds shall be used to offset the deficit. If this assessment is~~
2003 ~~insufficient to eliminate the deficit, the board of governors~~
2004 ~~shall levy an additional assessment~~ against all policyholders of
2005 the corporation for a 12-month period, which shall be collected
2006 at the time of issuance or renewal of a policy, as a uniform
2007 percentage of the premium for the policy of up to 10 percent of
2008 such premium, which funds shall be used to ~~further~~ offset the
2009 deficit and reduce the amount of the regular assessment as
2010 provided in sub-subparagraphs a. and b. Citizens policyholder
2011 surcharges under this sub-subparagraph are not considered premium
2012 and are not subject to commissions, fees, or premium taxes.
2013 However, failure to pay such surcharges shall be treated as
2014 failure to pay premium.

2015 j. If the amount of any assessments or surcharges collected
2016 from corporation policyholders, assessable insurers or their
2017 policyholders, or assessable insureds exceeds the amount of the
2018 deficits, such excess amounts shall be remitted to and retained
2019 by the corporation in a reserve to be used by the corporation, as
2020 determined by the board of governors and approved by the office,
2021 to pay claims or reduce any past, present, or future plan-year
2022 deficits or to reduce outstanding debt. The board of governors
2023 ~~shall maintain separate accounting records that consolidate data~~
2024 ~~for nonhomestead properties, including, but not limited to,~~
2025 ~~number of policies, insured values, premiums written, and losses.~~
2026 ~~The board of governors shall annually report to the office and~~
2027 ~~the Legislature a summary of such data.~~

2028 (c) The plan of operation of the corporation:

2029 1. Must provide for adoption of residential property and
2030 casualty insurance policy forms and commercial residential and

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2031 nonresidential property insurance forms, which forms must be
2032 approved by the office prior to use. The corporation shall adopt
2033 the following policy forms:

2034 a. Standard personal lines policy forms that are
2035 comprehensive multiperil policies providing full coverage of a
2036 residential property equivalent to the coverage provided in the
2037 private insurance market under an HO-3, HO-4, or HO-6 policy.

2038 b. Basic personal lines policy forms that are policies
2039 similar to an HO-8 policy or a dwelling fire policy that provide
2040 coverage meeting the requirements of the secondary mortgage
2041 market, but which coverage is more limited than the coverage
2042 under a standard policy.

2043 c. Commercial lines residential and nonresidential policy
2044 forms that are generally similar to the basic perils of full
2045 coverage obtainable for commercial residential structures and
2046 commercial nonresidential structures in the admitted voluntary
2047 market.

2048 d. Personal lines and commercial lines residential property
2049 insurance forms that cover the peril of wind only. The forms are
2050 applicable only to residential properties located in areas
2051 eligible for coverage under the high-risk account referred to in
2052 sub-subparagraph (b)2.a.

2053 e. Commercial lines nonresidential property insurance forms
2054 that cover the peril of wind only. The forms are applicable only
2055 to nonresidential properties located in areas eligible for
2056 coverage under the high-risk account referred to in sub-
2057 subparagraph (b)2.a.

2058 f. The corporation may adopt variations of the policy forms
2059 listed in sub-subparagraphs a.-e. that contain more restrictive

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2060 coverage.

2061 2.a. Must provide that the corporation adopt a program in
2062 which the corporation and authorized insurers enter into quota
2063 share primary insurance agreements for hurricane coverage, as
2064 defined in s. 627.4025(2)(a), for eligible risks, and adopt
2065 property insurance forms for eligible risks which cover the peril
2066 of wind only. As used in this subsection, the term:

2067 (I) "Quota share primary insurance" means an arrangement in
2068 which the primary hurricane coverage of an eligible risk is
2069 provided in specified percentages by the corporation and an
2070 authorized insurer. The corporation and authorized insurer are
2071 each solely responsible for a specified percentage of hurricane
2072 coverage of an eligible risk as set forth in a quota share
2073 primary insurance agreement between the corporation and an
2074 authorized insurer and the insurance contract. The responsibility
2075 of the corporation or authorized insurer to pay its specified
2076 percentage of hurricane losses of an eligible risk, as set forth
2077 in the quota share primary insurance agreement, may not be
2078 altered by the inability of the other party to the agreement to
2079 pay its specified percentage of hurricane losses. Eligible risks
2080 that are provided hurricane coverage through a quota share
2081 primary insurance arrangement must be provided policy forms that
2082 set forth the obligations of the corporation and authorized
2083 insurer under the arrangement, clearly specify the percentages of
2084 quota share primary insurance provided by the corporation and
2085 authorized insurer, and conspicuously and clearly state that
2086 neither the authorized insurer nor the corporation may be held
2087 responsible beyond its specified percentage of coverage of
2088 hurricane losses.

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2089 (II) "Eligible risks" means personal lines residential and
2090 commercial lines residential risks that meet the underwriting
2091 criteria of the corporation and are located in areas that were
2092 eligible for coverage by the Florida Windstorm Underwriting
2093 Association on January 1, 2002.

2094 b. The corporation may enter into quota share primary
2095 insurance agreements with authorized insurers at corporation
2096 coverage levels of 90 percent and 50 percent.

2097 c. If the corporation determines that additional coverage
2098 levels are necessary to maximize participation in quota share
2099 primary insurance agreements by authorized insurers, the
2100 corporation may establish additional coverage levels. However,
2101 the corporation's quota share primary insurance coverage level
2102 may not exceed 90 percent.

2103 d. Any quota share primary insurance agreement entered into
2104 between an authorized insurer and the corporation must provide
2105 for a uniform specified percentage of coverage of hurricane
2106 losses, by county or territory as set forth by the corporation
2107 board, for all eligible risks of the authorized insurer covered
2108 under the quota share primary insurance agreement.

2109 e. Any quota share primary insurance agreement entered into
2110 between an authorized insurer and the corporation is subject to
2111 review and approval by the office. However, such agreement shall
2112 be authorized only as to insurance contracts entered into between
2113 an authorized insurer and an insured who is already insured by
2114 the corporation for wind coverage.

