

20082860e1

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

20082860e1

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

20082860e1

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 creating s. 624.4305, F.S.; requiring that an insurer
63 planning to nonrenew more than a specified number of
64 residential property insurance policies notify the Office
65 of Insurance Regulation and obtain approval for such
66 nonrenewals; specifying procedures for issuance of such
67 notice; prohibiting the office from approving a nonrenewal
68 plan unless it determines that the insurer has met certain
69 conditions; prohibiting the office from requiring certain
70 actions; limiting the ability of the office to disapprove
71 or restrict nonrenewal of certain policies under certain
72 conditions; amending s. 626.9521, F.S.; increasing the
73 maximum fines that may be imposed by the office or
74 department for nonwillful and willful violations of state
75 law regarding unfair methods of competition and unfair or
76 deceptive acts or practices related to insurance; amending
77 s. 626.9541, F.S.; prohibiting an insurer from considering
78 certain factors when evaluating or adjusting a property
79 insurance claim; prohibiting an insurer from failing to
80 pay undisputed amounts of benefits owed under a property
81 insurance policy within a certain period; amending s.
82 627.062, F.S.; requiring that an insurer seeking a rate
83 for property insurance that is greater than the rate most
84 recently approved by the Office of Insurance Regulation
85 make a "file and use" filing for all such rate filings
86 made after a specified date; revising the factors the
87 office must consider in reviewing a rate filing;

20082860e1

88 prohibiting the Office of Insurance Regulation from
89 disapproving as excessive a rate solely because the
90 insurer obtained reinsurance covering a specified probably
91 maximum loss; allowing the office to disapprove a rate as
92 excessive within 1 year after the rate has been approved
93 under certain conditions related to nonrenewal of policies
94 by the insurer; requiring the Division of Administrative
95 Hearings to expedite a hearing request by an insurer and
96 for the administrative law judge to commence the hearing
97 within a specified time; establishing time limits for
98 entry of a recommended order, for parties to submit
99 written exceptions, and for the office to enter a final
100 order, subject to waiver by all parties; authorizing an
101 insurer to request an expedited appellate review pursuant
102 to the Florida Rules of Appellate Procedure; expressing
103 legislative intent for an expedited appellate review;
104 requiring an administrative law judge in a hearing on an
105 insurance rate to grant a continuance if requested by a
106 party due to receiving additional information that was not
107 previously available; deleting provisions relating to the
108 submission of a disputed rate filing, other than a rate
109 filing for medical malpractice insurance, to an
110 arbitration panel in lieu of an administrative hearing if
111 the rate is filed before a specified date; requiring
112 certain officers and the chief actuary of a property
113 insurer to certify certain information as part of a rate
114 filing, subject to the penalty of perjury; amending s.
115 627.0613, F.S.; deleting cross-references to conform to
116 changes made by the act; amending s. 627.0628, F.S.;

20082860e1

117 requiring that with respect to rate filings, insurers must
118 use actuarial methods or models found to be accurate or
119 reliable by the Florida Commission on Hurricane Loss
120 Projection Methodology; deleting the requirement for the
121 Office of Insurance Regulation and the Consumer Advocate
122 to have access to all assumptions of a hurricane loss
123 model in order for a model that has been found to be
124 accurate and reliable by the Florida Commission on
125 Hurricane Loss Projection Methodology to be admissible in
126 a rate proceeding; deleting cross-references to conform to
127 changes made by the act; amending s. 627.0629, F.S.;
128 requiring that the Office of Insurance Regulation develop
129 and make publicly available before a specified deadline a
130 proposed method for insurers to establish windstorm
131 mitigation premium discounts that correlate to the uniform
132 home rating scale; requiring that the Financial Services
133 Commission adopt rules before a specified deadline;
134 requiring insurers to make rate filings pursuant to such
135 method; authorizing the commission to make changes by rule
136 to the uniform home grading scale and specify by rule the
137 minimum required discounts, credits, or other rate
138 differentials; requiring that such rate differentials be
139 consistent with generally accepted actuarial principles
140 and wind loss mitigation studies; amending s. 627.351,
141 F.S., relating to Citizens Property Insurance Corporation;
142 deleting a provision to conform to changes made in the
143 act; deleting provisions defining the terms "homestead
144 property" and "nonhomestead property"; deleting a
145 provision providing for the classification of certain

20082860e1

146 dwellings as "nonhomestead property"; deleting provisions
147 making dwellings and condominium units that have a
148 replacement cost above a specified value ineligible for
149 coverage after a specified date; deleting requirements for
150 certain properties to meeting building code plus
151 requirements as a condition of eligibility for coverage by
152 the corporation; requiring certain structures to have
153 opening protections as a condition of eligibility for
154 coverage after a specified date; requiring that the
155 corporation cease issuance of new wind-only coverage
156 beginning on a specified date; deleting outdated
157 provisions requiring the corporation to submit a report
158 for approval of offering multiperil coverage; revising
159 threshold amounts of deficits incurred in a calendar year
160 on which the decision to levy assessments and the types of
161 such assessments are based; revising the formula used to
162 calculate shares of assessments owed by certain assessable
163 insureds; requiring that the board of governors make
164 certain determinations before levying emergency
165 assessments; providing the board of governors with
166 discretion to set the amount of an emergency assessment
167 within specified limits; requiring the board of governors
168 to levy a Citizens policyholder surcharge under certain
169 conditions; deleting a provision requiring the levy of an
170 immediate assessment against certain policyholders under
171 such conditions; requiring that funds collected from the
172 levy of such surcharges be used for certain purposes;
173 providing that such surcharges are not considered premium
174 and are not subject to commissions, fees, or premium

20082860e1

175 taxes; requiring that the failure to pay such surcharges
176 be treated as failure to pay premium; requiring that the
177 amount of any assessment or surcharge which exceeds the
178 amount of deficits be remitted to and used by the
179 corporation for specified purposes; deleting provisions
180 requiring that the plan of operation of the corporation
181 provide for the levy of a Citizens policyholder surcharge
182 if regular deficit assessments are levied as a result of
183 deficits in certain accounts; deleting provisions related
184 to the calculation, classification, and nonpayment of such
185 surcharge; requiring that the corporation make an annual
186 filing for each personal or commercial line of business it
187 writes, beginning on a specified date; limiting the
188 overall average statewide premium increase and the
189 increase for an individual policyholder to a specified
190 amount for rates established for certain policies during a
191 specified period; deleting a provision requiring an
192 insurer to purchase bonds that remain unsold; requiring
193 the corporation to make its database of policies available
194 to prospective take-out insurers under certain conditions;
195 requiring the corporation to require agents to accept or
196 decline appointment for any policy selected; requiring the
197 corporation to notify the policyholder of certain
198 information if an insurer selected his or her policy for a
199 take-out offer but the policyholder's agent refused to be
200 appointed; deleting provisions requiring the corporation
201 to make certain confidential underwriting and claims files
202 available to agents to conform to changes made by the act
203 relating to ineligibility of certain dwellings; amending