2115 f. For all eligible risks covered under quota share primary
2116 insurance agreements, the exposure and coverage levels for both
2117 the corporation and authorized insurers shall be reported by the

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2118 corporation to the Florida Hurricane Catastrophe Fund. For all
2119 policies of eligible risks covered under quota share primary
2120 insurance agreements, the corporation and the authorized insurer
2121 shall maintain complete and accurate records for the purpose of
2122 exposure and loss reimbursement audits as required by Florida
2123 Hurricane Catastrophe Fund rules. The corporation and the
2124 authorized insurer shall each maintain duplicate copies of policy
2125 declaration pages and supporting claims documents.

2126 g. The corporation board shall establish in its plan of
2127 operation standards for quota share agreements which ensure that
2128 there is no discriminatory application among insurers as to the
2129 terms of quota share agreements, pricing of quota share
2130 agreements, incentive provisions if any, and consideration paid
2131 for servicing policies or adjusting claims.

2132 h. The quota share primary insurance agreement between the
2133 corporation and an authorized insurer must set forth the specific
2134 terms under which coverage is provided, including, but not
2135 limited to, the sale and servicing of policies issued under the
2136 agreement by the insurance agent of the authorized insurer
2137 producing the business, the reporting of information concerning
2138 eligible risks, the payment of premium to the corporation, and
2139 arrangements for the adjustment and payment of hurricane claims
2140 incurred on eligible risks by the claims adjuster and personnel
2141 of the authorized insurer. Entering into a quota sharing
2142 insurance agreement between the corporation and an authorized
2143 insurer shall be voluntary and at the discretion of the
2144 authorized insurer.

2145 3. May provide that the corporation may employ or otherwise
2146 contract with individuals or other entities to provide

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2147 administrative or professional services that may be appropriate
2148 to effectuate the plan. The corporation shall have the power to
2149 borrow funds, by issuing bonds or by incurring other
2150 indebtedness, and shall have other powers reasonably necessary to
2151 effectuate the requirements of this subsection, including,
2152 without limitation, the power to issue bonds and incur other
2153 indebtedness in order to refinance outstanding bonds or other
2154 indebtedness. The corporation may, but is not required to, seek
2155 judicial validation of its bonds or other indebtedness under
2156 chapter 75. The corporation may issue bonds or incur other
2157 indebtedness, or have bonds issued on its behalf by a unit of
2158 local government pursuant to subparagraph (p)2., in the absence
2159 of a hurricane or other weather-related event, upon a
2160 determination by the corporation, subject to approval by the
2161 office, that such action would enable it to efficiently meet the
2162 financial obligations of the corporation and that such financings
2163 are reasonably necessary to effectuate the requirements of this
2164 subsection. The corporation is authorized to take all actions
2165 needed to facilitate tax-free status for any such bonds or
2166 indebtedness, including formation of trusts or other affiliated
2167 entities. The corporation shall have the authority to pledge
2168 assessments, projected recoveries from the Florida Hurricane
2169 Catastrophe Fund, other reinsurance recoverables, market
2170 equalization and other surcharges, and other funds available to
2171 the corporation as security for bonds or other indebtedness. In
2172 recognition of s. 10, Art. I of the State Constitution,
2173 prohibiting the impairment of obligations of contracts, it is the
2174 intent of the Legislature that no action be taken whose purpose
2175 is to impair any bond indenture or financing agreement or any

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2176 revenue source committed by contract to such bond or other
2177 indebtedness.

2178 4.a. Must require that the corporation operate subject to
2179 the supervision and approval of a board of governors consisting
2180 of eight individuals who are residents of this state, from
2181 different geographical areas of this state. The Governor, the
2182 Chief Financial Officer, the President of the Senate, and the
2183 Speaker of the House of Representatives shall each appoint two
2184 members of the board. At least one of the two members appointed
2185 by each appointing officer must have demonstrated expertise in
2186 insurance. The Chief Financial Officer shall designate one of the
2187 appointees as chair. All board members serve at the pleasure of
2188 the appointing officer. All members of the board of governors are
2189 subject to removal at will by the officers who appointed them.
2190 All board members, including the chair, must be appointed to
2191 serve for 3-year terms beginning annually on a date designated by
2192 the plan. Any board vacancy shall be filled for the unexpired
2193 term by the appointing officer. The Chief Financial Officer shall
2194 appoint a technical advisory group to provide information and
2195 advice to the board of governors in connection with the board's
2196 duties under this subsection. The executive director and senior
2197 managers of the corporation shall be engaged by the board and
2198 serve at the pleasure of the board. Any executive director
2199 appointed on or after July 1, 2006, is subject to confirmation by
2200 the Senate. The executive director is responsible for employing
2201 other staff as the corporation may require, subject to review and
2202 concurrence by the board.

2203 b. The board shall create a Market Accountability Advisory
2204 Committee to assist the corporation in developing awareness of

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2205 | its rates and its customer and agent service levels in
2206 | relationship to the voluntary market insurers writing similar
2207 | coverage. The members of the advisory committee shall consist of
2208 | the following 11 persons, one of whom must be elected chair by
2209 | the members of the committee: four representatives, one appointed
2210 | by the Florida Association of Insurance Agents, one by the
2211 | Florida Association of Insurance and Financial Advisors, one by
2212 | the Professional Insurance Agents of Florida, and one by the
2213 | Latin American Association of Insurance Agencies; three
2214 | representatives appointed by the insurers with the three highest
2215 | voluntary market share of residential property insurance business
2216 | in the state; one representative from the Office of Insurance
2217 | Regulation; one consumer appointed by the board who is insured by
2218 | the corporation at the time of appointment to the committee; one
2219 | representative appointed by the Florida Association of Realtors;
2220 | and one representative appointed by the Florida Bankers
2221 | Association. All members must serve for 3-year terms and may
2222 | serve for consecutive terms. The committee shall report to the
2223 | corporation at each board meeting on insurance market issues
2224 | which may include rates and rate competition with the voluntary
2225 | market; service, including policy issuance, claims processing,
2226 | and general responsiveness to policyholders, applicants, and
2227 | agents; and matters relating to depopulation.

2228 | 5. Must provide a procedure for determining the eligibility
2229 | of a risk for coverage, as follows:

2230 | a. Subject to the provisions of s. 627.3517, with respect
2231 | to personal lines residential risks, if the risk is offered
2232 | coverage from an authorized insurer at the insurer's approved
2233 | rate under either a standard policy including wind coverage or,

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2234 | if consistent with the insurer's underwriting rules as filed with
2235 | the office, a basic policy including wind coverage, for a new
2236 | application to the corporation for coverage, the risk is not
2237 | eligible for any policy issued by the corporation unless the
2238 | premium for coverage from the authorized insurer is more than 15
2239 | percent greater than the premium for comparable coverage from the
2240 | corporation. If the risk is not able to obtain any such offer,
2241 | the risk is eligible for either a standard policy including wind
2242 | coverage or a basic policy including wind coverage issued by the
2243 | corporation; however, if the risk could not be insured under a
2244 | standard policy including wind coverage regardless of market
2245 | conditions, the risk shall be eligible for a basic policy
2246 | including wind coverage unless rejected under subparagraph 9.
2247 | However, with regard to a policyholder of the corporation or a
2248 | policyholder removed from the corporation through an assumption
2249 | agreement until the end of the assumption period, the
2250 | policyholder remains eligible for coverage from the corporation
2251 | regardless of any offer of coverage from an authorized insurer or
2252 | surplus lines insurer. The corporation shall determine the type
2253 | of policy to be provided on the basis of objective standards
2254 | specified in the underwriting manual and based on generally
2255 | accepted underwriting practices.

2256 | (I) If the risk accepts an offer of coverage through the
2257 | market assistance plan or an offer of coverage through a
2258 | mechanism established by the corporation before a policy is
2259 | issued to the risk by the corporation or during the first 30 days
2260 | of coverage by the corporation, and the producing agent who
2261 | submitted the application to the plan or to the corporation is
2262 | not currently appointed by the insurer, the insurer shall:

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2263 (A) Pay to the producing agent of record of the policy, for
2264 the first year, an amount that is the greater of the insurer's
2265 usual and customary commission for the type of policy written or
2266 a fee equal to the usual and customary commission of the
2267 corporation; or

2268 (B) Offer to allow the producing agent of record of the
2269 policy to continue servicing the policy for a period of not less
2270 than 1 year and offer to pay the agent the greater of the
2271 insurer's or the corporation's usual and customary commission for
2272 the type of policy written.

2273

2274 If the producing agent is unwilling or unable to accept
2275 appointment, the new insurer shall pay the agent in accordance
2276 with sub-sub-sub-subparagraph (A).

2277 (II) When the corporation enters into a contractual
2278 agreement for a take-out plan, the producing agent of record of
2279 the corporation policy is entitled to retain any unearned
2280 commission on the policy, and the insurer shall:

2281 (A) Pay to the producing agent of record of the corporation
2282 policy, for the first year, an amount that is the greater of the
2283 insurer's usual and customary commission for the type of policy
2284 written or a fee equal to the usual and customary commission of
2285 the corporation; or

2286 (B) Offer to allow the producing agent of record of the
2287 corporation policy to continue servicing the policy for a period
2288 of not less than 1 year and offer to pay the agent the greater of
2289 the insurer's or the corporation's usual and customary commission
2290 for the type of policy written.

2291

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2292 If the producing agent is unwilling or unable to accept
2293 appointment, the new insurer shall pay the agent in accordance
2294 with sub-sub-sub-subparagraph (A).

2295 b. With respect to commercial lines residential risks, for
2296 a new application to the corporation for coverage, if the risk is
2297 offered coverage under a policy including wind coverage from an
2298 authorized insurer at its approved rate, the risk is not eligible
2299 for any policy issued by the corporation unless the premium for
2300 coverage from the authorized insurer is more than 15 percent
2301 greater than the premium for comparable coverage from the
2302 corporation. If the risk is not able to obtain any such offer,
2303 the risk is eligible for a policy including wind coverage issued
2304 by the corporation. However, with regard to a policyholder of the
2305 corporation or a policyholder removed from the corporation
2306 through an assumption agreement until the end of the assumption
2307 period, the policyholder remains eligible for coverage from the
2308 corporation regardless of any offer of coverage from an
2309 authorized insurer or surplus lines insurer.

2310 (I) If the risk accepts an offer of coverage through the
2311 market assistance plan or an offer of coverage through a
2312 mechanism established by the corporation before a policy is
2313 issued to the risk by the corporation or during the first 30 days
2314 of coverage by the corporation, and the producing agent who
2315 submitted the application to the plan or the corporation is not
2316 currently appointed by the insurer, the insurer shall:

2317 (A) Pay to the producing agent of record of the policy, for
2318 the first year, an amount that is the greater of the insurer's
2319 usual and customary commission for the type of policy written or
2320 a fee equal to the usual and customary commission of the

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2321 corporation; or

2322 (B) Offer to allow the producing agent of record of the
2323 policy to continue servicing the policy for a period of not less
2324 than 1 year and offer to pay the agent the greater of the
2325 insurer's or the corporation's usual and customary commission for
2326 the type of policy written.

2327
2328 If the producing agent is unwilling or unable to accept
2329 appointment, the new insurer shall pay the agent in accordance
2330 with sub-sub-sub-subparagraph (A).

2331 (II) When the corporation enters into a contractual
2332 agreement for a take-out plan, the producing agent of record of
2333 the corporation policy is entitled to retain any unearned
2334 commission on the policy, and the insurer shall:

2335 (A) Pay to the producing agent of record of the corporation
2336 policy, for the first year, an amount that is the greater of the
2337 insurer's usual and customary commission for the type of policy
2338 written or a fee equal to the usual and customary commission of
2339 the corporation; or

2340 (B) Offer to allow the producing agent of record of the
2341 corporation policy to continue servicing the policy for a period
2342 of not less than 1 year and offer to pay the agent the greater of
2343 the insurer's or the corporation's usual and customary commission
2344 for the type of policy written.