20082860e1

204 s. 627.4133, F.S.; increasing the required time period for
205 an insurer to notify a policyholder of cancellation or
206 nonrenewal of a personal lines or commercial residential
207 property insurance policy; making conforming changes;
208 creating s. 627.714, F.S.; requiring that personal lines
209 residential policies be guaranteed renewable for a
210 specified period if the dwelling meets certain
211 requirements for wind-borne debris protection; creating s.
212 689.262, F.S.; requiring a purchaser of residential
213 property to be presented with the windstorm mitigation
214 rating of the structure; authorizing the Financial
215 Services Commission to adopt rules; amending s. 817.2341,
216 F.S.; providing for criminal penalties to be imposed under
217 certain conditions against any person who willfully files
218 a materially false or misleading rate filing; requiring
219 Citizens Property Insurance Corporation to transfer funds
220 to the General Revenue Fund if the losses due to a
221 hurricane do not exceed a specified amount; requiring the
222 board of governors of Citizens Property Insurance
223 Corporation to make a reasonable estimate of such losses
224 by a certain date; making nonrecurring appropriations for
225 purposes of the Insurance Capital Build-Up Incentive
226 Program established pursuant to s. 215.5595, F.S., as
227 amended by the act; authorizing costs and fees to be paid
228 from funds appropriated, subject to specified limitations;
229 providing effective dates.

230
231 Be It Enacted by the Legislature of the State of Florida:
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20082860e1

233 Section 1. Section 215.5595, Florida Statutes, is amended
234 to read:

235 215.5595 Insurance Capital Build-Up Incentive Program.--

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

238 (a) The losses in Florida from eight hurricanes in 2004 and
239 2005 have seriously strained the resources of both the voluntary
240 insurance market and the public sector mechanisms of Citizens
241 Property Insurance Corporation and the Florida Hurricane
242 Catastrophe Fund.

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

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

251 ~~(d) Hurricane forecast experts predict that the 2006~~
252 ~~hurricane season will be an active hurricane season and that the~~
253 ~~Atlantic and Gulf Coast regions face an active hurricane cycle of~~
254 ~~10 to 20 years or longer.~~

255 (b)(e) Citizens Property Insurance Corporation has over 1.2
256 million policies in force, has the largest market share of any
257 insurer writing residential property insurer in the state, and
258 faces the threat of a catastrophic loss that ~~The number of~~
259 ~~cancellations or nonrenewals of residential property insurance~~
260 ~~policies is expected to increase and the number of new~~
261 ~~residential policies written in the voluntary market are likely~~

20082860e1

262 ~~to decrease, causing increased policy growth and exposure to the~~
263 ~~state insurer of last resort, Citizens Property Insurance~~
264 ~~Corporation, and threatening to increase the deficit of the~~
265 ~~corporation, currently estimated to be over \$1.7 billion. This~~
266 ~~deficit~~ must be funded by assessments against insurers and
267 policyholders, unless otherwise funded by the state.

268 (c)(f) Policyholders are subject to high ~~increased~~ premiums
269 and assessments that are increasingly making such coverage
270 unaffordable and that may force policyholders to sell their homes
271 and even leave the state.

272 (d)(g) The increased risk to the public sector and private
273 sector continues to pose ~~poses~~ a serious threat to the economy of
274 this state, particularly the building and financing of
275 residential structures, and existing mortgages may be placed in
276 default.

277 ~~(h) The losses from 2004 and 2005, combined with the~~
278 ~~expectation that the increase in hurricane activity will continue~~
279 ~~for the foreseeable future, have caused both insurers and~~
280 ~~reinsurers to limit the capital they are willing to commit to~~
281 ~~covering the hurricane risk in Florida; attracting new capital to~~
282 ~~the Florida market is a critical priority; and providing a low-~~
283 ~~cost source of capital would enable insurers to write additional~~
284 ~~residential property insurance coverage and act to mitigate~~
285 ~~premium increases.~~

286 (e)(i) Appropriating state funds to be exchanged for ~~used~~
287 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
288 under conditions requiring the insurer to contribute additional
289 private sector capital and to write a minimum level of premiums
290 for residential hurricane coverage, is a valid and important

20082860e1

291 public purpose.

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

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

300 (a) The amount of state funds provided in exchange for a
301 ~~the surplus note to for~~ any insurer or insurer group, other than
302 an insurer writing only manufactured housing policies, may not
303 exceed \$25 million or 20 percent of the total amount of funds
304 appropriated for ~~available under~~ the program, whichever is
305 greater. The amount of the surplus note for any insurer or
306 insurer group writing residential property insurance covering
307 only manufactured housing may not exceed \$7 million.

308 (b) The insurer must contribute an amount of new capital to
309 its surplus which is at least equal to the amount of the surplus
310 note and must apply to the board by October 1, 2008 ~~July 1, 2006~~.
311 ~~If an insurer applies after July 1, 2006, but before June 1,~~
312 ~~2007, the amount of the surplus note is limited to one-half of~~
313 ~~the new capital that the insurer contributes to its surplus,~~
314 ~~except that an insurer writing only manufactured housing policies~~
315 ~~is eligible to receive a surplus note of up to \$7 million. For~~
316 purposes of this section, new capital must be in the form of cash
317 or cash equivalents as specified in s. 625.012(1).

318 (c) The insurer's surplus, new capital, and the surplus
319 note must total at least \$50 million, except for insurers writing

20082860e1

320 residential property insurance covering only manufactured
321 housing. The insurer's surplus, new capital, and the surplus note
322 must total at least \$14 million for insurers writing only
323 residential property insurance covering manufactured housing
324 policies as provided in paragraph (a).