2345
2346 If the producing agent is unwilling or unable to accept
2347 appointment, the new insurer shall pay the agent in accordance
2348 with sub-sub-sub-subparagraph (A).

2349 c. For purposes of determining comparable coverage under

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2350 | sub-subparagraphs a. and b., the comparison shall be based on
2351 | those forms and coverages that are reasonably comparable. The
2352 | corporation may rely on a determination of comparable coverage
2353 | and premium made by the producing agent who submits the
2354 | application to the corporation, made in the agent's capacity as
2355 | the corporation's agent. A comparison may be made solely of the
2356 | premium with respect to the main building or structure only on
2357 | the following basis: the same coverage A or other building
2358 | limits; the same percentage hurricane deductible that applies on
2359 | an annual basis or that applies to each hurricane for commercial
2360 | residential property; the same percentage of ordinance and law
2361 | coverage, if the same limit is offered by both the corporation
2362 | and the authorized insurer; the same mitigation credits, to the
2363 | extent the same types of credits are offered both by the
2364 | corporation and the authorized insurer; the same method for loss
2365 | payment, such as replacement cost or actual cash value, if the
2366 | same method is offered both by the corporation and the authorized
2367 | insurer in accordance with underwriting rules; and any other form
2368 | or coverage that is reasonably comparable as determined by the
2369 | board. If an application is submitted to the corporation for
2370 | wind-only coverage in the high-risk account, the premium for the
2371 | corporation's wind-only policy plus the premium for the ex-wind
2372 | policy that is offered by an authorized insurer to the applicant
2373 | shall be compared to the premium for multiperil coverage offered
2374 | by an authorized insurer, subject to the standards for comparison
2375 | specified in this subparagraph. If the corporation or the
2376 | applicant requests from the authorized insurer a breakdown of the
2377 | premium of the offer by types of coverage so that a comparison
2378 | may be made by the corporation or its agent and the authorized

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2379 insurer refuses or is unable to provide such information, the
2380 corporation may treat the offer as not being an offer of coverage
2381 from an authorized insurer at the insurer's approved rate.

2382 6. Must include rules for classifications of risks and
2383 rates therefor.

2384 7. Must provide that if premium and investment income for
2385 an account attributable to a particular calendar year are in
2386 excess of projected losses and expenses for the account
2387 attributable to that year, such excess shall be held in surplus
2388 in the account. Such surplus shall be available to defray
2389 deficits in that account as to future years and shall be used for
2390 that purpose prior to assessing assessable insurers and
2391 assessable insureds as to any calendar year.

2392 8. Must provide objective criteria and procedures to be
2393 uniformly applied for all applicants in determining whether an
2394 individual risk is so hazardous as to be uninsurable. In making
2395 this determination and in establishing the criteria and
2396 procedures, the following shall be considered:

2397 a. Whether the likelihood of a loss for the individual risk
2398 is substantially higher than for other risks of the same class;
2399 and

2400 b. Whether the uncertainty associated with the individual
2401 risk is such that an appropriate premium cannot be determined.

2402

2403 The acceptance or rejection of a risk by the corporation shall be
2404 construed as the private placement of insurance, and the
2405 provisions of chapter 120 shall not apply.

2406 9. Must provide that the corporation shall make its best
2407 efforts to procure catastrophe reinsurance at reasonable rates,

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2408 to cover its projected 100-year probable maximum loss as
2409 determined by the board of governors.

2410 ~~10. Must provide that in the event of regular deficit~~
2411 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2412 ~~(b)3.b., in the personal lines account, the commercial lines~~
2413 ~~residential account, or the high-risk account, the corporation~~
2414 ~~shall levy upon corporation policyholders in its next rate~~
2415 ~~filing, or by a separate rate filing solely for this purpose, a~~
2416 ~~Citizens policyholder surcharge arising from a regular assessment~~
2417 ~~in such account in a percentage equal to the total amount of such~~
2418 ~~regular assessments divided by the aggregate statewide direct~~
2419 ~~written premium for subject lines of business for the prior~~
2420 ~~calendar year. For purposes of calculating the Citizens~~
2421 ~~policyholder surcharge to be levied under this subparagraph, the~~
2422 ~~total amount of the regular assessment to which this surcharge is~~
2423 ~~related shall be determined as set forth in subparagraph (b)3.,~~
2424 ~~without deducting the estimated Citizens policyholder surcharge.~~
2425 ~~Citizens policyholder surcharges under this subparagraph are not~~
2426 ~~considered premium and are not subject to commissions, fees, or~~
2427 ~~premium taxes; however, failure to pay a market equalization~~
2428 ~~surcharge shall be treated as failure to pay premium.~~

2429 10.11. The policies issued by the corporation must provide
2430 that, if the corporation or the market assistance plan obtains an
2431 offer from an authorized insurer to cover the risk at its
2432 approved rates, the risk is no longer eligible for renewal
2433 through the corporation, except as otherwise provided in this
2434 subsection.

2435 11.12. Corporation policies and applications must include a
2436 notice that the corporation policy could, under this section, be

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2437 replaced with a policy issued by an authorized insurer that does
2438 not provide coverage identical to the coverage provided by the
2439 corporation. The notice shall also specify that acceptance of
2440 corporation coverage creates a conclusive presumption that the
2441 applicant or policyholder is aware of this potential.

2442 12.13. May establish, subject to approval by the office,
2443 different eligibility requirements and operational procedures for
2444 any line or type of coverage for any specified county or area if
2445 the board determines that such changes to the eligibility
2446 requirements and operational procedures are justified due to the
2447 voluntary market being sufficiently stable and competitive in
2448 such area or for such line or type of coverage and that consumers
2449 who, in good faith, are unable to obtain insurance through the
2450 voluntary market through ordinary methods would continue to have
2451 access to coverage from the corporation. When coverage is sought
2452 in connection with a real property transfer, such requirements
2453 and procedures shall not provide for an effective date of
2454 coverage later than the date of the closing of the transfer as
2455 established by the transferor, the transferee, and, if
2456 applicable, the lender.

2457 13.14. Must provide that, with respect to the high-risk
2458 account, any assessable insurer with a surplus as to
2459 policyholders of \$25 million or less writing 25 percent or more
2460 of its total countrywide property insurance premiums in this
2461 state may petition the office, within the first 90 days of each
2462 calendar year, to qualify as a limited apportionment company. A
2463 regular assessment levied by the corporation on a limited
2464 apportionment company for a deficit incurred by the corporation
2465 for the high-risk account in 2006 or thereafter may be paid to

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2466 the corporation on a monthly basis as the assessments are
2467 collected by the limited apportionment company from its insureds
2468 pursuant to s. 627.3512, but the regular assessment must be paid
2469 in full within 12 months after being levied by the corporation. A
2470 limited apportionment company shall collect from its
2471 policyholders any emergency assessment imposed under sub-
2472 subparagraph (b)3.d. The plan shall provide that, if the office
2473 determines that any regular assessment will result in an
2474 impairment of the surplus of a limited apportionment company, the
2475 office may direct that all or part of such assessment be deferred
2476 as provided in subparagraph (p)4. However, there shall be no
2477 limitation or deferment of an emergency assessment to be
2478 collected from policyholders under sub-subparagraph (b)3.d.

2479 ~~14.15.~~ Must provide that the corporation appoint as its
2480 licensed agents only those agents who also hold an appointment as
2481 defined in s. 626.015(3) with an insurer who at the time of the
2482 agent's initial appointment by the corporation is authorized to
2483 write and is actually writing personal lines residential property
2484 coverage, commercial residential property coverage, or commercial
2485 nonresidential property coverage within the state.

2486 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
2487 plan option to its policyholders which allows at a minimum for
2488 quarterly and semiannual payment of premiums. A monthly payment
2489 plan may, but is not required to, be offered.

2490 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
2491 homes built prior to 1994 to actual cash value of the dwelling
2492 rather than replacement costs of the dwelling.

2493 ~~17.18.~~ May provide such limits of coverage as the board
2494 determines, consistent with the requirements of this subsection.

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2495 18.19. May require commercial property to meet specified
2496 hurricane mitigation construction features as a condition of
2497 eligibility for coverage.

2498 (m)1. Rates for coverage provided by the corporation shall
2499 be actuarially sound and subject to the requirements of s.
2500 627.062, except as otherwise provided in this paragraph. The
2501 corporation shall file its recommended rates with the office at
2502 least annually. The corporation shall provide any additional
2503 information regarding the rates which the office requires. The
2504 office shall consider the recommendations of the board and issue
2505 a final order establishing the rates for the corporation within
2506 45 days after the recommended rates are filed. The corporation
2507 may not pursue an administrative challenge or judicial review of
2508 the final order of the office.

2509 2. In addition to the rates otherwise determined pursuant
2510 to this paragraph, the corporation shall impose and collect an
2511 amount equal to the premium tax provided for in s. 624.509 to
2512 augment the financial resources of the corporation.

2513 3. After the public hurricane loss-projection model under
2514 s. 627.06281 has been found to be accurate and reliable by the
2515 Florida Commission on Hurricane Loss Projection Methodology, that
2516 model shall serve as the minimum benchmark for determining the
2517 windstorm portion of the corporation's rates. This subparagraph
2518 does not require or allow the corporation to adopt rates lower
2519 than the rates otherwise required or allowed by this paragraph.

2520 4. The rate filings for the corporation which were approved
2521 by the office and which took effect January 1, 2007, are
2522 rescinded, except for those rates that were lowered. As soon as
2523 possible, the corporation shall begin using the lower rates that

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2524 were in effect on December 31, 2006, and shall provide refunds to
2525 policyholders who have paid higher rates as a result of that rate
2526 filing. The rates in effect on December 31, 2006, shall remain in
2527 effect for the 2007 and 2008 calendar years except for any rate
2528 change that results in a lower rate. The next rate change that
2529 may increase rates shall take effect ~~January 1, 2009~~, pursuant to
2530 a new rate filing recommended by the corporation and established
2531 by the office, subject to the requirements of this paragraph.

2532 5.a. Beginning on January 15, 2009, and each year
2533 thereafter, the corporation must make a recommended actuarially
2534 sound rate filing for each personal and commercial line of
2535 business it writes, to be effective no earlier than July 1, 2009.

2536 b. For the 36-month period beginning with the effective
2537 date for each of the rate filings made by the corporation on
2538 January 15, 2009, the rates established by the office for the
2539 corporation for its personal residential multiperil policies, its
2540 commercial residential multiperil policies, and its commercial
2541 nonresidential multiperil policies may not result in an overall
2542 average statewide premium increase of more than 5 percent or an
2543 increase for any single policyholder of more than 5 percent,
2544 during the first 12-month period, and may not result in an
2545 overall average statewide premium increase of more than 10
2546 percent, or an increase for any single policyholder of more than
2547 10 percent, during each of the two subsequent 12-month periods,
2548 excluding coverage changes and surcharges.

2549 c. For the 36-month period beginning with the effective
2550 date for the rate filings made by the corporation on January 15,
2551 2009, the rates established by the office for the corporation for
2552 its personal residential wind-only policies, its commercial

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2553 residential wind-only policies, and its commercial nonresidential
2554 wind-only policies may not result in an overall average statewide
2555 premium increase of more than 10 percent, or an increase for any
2556 single policyholder of more than 10 percent, during the first 12-
2557 month period, and may not result in an overall average statewide
2558 premium increase of more than 10 percent, or an increase for any
2559 single policyholder of more than 10 percent, during each of the
2560 two subsequent 12-month periods, excluding coverage changes and
2561 surcharges.