325 (d) The insurer must commit to increase its writings of
326 residential property insurance, including the peril of wind, and
327 to meet ~~meeting~~ a minimum writing ratio of net written premium to
328 surplus of at least 1:1 for the first year after receiving the
329 state funds, 1.5:1 for the second year, and 2:1 for the remaining
330 term of the surplus note. Alternatively, the insurer must meet a
331 minimum writing ratio of gross written premium to surplus of at
332 least 3:1 for the first year after receiving the state funds,
333 4.5:1 for the second year, and 6:1 for the remaining term of the
334 surplus note. The writing ratios, which shall be determined by
335 the Office of Insurance Regulation and certified quarterly to the
336 board. For this purpose, the term "premium" "net written premium"
337 means net written premium for residential property insurance in
338 Florida, including the peril of wind, and "surplus" refers to the
339 amount of the state funds provided to the insurer in exchange for
340 the surplus note plus the amount of new capital contributed by
341 the insurer in order to obtain the state funds ~~the entire surplus~~
342 ~~of the insurer.~~ The insurer must also commit to writing at least
343 15 percent of its net or gross written premium for new policies,
344 not including renewal premiums, for policies taken out of
345 Citizens Property Insurance Corporation, during each of the first
346 3 years after receiving the state funds in exchange for the
347 surplus note, which shall be determined by the Office of
348 Insurance Regulation and certified annually to the board. The

20082860e1

349 removal of such policies must result in a reduction in the
350 probable maximum loss in the account from which the policies are
351 removed. The insurer must also commit to maintaining a level of
352 surplus and reinsurance sufficient to cover in excess of its 1-
353 in-100 year probable maximum loss, as determined by a hurricane
354 loss model accepted by the Florida Commission on Hurricane Loss
355 Projection Methodology, which shall be determined by the Office
356 of Insurance Regulation and certified annually the board. If the
357 board determines that the insurer has failed to meet any of the
358 requirements of this paragraph ~~required ratio is not maintained~~
359 during the term of the surplus note, the board may increase the
360 interest rate, accelerate the repayment of interest and
361 principal, or shorten the term of the surplus note, subject to
362 approval by the Commissioner of Insurance of payments by the
363 insurer of principal and interest as provided in paragraph (f).

364 (e) If the requirements of this section are met, the board
365 may approve an application by an insurer for funds in exchange
366 for issuance of a surplus note, unless the board determines that
367 the financial condition of the insurer and its business plan for
368 writing residential property insurance in Florida places an
369 unreasonably high level of financial risk to the state of
370 nonpayment in full of the interest and principal. The board shall
371 consult with the Office of Insurance Regulation and may contract
372 with independent financial and insurance consultants in making
373 this determination.

374 (f) The surplus note must be repayable to the state with a
375 term of 20 years. The surplus note shall accrue interest on the
376 unpaid principal balance at a rate equivalent to the 10-year U.S.
377 Treasury Bond rate, require the payment only of interest during

20082860e1

378 the first 3 years, and include such other terms as approved by
379 the board. The board may charge late fees up to 5 percent for
380 late payments or other late remittances. Payment of principal, ~~or~~
381 interest, or late fees by the insurer on the surplus note must be
382 approved by the Commissioner of Insurance, who shall approve such
383 payment unless the commissioner determines that such payment will
384 substantially impair the financial condition of the insurer. If
385 such a determination is made, the commissioner shall approve such
386 payment that will not substantially impair the financial
387 condition of the insurer.

388 (g) The total amount of funds available for the program is
389 limited to the amount appropriated by the Legislature for this
390 purpose. If the amount of surplus notes requested by insurers
391 exceeds the amount of funds available, the board may prioritize
392 insurers that are eligible and approved, with priority for
393 funding given to insurers writing only manufactured housing
394 policies, regardless of the date of application, based on the
395 financial strength of the insurer, the viability of its proposed
396 business plan for writing additional residential property
397 insurance in the state, and the effect on competition in the
398 residential property insurance market. Between insurers writing
399 residential property insurance covering manufactured housing,
400 priority shall be given to the insurer writing the highest
401 percentage of its policies covering manufactured housing.

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

406 (h)(i) Notwithstanding paragraph (d), a newly formed

20082860e1

407 manufactured housing insurer that is eligible for a surplus note
408 under this section shall meet the premium to surplus ratio
409 provisions of s. 624.4095.

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

412 1. A Florida domiciled insurer that begins writing personal
413 lines residential manufactured housing policies in Florida after
414 March 1, 2007, and that removes a minimum of 50,000 policies from
415 Citizens Property Insurance Corporation without accepting a
416 bonus, provided at least 25 percent of its policies cover
417 manufactured housing. Such an insurer may count any funds above
418 the minimum capital and surplus requirement that were contributed
419 into the insurer after March 1, 2007, as new capital under this
420 section.

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

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

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

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

427 (4) The state funds provided to the insurer in exchange for
428 the A surplus note ~~provided to an insurer~~ pursuant to this
429 section are ~~is~~ considered borrowed surplus ~~an asset~~ of the
430 insurer pursuant to s. 628.401 ~~s. 625.012~~.

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

435 (6) The board shall adopt rules prescribing the procedures,

20082860e1

436 administration, and criteria for approving the applications of
437 insurers to receive funds in exchange for issuance of surplus
438 notes pursuant to this section, which may be adopted pursuant to
439 the procedures for emergency rules of chapter 120. Otherwise,
440 actions and determinations by the board pursuant to this section
441 are exempt from chapter 120.

442 (7) The board shall invest and reinvest the funds
443 appropriated for the program in accordance with s. 215.47 and
444 consistent with board policy.

445 (8) The board shall semiannually submit a report to the
446 President of the Senate and the Speaker of the House of
447 Representatives on February 1 and August 1 as to the results of
448 the program and each insurer's compliance with the terms of its
449 surplus note.

450 (9) The amendments to this section enacted in 2008 do not
451 affect the terms or conditions of the surplus notes that were
452 approved prior to January 1, 2008. However, the board may
453 renegotiate the terms of any surplus note issued by an insurer
454 prior to January 2008 under this program upon the agreement of
455 the insurer and the board and consistent with the requirements of
456 this section as amended in 2008.