2562 (p)1. The corporation shall certify to the office its needs
2563 for annual assessments as to a particular calendar year, and for
2564 any interim assessments that it deems to be necessary to sustain
2565 operations as to a particular year pending the receipt of annual
2566 assessments. Upon verification, the office shall approve such
2567 certification, and the corporation shall levy such annual or
2568 interim assessments. Such assessments shall be prorated as
2569 provided in paragraph (b). The corporation shall take all
2570 reasonable and prudent steps necessary to collect the amount of
2571 assessment due from each assessable insurer, including, if
2572 prudent, filing suit to collect such assessment. If the
2573 corporation is unable to collect an assessment from any
2574 assessable insurer, the uncollected assessments shall be levied
2575 as an additional assessment against the assessable insurers and
2576 any assessable insurer required to pay an additional assessment
2577 as a result of such failure to pay shall have a cause of action
2578 against such nonpaying assessable insurer. Assessments shall be
2579 included as an appropriate factor in the making of rates. The
2580 failure of a surplus lines agent to collect and remit any regular
2581 or emergency assessment levied by the corporation is considered

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2582 to be a violation of s. 626.936 and subjects the surplus lines
2583 agent to the penalties provided in that section.

2584 2. The governing body of any unit of local government, any
2585 residents of which are insured by the corporation, may issue
2586 bonds as defined in s. 125.013 or s. 166.101 from time to time to
2587 fund an assistance program, in conjunction with the corporation,
2588 for the purpose of defraying deficits of the corporation. In
2589 order to avoid needless and indiscriminate proliferation,
2590 duplication, and fragmentation of such assistance programs, any
2591 unit of local government, any residents of which are insured by
2592 the corporation, may provide for the payment of losses,
2593 regardless of whether or not the losses occurred within or
2594 outside of the territorial jurisdiction of the local government.
2595 Revenue bonds under this subparagraph may not be issued until
2596 validated pursuant to chapter 75, unless a state of emergency is
2597 declared by executive order or proclamation of the Governor
2598 pursuant to s. 252.36 making such findings as are necessary to
2599 determine that it is in the best interests of, and necessary for,
2600 the protection of the public health, safety, and general welfare
2601 of residents of this state and declaring it an essential public
2602 purpose to permit certain municipalities or counties to issue
2603 such bonds as will permit relief to claimants and policyholders
2604 of the corporation. Any such unit of local government may enter
2605 into such contracts with the corporation and with any other
2606 entity created pursuant to this subsection as are necessary to
2607 carry out this paragraph. Any bonds issued under this
2608 subparagraph shall be payable from and secured by moneys received
2609 by the corporation from emergency assessments under sub-
2610 subparagraph (b)3.d., and assigned and pledged to or on behalf of

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2611 the unit of local government for the benefit of the holders of
2612 such bonds. The funds, credit, property, and taxing power of the
2613 state or of the unit of local government shall not be pledged for
2614 the payment of such bonds. ~~If any of the bonds remain unsold 60~~
2615 ~~days after issuance, the office shall require all insurers~~
2616 ~~subject to assessment to purchase the bonds, which shall be~~
2617 ~~treated as admitted assets; each insurer shall be required to~~
2618 ~~purchase that percentage of the unsold portion of the bond issue~~
2619 ~~that equals the insurer's relative share of assessment liability~~
2620 ~~under this subsection. An insurer shall not be required to~~
2621 ~~purchase the bonds to the extent that the office determines that~~
2622 ~~the purchase would endanger or impair the solvency of the~~
2623 ~~insurer.~~

2624 3.a. The corporation shall adopt one or more programs
2625 subject to approval by the office for the reduction of both new
2626 and renewal writings in the corporation. Beginning January 1,
2627 2008, any program the corporation adopts for the payment of
2628 bonuses to an insurer for each risk the insurer removes from the
2629 corporation shall comply with s. 627.3511(2) and may not exceed
2630 the amount referenced in s. 627.3511(2) for each risk removed.
2631 The corporation may consider any prudent and not unfairly
2632 discriminatory approach to reducing corporation writings, and may
2633 adopt a credit against assessment liability or other liability
2634 that provides an incentive for insurers to take risks out of the
2635 corporation and to keep risks out of the corporation by
2636 maintaining or increasing voluntary writings in counties or areas
2637 in which corporation risks are highly concentrated and a program
2638 to provide a formula under which an insurer voluntarily taking
2639 risks out of the corporation by maintaining or increasing

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2640 | voluntary writings will be relieved wholly or partially from
2641 | assessments under sub-subparagraphs (b)3.a. and b. However, any
2642 | "take-out bonus" or payment to an insurer must be conditioned on
2643 | the property being insured for at least 5 years by the insurer,
2644 | unless canceled or nonrenewed by the policyholder. If the policy
2645 | is canceled or nonrenewed by the policyholder before the end of
2646 | the 5-year period, the amount of the take-out bonus must be
2647 | prorated for the time period the policy was insured. When the
2648 | corporation enters into a contractual agreement for a take-out
2649 | plan, the producing agent of record of the corporation policy is
2650 | entitled to retain any unearned commission on such policy, and
2651 | the insurer shall either:

2652 | (I) Pay to the producing agent of record of the policy, for
2653 | the first year, an amount which is the greater of the insurer's
2654 | usual and customary commission for the type of policy written or
2655 | a policy fee equal to the usual and customary commission of the
2656 | corporation; or

2657 | (II) Offer to allow the producing agent of record of the
2658 | policy to continue servicing the policy for a period of not less
2659 | than 1 year and offer to pay the agent the insurer's usual and
2660 | customary commission for the type of policy written. If the
2661 | producing agent is unwilling or unable to accept appointment by
2662 | the new insurer, the new insurer shall pay the agent in
2663 | accordance with sub-sub-subparagraph (I).

2664 | b. Any credit or exemption from regular assessments adopted
2665 | under this subparagraph shall last no longer than the 3 years
2666 | following the cancellation or expiration of the policy by the
2667 | corporation. With the approval of the office, the board may
2668 | extend such credits for an additional year if the insurer

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2669 | guarantees an additional year of renewability for all policies
2670 | removed from the corporation, or for 2 additional years if the
2671 | insurer guarantees 2 additional years of renewability for all
2672 | policies so removed.

2673 | c. There shall be no credit, limitation, exemption, or
2674 | deferment from emergency assessments to be collected from
2675 | policyholders pursuant to sub-subparagraph (b)3.d.

2676 | d. Subject to the execution of the confidentiality
2677 | agreement required by paragraph (w), the corporation shall make
2678 | its database of policies available to prospective take-out
2679 | insurers considering underwriting a risk insured by the
2680 | corporation, without categorically eliminating policies from
2681 | eligibility for removal. The corporation may not instruct or
2682 | encourage prospective take-out insurers to avoid the selection of
2683 | policies for which the agent has disapproved policy removals. The
2684 | corporation must require agents to accept or decline appointment
2685 | for any policy selected and, in the case of a declination, must
2686 | notify the policyholder that an insurer, identified by name,
2687 | selected his or her policy for a take-out offer, but that the
2688 | policyholder's agent refused to be appointed by the insurer. The
2689 | notice must also provide the policyholder with the take-out
2690 | insurer's contact information so that the policyholder may
2691 | contact the company directly and make his or her own
2692 | determination of whether to seek coverage from the take-out
2693 | insurer.

2694 | 4. The plan shall provide for the deferment, in whole or in
2695 | part, of the assessment of an assessable insurer, other than an
2696 | emergency assessment collected from policyholders pursuant to
2697 | sub-subparagraph (b)3.d., if the office finds that payment of the

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2698 assessment would endanger or impair the solvency of the insurer.
2699 In the event an assessment against an assessable insurer is
2700 deferred in whole or in part, the amount by which such assessment
2701 is deferred may be assessed against the other assessable insurers
2702 in a manner consistent with the basis for assessments set forth
2703 in paragraph (b).

2704 5. Effective July 1, 2007, in order to evaluate the costs
2705 and benefits of approved take-out plans, if the corporation pays
2706 a bonus or other payment to an insurer for an approved take-out
2707 plan, it shall maintain a record of the address or such other
2708 identifying information on the property or risk removed in order
2709 to track if and when the property or risk is later insured by the
2710 corporation.

2711 6. Any policy taken out, assumed, or removed from the
2712 corporation is, as of the effective date of the take-out,
2713 assumption, or removal, direct insurance issued by the insurer
2714 and not by the corporation, even if the corporation continues to
2715 service the policies. This subparagraph applies to policies of
2716 the corporation and not policies taken out, assumed, or removed
2717 from any other entity.

2718 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2719 ~~the risk being no longer eligible for coverage due to being~~
2720 ~~valued at \$1 million or more, the corporation shall, directly or~~
2721 ~~through the market assistance plan, make information from~~
2722 ~~confidential underwriting and claims files of policyholders~~
2723 ~~available only to licensed general lines agents who register with~~
2724 ~~the corporation to receive such information according to the~~
2725 ~~following procedures:~~

2726 ~~2. By August 1, 2006, the corporation shall provide such~~

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2727 ~~policyholders who are not eligible for renewal the opportunity to~~
2728 ~~request in writing, within 30 days after the notification is~~
2729 ~~sent, that information from their confidential underwriting and~~
2730 ~~claims files not be released to licensed general lines agents~~
2731 ~~registered pursuant to this paragraph.~~

2732 ~~3. By August 1, 2006, the corporation shall make available~~
2733 ~~to licensed general lines agents the registration procedures to~~
2734 ~~be used to obtain confidential information from underwriting and~~
2735 ~~claims files for such policies not eligible for renewal. As a~~
2736 ~~condition of registration, the corporation shall require the~~
2737 ~~licensed general lines agent to attest that the agent has the~~
2738 ~~experience and relationships with authorized or surplus lines~~
2739 ~~carriers to attempt to offer replacement coverage for such~~
2740 ~~policies.~~

2741 ~~4. By September 1, 2006, the corporation shall make~~
2742 ~~available through a secured website to licensed general lines~~
2743 ~~agents registered pursuant to this paragraph application, rating,~~
2744 ~~loss history, mitigation, and policy type information relating to~~
2745 ~~such policies not eligible for renewal and for which the~~
2746 ~~policyholder has not requested the corporation withhold such~~
2747 ~~information. The registered licensed general lines agent may use~~
2748 ~~such information to contact and assist the policyholder in~~
2749 ~~securing replacement policies, and the agent may disclose to the~~
2750 ~~policyholder that such information was obtained from the~~
2751 ~~corporation.~~

2752 ~~(dd)-(ee)~~ The assets of the corporation may be invested and
2753 managed by the State Board of Administration.

2754 ~~(ee)-(ff)~~ The office may establish a pilot program to offer
2755 optional sinkhole coverage in one or more counties or other

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2756 territories of the corporation for the purpose of implementing s.
2757 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.
2758 Under the pilot program, the corporation is not required to issue
2759 a notice of nonrenewal to exclude sinkhole coverage upon the
2760 renewal of existing policies, but may exclude such coverage using
2761 a notice of coverage change.

2762 Section 13. Paragraph (b) of subsection (2) of section
2763 627.4133, Florida Statutes, is amended to read:

2764 (2) With respect to any personal lines or commercial
2765 residential property insurance policy, including, but not limited
2766 to, any homeowner's, mobile home owner's, farmowner's,
2767 condominium association, condominium unit owner's, apartment
2768 building, or other policy covering a residential structure or its
2769 contents:

2770 (b) The insurer shall give the named insured written notice
2771 of nonrenewal, cancellation, or termination at least 180 ~~100~~ days
2772 prior to the effective date of the nonrenewal, cancellation, or
2773 termination. ~~However, the insurer shall give at least 100 days'~~
2774 ~~written notice, or written notice by June 1, whichever is~~
2775 ~~earlier, for any nonrenewal, cancellation, or termination that~~
2776 ~~would be effective between June 1 and November 30.~~ The notice
2777 must include the reason or reasons for the nonrenewal,
2778 cancellation, or termination, except that:

2779 1. When cancellation is for nonpayment of premium, at least
2780 10 days' written notice of cancellation accompanied by the reason
2781 therefor shall be given. As used in this subparagraph, the term
2782 "nonpayment of premium" means failure of the named insured to
2783 discharge when due any of her or his obligations in connection
2784 with the payment of premiums on a policy or any installment of