457 (10) On January 15, 2009, the State Board of Administration
458 shall transfer to Citizens Property Insurance Corporation any
459 funds that have not been committed or reserved for insurers
460 approved to receive such funds under the program, from the funds
461 that were appropriated from Citizens Property Insurance
462 Corporation in 2008-2009 for such purposes. Beginning July 1,
463 2009, and each quarter thereafter, the State Board of
464 Administration shall transfer any interest earned prior to

20082860e1

465 issuance of any surplus notes, interest paid, and principal
466 repaid to the state for any surplus notes issued by the program
467 after December 1, 2008, to the Citizens Property Insurance
468 Corporation. Such transfers shall be in the proportion that
469 surplus notes were funded from 2008-2009 appropriations from
470 Citizens Property Insurance Corporation and shall be made until
471 principal or interest is no longer due to the state on surplus
472 notes funded from such appropriations. Citizens Property
473 Insurance Corporation shall deposit the transferred funds into
474 each of its accounts in the proportion that moneys were
475 transferred out of those accounts to the General Revenue Fund in
476 December 2008.

477 Section 2. Section 542.20, Florida Statutes, is amended to
478 read:

479 542.20 Exemptions.--

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

484 (2) (a) The business of insurance is subject to the
485 provisions of this chapter. As applied to the business of
486 insurance, any legal action to seek penalties or damages for
487 violations or to otherwise enforce the provisions of this chapter
488 shall be brought only by the Attorney General or a state
489 attorney, as provided in this chapter, and another party may not
490 bring suit against a person engaged in the business of insurance,
491 notwithstanding any other provision of this chapter.

492 (b) This chapter does not prohibit a rating organization or
493 advisory organization from collecting claims, loss, or expense

20082860e1

494 data from insurers and filing rates or advisory rates with the
495 Office of Insurance Regulation, and does not prohibit any person
496 from engaging in acts expressly allowed by the Florida Insurance
497 Code, including, but not limited to, those listed in s. 627.314.

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

500 624.3161 Market conduct examinations.--

501 (6) Based on the findings of a market conduct examination
502 that an insurer has exhibited a pattern or practice of willful
503 violations of an unfair insurance trade practice related to
504 claims-handling which caused harm to policyholders, as prohibited
505 by s. 626.9541(1)(i), the office may require an insurer to file
506 its claims-handling practices and procedures related to that line
507 of insurance with the office for review and inspection, to be
508 held by the office for the following 36-month period. Such
509 claims-handling practices and procedures are public records and
510 are not trade secrets or otherwise exempt from the provisions of
511 s. 119.07(1). As used in this section, "claims-handling practices
512 and procedures" are any policies, guidelines, rules, protocols,
513 standard operating procedures, instructions, or directives that
514 govern or guide how and the manner in which an insured's claims
515 for benefits under any policy will be processed.

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

519 624.4211 Administrative fine in lieu of suspension or
520 revocation.--

521 (2) With respect to any nonwillful violation, such fine may
522 ~~shall~~ not exceed \$25,000 ~~\$2,500~~ per violation. In no event shall

20082860e1

523 such fine exceed an aggregate amount equal to 1 percent of the
524 insurer's surplus, as determined by the most recent financial
525 statements filed with the office, ~~of \$10,000~~ for all nonwillful
526 violations arising out of the same action. If ~~When~~ an insurer
527 discovers a nonwillful violation, the insurer shall correct the
528 violation and, if restitution is due, make restitution to all
529 affected persons. Such restitution shall include interest at 12
530 percent per year from either the date of the violation or the
531 date of inception of the affected person's policy, at the
532 insurer's option. The restitution may be a credit against future
533 premiums due provided that ~~the~~ interest accumulates ~~shall~~
534 ~~accumulate~~ until the premiums are due. If the amount of
535 restitution due to any person is \$50 or more and the insurer
536 wishes to credit it against future premiums, it shall notify such
537 person that she or he may receive a check instead of a credit. If
538 the credit is on a policy that ~~which~~ is not renewed, the insurer
539 shall pay the restitution to the person to whom it is due.

540 (3) With respect to any knowing and willful violation of a
541 lawful order or rule of the office or commission or a provision
542 of this code, the office may impose a fine upon the insurer in an
543 amount not to exceed \$100,000 ~~\$20,000~~ for each such violation. In
544 no event shall such fine exceed an aggregate amount equal to 5
545 percent of the insurer's surplus, as determined by the most
546 recent financial statements filed with the office, ~~of \$100,000~~
547 for all knowing and willful violations arising out of the same
548 action. In addition to such fines, the ~~such~~ insurer shall make
549 restitution when due in accordance with ~~the provisions of~~
550 subsection (2).

551 (5) The office may impose an administrative fine for each

20082860e1

552 day the insurer is not in compliance with the Florida Insurance
553 Code up to a maximum of \$25,000 per violation per day, beginning
554 with the 10th day of noncompliance, not to exceed an aggregate
555 amount equal to 5 percent of the insurer's surplus, as determined
556 by the most recent financial statements filed with the office.
557 This aggregate cap includes all fines imposed by the office under
558 this section.

559 (6) In determining the amount of the fine, the office shall
560 consider:

561 (a) The degree of consumer harm caused or potentially
562 caused by the violation;

563 (b) Whether the violation constitutes an immediate danger
564 to the public;

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

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

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

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

571 Section 5. Section 624.4213, Florida Statutes, is created
572 to read:

573 624.4213 Trade secret documents.--

574 (1) If any person who is required to submit documents or
575 other information to the office or department pursuant to the
576 Insurance Code or by rule or order of the office, department, or
577 commission claims that such submission contains a trade secret,
578 such person may file with the office or department a notice of
579 trade secret as provided in this section. Failure to do so
580 constitutes a waiver of any claim by such person that the

20082860e1

581 document or information is a trade secret.

582 (a) Each page of such document or specific portion of a
583 document claimed to be a trade secret must be clearly marked as
584 "trade secret."

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

588 (c) In submitting a notice of trade secret to the office or
589 department, the submitting party must include an affidavit
590 certifying under oath to the truth of the following statements
591 concerning all documents or information that are claimed to be
592 trade secrets:

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

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

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

604 4. The information is not publicly available elsewhere.

605 (2) If the office or department receives a public-records
606 request for a document or information that is marked and
607 certified as a trade secret, the office or department shall
608 promptly notify the person that certified the document as a trade
609 secret. The notice shall inform such person that he or she or his

20082860e1

610 or her company has 30 days following receipt of such notice to
611 file an action in circuit court seeking a determination whether
612 the document in question contains trade secrets and an order
613 barring public disclosure of the document. If that person or
614 company files an action within 30 days after receipt of notice of
615 the public-records request, the office or department may not
616 release the documents pending the outcome of the legal action.
617 The failure to file an action within 30 days constitutes a waiver
618 of any claim of confidentiality and the office or department
619 shall release the document as requested.

620 (3) If a court or administrative tribunal finds that any
621 document or information certified as a trade secret, submitted to
622 the office or department under this section, and subsequently
623 requested by a third party is not a trade secret, the company or
624 the person certifying such document or information as a trade
625 secret is liable for an award of reasonable attorney's fees and
626 costs to the third party seeking access to such documents and to
627 the office or department.

628 (4) The office or department may disclose a trade secret,
629 together with the claim that it is a trade secret, to an officer
630 or employee of another governmental agency whose use of the trade
631 secret is within the scope of his or her employment.

632 Section 6. Section 624.4305, Florida Statutes, is created to
633 read:

634 624.4305 Nonrenewal of residential property insurance
635 policies.--

636 (1) Any insurer planning to nonrenew more than 10,000
637 residential property insurance policies in this state within a
638 12-month period shall give notice in writing to the Office of

20082860e1

639 Insurance Regulation 90 days before the issuance of any notices
640 of nonrenewal. The notice provided to the office must set forth
641 the insurer's reasons for such action, the effective dates of
642 nonrenewal, and any arrangements made for other insurers to offer
643 coverage to affected policyholders.

644 (2) An insurer may not issue a notice of nonrenewal to
645 policyholders unless the office approves or fails to disapprove
646 the nonrenewal plan within 90 days after the date on which it
647 receives the notice from the insurer. The office may not approve
648 the plan unless it finds that the insurer has staggered the
649 nonrenewals over a reasonable period relative to the number of
650 nonrenewals, or has made arrangements for offers of replacement
651 coverage. The office may not require that the effective dates of
652 nonrenewal be staggered over a period longer than 24 months
653 unless the insurer is nonrenewing more than 100,000 policies, in
654 which case the office may not require that the effective dates of
655 nonrenewal be staggered over a period longer than 36 months. If
656 the insurer has arranged for an offer of coverage to be made to
657 an affected policyholder by an authorized insurer, the office may
658 not restrict or disapprove the nonrenewal of such policy beyond
659 what is required by law.

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

662 626.9521 Unfair methods of competition and unfair or
663 deceptive acts or practices prohibited; penalties.--

664 (2) Any person who violates any provision of this part
665 shall be subject to a fine in an amount not greater than \$25,000
666 ~~\$2,500~~ for each nonwillful violation and not greater than
667 \$100,000 ~~\$20,000~~ for each willful violation. Fines under this

20082860e1

668 subsection imposed against an insurer may not exceed an aggregate
669 amount equal to 1 percent of the insurer's surplus ~~of \$10,000~~ for
670 all nonwillful violations arising out of the same action or an
671 aggregate amount equal to 5 percent of the insurer's surplus ~~of~~
672 ~~\$100,000~~ for all willful violations arising out of the same
673 action, as surplus is determined by the insurer's most recent
674 financial statements filed with the office. The fines authorized
675 by this subsection may be imposed in addition to any other
676 applicable penalty.

677 Section 8. Paragraph (i) of subsection (1) of section
678 626.9541, Florida Statutes, is amended to read:

679 626.9541 Unfair methods of competition and unfair or
680 deceptive acts or practices defined.--

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

684 (i) Unfair claim settlement practices.--

685 1. Attempting to settle claims on the basis of an
686 application, ~~when~~ serving as a binder or intended to become a
687 part of the policy, or any other material document that is ~~which~~
688 ~~was~~ altered without notice to, or knowledge or consent of, the
689 insured;

690 2. A material misrepresentation made to an insured or any
691 other person having an interest in the proceeds payable under a
692 ~~such~~ contract or policy, for the purpose and with the intent of
693 effecting settlement of such claims, loss, or damage under such
694 contract or policy on less favorable terms than those provided
695 in, and contemplated by, the ~~such~~ contract or policy; ~~or~~

696 3. Committing or performing with such frequency as to

20082860e1

- 697 indicate a general business practice any of the following:
- 698 a. Failing to adopt and implement standards for the proper
699 investigation of claims.~~†~~
- 700 b. Misrepresenting pertinent facts or insurance policy
701 provisions relating to coverages at issue.~~†~~
- 702 c. Failing to acknowledge and act promptly upon
703 communications with respect to claims.~~†~~
- 704 d. Denying claims without conducting reasonable
705 investigations based upon available information.~~†~~
- 706 e. Failing to affirm or deny full or partial coverage of
707 claims, and, as to partial coverage, the dollar amount or extent
708 of coverage, or failing to provide a written statement that the
709 claim is being investigated, upon the written request of the
710 insured within 30 days after proof-of-loss statements have been
711 completed.~~†~~
- 712 f. Failing to promptly provide a reasonable explanation in
713 writing to the insured of the basis in the insurance policy, in
714 relation to the facts or applicable law, for denial of a claim or
715 for the offer of a compromise settlement.~~†~~
- 716 g. Failing to promptly notify the insured of any additional
717 information necessary for the processing of a claim.~~†~~~~or~~
- 718 h. Failing to clearly explain the nature of the requested
719 information and the reasons why such information is necessary.
- 720 4. Giving consideration to the age, race, income level,
721 education, credit score, or any other personal characteristic of
722 a policyholder when evaluating, adjusting, settling, or
723 attempting to settle a property insurance claim; or
- 724 5. Failing to pay undisputed amounts of partial or full
725 benefits owed under first-party property insurance policies

20082860e1

726 within 90 days after determining the amounts of partial or full
727 benefits and agreeing to coverage.

728 Section 9. Paragraphs (a), (b), and (g) of subsection (2),
729 and subsections (6) and (9) of section 627.062, Florida Statutes,
730 are amended to read:

731 627.062 Rate standards.--

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

733 (a) Insurers or rating organizations shall establish and
734 use rates, rating schedules, or rating manuals to allow the
735 insurer a reasonable rate of return on such classes of insurance
736 written in this state. A copy of rates, rating schedules, rating
737 manuals, premium credits or discount schedules, and surcharge
738 schedules, and changes thereto, shall be filed with the office
739 under one of the following procedures except as provided in
740 subparagraph 3.:

741 1. If the filing is made at least 90 days before the
742 proposed effective date and the filing is not implemented during
743 the office's review of the filing and any proceeding and judicial
744 review, then such filing shall be considered a "file and use"
745 filing. In such case, the office shall finalize its review by
746 issuance of a notice of intent to approve or a notice of intent
747 to disapprove within 90 days after receipt of the filing. The
748 notice of intent to approve and the notice of intent to
749 disapprove constitute agency action for purposes of the
750 Administrative Procedure Act. Requests for supporting
751 information, requests for mathematical or mechanical corrections,
752 or notification to the insurer by the office of its preliminary
753 findings shall not toll the 90-day period during any such
754 proceedings and subsequent judicial review. The rate shall be

20082860e1

755 deemed approved if the office does not issue a notice of intent
756 to approve or a notice of intent to disapprove within 90 days
757 after receipt of the filing.