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2785 such premium, whether the premium is payable directly to the
2786 insurer or its agent or indirectly under any premium finance plan
2787 or extension of credit, or failure to maintain membership in an
2788 organization if such membership is a condition precedent to
2789 insurance coverage. "Nonpayment of premium" also means the
2790 failure of a financial institution to honor an insurance
2791 applicant's check after delivery to a licensed agent for payment
2792 of a premium, even if the agent has previously delivered or
2793 transferred the premium to the insurer. If a dishonored check
2794 represents the initial premium payment, the contract and all
2795 contractual obligations shall be void ab initio unless the
2796 nonpayment is cured within the earlier of 5 days after actual
2797 notice by certified mail is received by the applicant or 15 days
2798 after notice is sent to the applicant by certified mail or
2799 registered mail, and if the contract is void, any premium
2800 received by the insurer from a third party shall be refunded to
2801 that party in full.

2802 2. When such cancellation or termination occurs during the
2803 first 90 days during which the insurance is in force and the
2804 insurance is canceled or terminated for reasons other than
2805 nonpayment of premium, at least 20 days' written notice of
2806 cancellation or termination accompanied by the reason therefor
2807 shall be given except where there has been a material
2808 misstatement or misrepresentation or failure to comply with the
2809 underwriting requirements established by the insurer.

2810 ~~3. The requirement for providing written notice of~~
2811 ~~nonrenewal by June 1 of any nonrenewal that would be effective~~
2812 ~~between June 1 and November 30 does not apply to the following~~
2813 ~~situations, but the insurer remains subject to the requirement to~~

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2814 ~~provide such notice at least 100 days prior to the effective date~~
2815 ~~of nonrenewal:~~

2816 ~~a. A policy that is nonrenewed due to a revision in the~~
2817 ~~coverage for sinkhole losses and catastrophic ground cover~~
2818 ~~collapse pursuant to s. 627.730, as amended by s. 30, chapter~~
2819 ~~2007-1, Laws of Florida.~~

2820 ~~b. A policy that is nonrenewed by Citizens Property~~
2821 ~~Insurance Corporation, pursuant to s. 627.351(6), for a policy~~
2822 ~~that has been assumed by an authorized insurer offering~~
2823 ~~replacement or renewal coverage to the policyholder.~~

2824
2825 After the policy has been in effect for 90 days, the policy shall
2826 not be canceled by the insurer except when there has been a
2827 material misstatement, a nonpayment of premium, a failure to
2828 comply with underwriting requirements established by the insurer
2829 within 90 days of the date of effectuation of coverage, or a
2830 substantial change in the risk covered by the policy or when the
2831 cancellation is for all insureds under such policies for a given
2832 class of insureds. This paragraph does not apply to individually
2833 rated risks having a policy term of less than 90 days.

2834 Section 14. Effective January 1, 2011, section 689.262,
2835 Florida Statutes, is created to read:

2836 689.262 Sale of residential property; disclosure of
2837 windstorm mitigation rating.--A purchaser of residential property
2838 must be informed of the windstorm mitigation rating of the
2839 structure, based on the uniform home grading scale adopted
2840 pursuant to s. 215.55865. The rating must be included in the
2841 contract for sale or as a separate document attached to the
2842 contract for sale. The Financial Services Commission may adopt

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2843 rules, consistent with other state laws, to administer this
2844 section, including the form of the disclosure and the
2845 requirements for the windstorm mitigation inspection or report
2846 that is required for purposes of determining the rating.

2847 Section 15. Effective October 1, 2008, subsection (1) of
2848 section 817.2341, Florida Statutes, is amended to read:

2849 817.2341 False or misleading statements or supporting
2850 documents; penalty.--

2851 (1) Any person who willfully files with the department or
2852 office, or who willfully signs for filing with the department or
2853 office, a materially false or materially misleading financial
2854 statement or document in support of such statement required by
2855 law or rule, or a materially false or materially misleading rate
2856 filing, with intent to deceive and with knowledge that the
2857 statement or document is materially false or materially
2858 misleading, commits a felony of the third degree, punishable as
2859 provided in s. 775.082, s. 775.083, or s. 775.084.

2860 Section 16. (1) By December 15, 2008, Citizens Property
2861 Insurance Corporation shall transfer \$250 million to the General
2862 Revenue Fund by transferring an amount from the Personal Lines
2863 Account and the Commercial Lines Account, as defined in s.
2864 627.351(6), Florida Statutes, in proportion to the surplus of
2865 each account, if the combined losses in the Personal Lines
2866 Account and the Commercial Lines Account from one or more named
2867 hurricanes in 2008 do not exceed \$750 million. The board of
2868 governors of Citizens Property Insurance Corporation must make a
2869 reasonable estimate of such losses on or after December 1, 2008,
2870 and no later than December 14, 2008, using generally accepted
2871 actuarial and accounting practices, recognizing that audited

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2872 financial statements will not yet be available and that all
2873 losses will have not been reported or developed.

2874 (2) If Citizens Property Insurance Corporation transfers
2875 \$250 million to General Revenue as provided in subsection (1),
2876 effective December 15, 2008, and for the 2008-2009 fiscal year,
2877 the sum of \$250 million is appropriated from the General Revenue
2878 Fund on a nonrecurring basis to the State Board of Administration
2879 for purposes of the Insurance Capital Build-Up Incentive Program
2880 established pursuant to s. 215.5595, Florida Statutes, as amended
2881 by this act. Costs and fees incurred by the board in
2882 administering this program, including fees for investment
2883 services, shall be paid from funds appropriated by the
2884 Legislature for this program, but are limited to 1 percent of the
2885 amount appropriated. Notwithstanding the provisions of s.
2886 216.301, Florida Statutes, to the contrary, the unexpended
2887 balance of this appropriation shall not revert to the General
2888 Revenue Fund until June 30, 2009.

2889 Section 17. Except as otherwise expressly provided in this
2890 act, this act shall take effect July 1, 2008.