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

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

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

777 1. Past and prospective loss experience within and without
778 this state.

779 2. Past and prospective expenses.

780 3. The degree of competition among insurers for the risk
781 insured.

782 4. Investment income reasonably expected by the insurer,
783 consistent with the insurer's investment practices, from

20082860e1

784 investable premiums anticipated in the filing, plus any other
785 expected income from currently invested assets representing the
786 amount expected on unearned premium reserves and loss reserves.
787 The commission may adopt rules using ~~utilizing~~ reasonable
788 techniques of actuarial science and economics to specify the
789 manner in which insurers shall calculate investment income
790 attributable to such classes of insurance written in this state
791 and the manner in which such investment income shall be used to
792 calculate ~~in the calculation of~~ insurance rates. Such manner
793 shall contemplate allowances for an underwriting profit factor
794 and full consideration of investment income which produce a
795 reasonable rate of return; however, investment income from
796 invested surplus may ~~shall~~ not be considered.

797 5. The reasonableness of the judgment reflected in the
798 filing.

799 6. Dividends, savings, or unabsorbed premium deposits
800 allowed or returned to Florida policyholders, members, or
801 subscribers.

802 7. The adequacy of loss reserves.

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

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

809 10. Conflagration and catastrophe hazards, if applicable.

810 11. Projected hurricane losses, if applicable, which must
811 be estimated using a model or method found to be acceptable or
812 reliable by the Florida Commission on Hurricane Loss Projection

20082860e1

813 Methodology, and as further provided in s. 627.0628.

814 ~~12.11.~~ A reasonable margin for underwriting profit and
815 contingencies. ~~For that portion of the rate covering the risk of~~
816 ~~hurricanes and other catastrophic losses for which the insurer~~
817 ~~has not purchased reinsurance and has exposed its capital and~~
818 ~~surplus to such risk, the office must approve a rating factor~~
819 ~~that provides the insurer a reasonable rate of return that is~~
820 ~~commensurate with such risk.~~

821 ~~13.12.~~ The cost of medical services, if applicable.

822 ~~14.13.~~ Other relevant factors which impact upon the
823 frequency or severity of claims or upon expenses.

824 (g) The office may at any time review a rate, rating
825 schedule, rating manual, or rate change; the pertinent records of
826 the insurer; and market conditions. If the office finds on a
827 preliminary basis that a rate may be excessive, inadequate, or
828 unfairly discriminatory, the office shall initiate proceedings to
829 disapprove the rate and shall so notify the insurer. However, the
830 office may not disapprove as excessive any rate for which it has
831 given final approval or which has been deemed approved for a
832 period of 1 year after the effective date of the filing unless
833 the office finds that a material misrepresentation or material
834 error was made by the insurer or was contained in the filing, or
835 unless the insurer has nonrenewed a number or percentage of
836 policies which the office determines may result in the insurer
837 having an excessive rate. Upon being so notified, the insurer or
838 rating organization shall, within 60 days, file with the office
839 all information which, in the belief of the insurer or
840 organization, proves the reasonableness, adequacy, and fairness
841 of the rate or rate change. The office shall issue a notice of

20082860e1

842 intent to approve or a notice of intent to disapprove pursuant to
843 the procedures of paragraph (a) within 90 days after receipt of
844 the insurer's initial response. In such instances and in any
845 administrative proceeding relating to the legality of the rate,
846 the insurer or rating organization shall carry the burden of
847 proof by a preponderance of the evidence to show that the rate is
848 not excessive, inadequate, or unfairly discriminatory. After the
849 office notifies an insurer that a rate may be excessive,
850 inadequate, or unfairly discriminatory, unless the office
851 withdraws the notification, the insurer shall not alter the rate
852 except to conform with the office's notice until the earlier of
853 120 days after the date the notification was provided or 180 days
854 after the date of the implementation of the rate. The office may,
855 subject to chapter 120, disapprove without the 60-day
856 notification any rate increase filed by an insurer within the
857 prohibited time period or during the time that the legality of
858 the increased rate is being contested.

859

860 The provisions of this subsection shall not apply to workers'
861 compensation and employer's liability insurance and to motor
862 vehicle insurance.

863 (6) (a) If an insurer requests an administrative hearing
864 pursuant to s. 120.57 related to a rate filing under this
865 section, the director of the Division of Administrative Hearings
866 shall expedite the hearing and assign an administrative law judge
867 who shall commence the hearing within 30 days after the receipt
868 of the formal request and shall enter a recommended order within
869 30 days after the hearing or within 30 days after receipt of the
870 hearing transcript by the administrative law judge, whichever is

20082860e1

871 later. Each party shall be allowed 10 days in which to submit
872 written exceptions to the recommended order. The office shall
873 enter a final order within 30 days after the entry of the
874 recommended order. The provisions of this paragraph may be waived
875 upon stipulation of all parties.

876 (b) Upon entry of a final order, the insurer may request a
877 expedited appellate review pursuant to the Florida Rules of
878 Appellate Procedure. It is the intent of the Legislature that the
879 First District Court of Appeal grant an insurer's request for an
880 expedited appellate review.

881 (c) If, in any administrative hearing under s. 120.57, any
882 additional information related to a rate filing, other than
883 expert opinion, is offered or presented by the insurer to justify
884 the rate, or offered or presented by the office to challenge the
885 rate, which was not received by the other party prior to the date
886 that the office issues a notice of intent to disapprove the
887 filing, the administrative law judge shall grant a continuance of
888 at least 30 days if requested by the party that had not
889 previously received the information. After any action with
890 respect to a rate filing that constitutes agency action for
891 purposes of the Administrative Procedure Act, except for a rate
892 filing for medical malpractice, an insurer may, in lieu of
893 demanding a hearing under s. 120.57, require arbitration of the
894 rate filing. However, the arbitration option provision in this
895 subsection does not apply to a rate filing that is made on or
896 after the effective date of this act until January 1, 2009.
897 Arbitration shall be conducted by a board of arbitrators
898 consisting of an arbitrator selected by the office, an arbitrator
899 selected by the insurer, and an arbitrator selected jointly by

20082860e1

900 ~~the other two arbitrators. Each arbitrator must be certified by~~
901 ~~the American Arbitration Association. A decision is valid only~~
902 ~~upon the affirmative vote of at least two of the arbitrators. No~~
903 ~~arbitrator may be an employee of any insurance regulator or~~
904 ~~regulatory body or of any insurer, regardless of whether or not~~
905 ~~the employing insurer does business in this state. The office and~~
906 ~~the insurer must treat the decision of the arbitrators as the~~
907 ~~final approval of a rate filing. Costs of arbitration shall be~~
908 ~~paid by the insurer.~~

909 ~~(b) Arbitration under this subsection shall be conducted~~
910 ~~pursuant to the procedures specified in ss. 682.06-682.10. Either~~
911 ~~party may apply to the circuit court to vacate or modify the~~
912 ~~decision pursuant to s. 682.13 or s. 682.14. The commission shall~~
913 ~~adopt rules for arbitration under this subsection, which rules~~
914 ~~may not be inconsistent with the arbitration rules of the~~
915 ~~American Arbitration Association as of January 1, 1996.~~

916 ~~(c) Upon initiation of the arbitration process, the insurer~~
917 ~~waives all rights to challenge the action of the office under the~~
918 ~~Administrative Procedure Act or any other provision of law;~~
919 ~~however, such rights are restored to the insurer if the~~
920 ~~arbitrators fail to render a decision within 90 days after~~
921 ~~initiation of the arbitration process.~~

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

927 1. The signing officer and actuary have reviewed the rate
928 filing;

20082860e1

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

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

939 4. Based on the signing officer's and actuary's knowledge,
940 the rate filing reflects all premium savings that are reasonably
941 expected to result from legislative enactments and are in
942 accordance with generally accepted and reasonable actuarial
943 techniques; ~~-~~

944 5. Based on the signing officer's and actuary's knowledge,
945 the actuary responsible for preparing the rate filing reviewed
946 the rate indications used by the office in approving the
947 insurer's last rate filing, if made available to the insurer for
948 review, and identified factors used in the current rate filing
949 which are inconsistent with the factors used by the office in
950 developing such rate indications; and

951 6. Based on the signing officer's and actuary's knowledge,
952 the number and type of policies that the insurer intends to
953 nonrenew during the year following the proposed effective date of
954 the rate filing, and that the rate filing reflects the reduced
955 risk of loss associated with such nonrenewals.

956 (b) A signing officer or actuary knowingly making a false
957 certification under this subsection commits a violation of s.

20082860e1

958 626.9541(1)(e) and is subject to the penalties under s. 626.9521.

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

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

964 Section 10. Subsection (1) of section 627.0613, Florida
965 Statutes, is amended to read:

966 627.0613 Consumer advocate.--The Chief Financial Officer
967 must appoint a consumer advocate who must represent the general
968 public of the state before the department and the office. The
969 consumer advocate must report directly to the Chief Financial
970 Officer, but is not otherwise under the authority of the
971 department or of any employee of the department. The consumer
972 advocate has such powers as are necessary to carry out the duties
973 of the office of consumer advocate, including, but not limited
974 to, the powers to:

975 (1) Recommend to the department or office, by petition, the
976 commencement of any proceeding or action; appear in any
977 proceeding or action before the department or office; or appear
978 in any proceeding before the Division of Administrative Hearings
979 ~~or arbitration panel specified in s. 627.062(6)~~ relating to
980 subject matter under the jurisdiction of the department or
981 office.

982 Section 11. Paragraph (c) of subsection (1) and paragraph
983 (c) of subsection (3) of section 627.0628, Florida Statutes, are
984 amended to read:

985 627.0628 Florida Commission on Hurricane Loss Projection
986 Methodology; public records exemption; public meetings

20082860e1

987 exemption.--

988 (1) LEGISLATIVE FINDINGS AND INTENT.--

989 (c) It is the intent of the Legislature to create the
990 Florida Commission on Hurricane Loss Projection Methodology as a
991 panel of experts to provide the most actuarially sophisticated
992 guidelines and standards for projection of hurricane losses
993 possible, given the current state of actuarial science. It is the
994 further intent of the Legislature that such standards and
995 guidelines must be used by the State Board of Administration in
996 developing reimbursement premium rates for the Florida Hurricane
997 Catastrophe Fund, and, subject to paragraph (3)(c), must ~~may~~ be
998 used by insurers in rate filings under s. 627.062 unless the way
999 in which such standards and guidelines were applied by the
1000 insurer was erroneous, as shown by a preponderance of the
1001 evidence.

1002 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

1003 (c) With respect to a rate filing under s. 627.062, an
1004 insurer must ~~may~~ employ and may not modify or adjust actuarial
1005 methods, principles, standards, models, or output ranges found by
1006 the commission to be accurate or reliable in determining ~~to~~
1007 ~~determine~~ hurricane loss factors used ~~for use~~ in a rate filing
1008 and in determining probable maximum loss levels for reinsurance
1009 costs included in a rate filing ~~under s. 627.062. Such findings~~
1010 ~~and factors are admissible and relevant in consideration of a~~
1011 ~~rate filing by the office or in any arbitration or administrative~~
1012 ~~or judicial review only if the office and the consumer advocate~~
1013 ~~appointed pursuant to s. 627.0613 have access to all of the~~
1014 ~~assumptions and factors that were used in developing the~~
1015 ~~actuarial methods, principles, standards, models, or output~~

20082860e1

1016 ~~ranges, and are not precluded from disclosing such information in~~
1017 ~~a rate proceeding. In any rate hearing under s. 120.57 or in any~~
1018 ~~arbitration proceeding under s. 627.062(6), the hearing officer,~~
1019 ~~judge, or arbitration panel may determine whether the office and~~
1020 ~~the consumer advocate were provided with access to all of the~~
1021 ~~assumptions and factors that were used in developing the~~
1022 ~~actuarial methods, principles, standards, models, or output~~
1023 ~~ranges and to determine their admissibility.~~

1024 Section 12. Subsection (1) of section 627.0629, Florida
1025 Statutes, is amended to read:

1026 627.0629 Residential property insurance; rate filings.--

1027 (1) (a) It is the intent of the Legislature that insurers
1028 must provide savings to consumers who install or implement
1029 windstorm damage mitigation techniques, alterations, or solutions
1030 to their properties to prevent windstorm losses. A rate filing
1031 for residential property insurance must include actuarially
1032 reasonable discounts, credits, or other rate differentials, or
1033 appropriate reductions in deductibles, for properties on which
1034 fixtures or construction techniques demonstrated to reduce the
1035 amount of loss in a windstorm have been installed or implemented.
1036 The fixtures or construction techniques shall include, but not be
1037 limited to, fixtures or construction techniques which enhance
1038 roof strength, roof covering performance, roof-to-wall strength,
1039 wall-to-floor-to-foundation strength, opening protection, and
1040 window, door, and skylight strength. Credits, discounts, or other
1041 rate differentials, or appropriate reductions in deductibles, for
1042 fixtures and construction techniques which meet the minimum
1043 requirements of the Florida Building Code must be included in the
1044 rate filing. All insurance companies must make a rate filing

20082860e1

1045 which includes the credits, discounts, or other rate
1046 differentials or reductions in deductibles by February 28, 2003.
1047 By July 1, 2007, the office shall reevaluate the discounts,
1048 credits, other rate differentials, and appropriate reductions in
1049 deductibles for fixtures and construction techniques that meet
1050 the minimum requirements of the Florida Building Code, based upon
1051 actual experience or any other loss relativity studies available
1052 to the office. The office shall determine the discounts, credits,
1053 other rate differentials, and appropriate reductions in
1054 deductibles that reflect the full actuarial value of such
1055 revaluation, which may be used by insurers in rate filings.

1056 (b) By February 1, 2009, the Office of Insurance
1057 Regulation, in consultation with the Department of Financial
1058 Services and the Department of Community Affairs, shall develop
1059 and make publicly available a proposed method for insurers to
1060 establish discounts, credits, or other rate differentials for
1061 hurricane mitigation measures which directly correlate to the
1062 numerical rating assigned to a structure pursuant to the uniform
1063 home grading scale adopted by the Financial Services Commission
1064 pursuant to s. 215.55865, including any proposed changes to the
1065 uniform home grading scale. By October 1, 2009, the commission
1066 shall adopt rules requiring insurers to make rate filings for
1067 residential property insurance which revise insurers' discounts,
1068 credits, or other rate differentials for hurricane mitigation
1069 measures so that such rate differentials correlate directly to
1070 the uniform home grading scale. The rules may include such
1071 changes to the uniform home grading scale as the commission
1072 determines are necessary, and may specify the minimum required
1073 discounts, credits, or other rate differentials. Such rate

20082860e1

1074 differentials must be consistent with generally accepted
1075 actuarial principles and wind-loss mitigation studies. The rules
1076 shall allow a period of at least 2 years after the effective date
1077 of the revised mitigation discounts, credits, or other rate
1078 differentials for a property owner to obtain an inspection or
1079 otherwise qualify for the revised credit, during which time the
1080 insurer shall continue to apply the mitigation credit that was
1081 applied immediately prior to the effective date of the revised
1082 credit.

1083 Section 13. Paragraph (b) of subsection (2) and paragraphs
1084 (a), (b), (c), (m), (p), (dd), (ee), and (ff) of subsection (6)
1085 of section 627.351, Florida Statutes, are amended to read:

1086 627.351 Insurance risk apportionment plans.--

1087 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

1088 (b) The department shall require all insurers holding a
1089 certificate of authority to transact property insurance on a
1090 direct basis in this state, other than joint underwriting
1091 associations and other entities formed pursuant to this section,
1092 to provide windstorm coverage to applicants from areas determined
1093 to be eligible pursuant to paragraph (c) who in good faith are
1094 entitled to, but are unable to procure, such coverage through
1095 ordinary means; or it shall adopt a reasonable plan or plans for
1096 the equitable apportionment or sharing among such insurers of
1097 windstorm coverage, which may include formation of an association
1098 for this purpose. As used in this subsection, the term "property
1099 insurance" means insurance on real or personal property, as
1100 defined in s. 624.604, including insurance for fire, industrial
1101 fire, allied lines, farmowners multiperil, homeowners'
1102 multiperil, commercial multiperil, and mobile homes, and

20082860e1

1103 including liability coverages on all such insurance, but
1104 excluding inland marine as defined in s. 624.607(3) and excluding
1105 vehicle insurance as defined in s. 624.605(1)(a) other than
1106 insurance on mobile homes used as permanent dwellings. The
1107 department shall adopt rules that provide a formula for the
1108 recovery and repayment of any deferred assessments.

1109 1. For the purpose of this section, properties eligible for
1110 such windstorm coverage are defined as dwellings, buildings, and
1111 other structures, including mobile homes which are used as
1112 dwellings and which are tied down in compliance with mobile home
1113 tie-down requirements prescribed by the Department of Highway
1114 Safety and Motor Vehicles pursuant to s. 320.8325, and the
1115 contents of all such properties. An applicant or policyholder is
1116 eligible for coverage only if an offer of coverage cannot be
1117 obtained by or for the applicant or policyholder from an admitted
1118 insurer at approved rates.

1119 2.a.(I) All insurers required to be members of such
1120 association shall participate in its writings, expenses, and
1121 losses. Surplus of the association shall be retained for the
1122 payment of claims and shall not be distributed to the member
1123 insurers. Such participation by member insurers shall be in the
1124 proportion that the net direct premiums of each member insurer
1125 written for property insurance in this state during the preceding
1126 calendar year bear to the aggregate net direct premiums for
1127 property insurance of all member insurers, as reduced by any
1128 credits for voluntary writings, in this state during the
1129 preceding calendar year. For the purposes of this subsection, the
1130 term "net direct premiums" means direct written premiums for
1131 property insurance, reduced by premium for liability coverage and

20082860e1

1132 for the following if included in allied lines: rain and hail on
1133 growing crops; livestock; association direct premiums booked;
1134 National Flood Insurance Program direct premiums; and similar
1135 deductions specifically authorized by the plan of operation and
1136 approved by the department. A member's participation shall begin
1137 on the first day of the calendar year following the year in which
1138 it is issued a certificate of authority to transact property
1139 insurance in the state and shall terminate 1 year after the end
1140 of the calendar year during which it no longer holds a
1141 certificate of authority to transact property insurance in the
1142 state. The commissioner, after review of annual statements, other
1143 reports, and any other statistics that the commissioner deems
1144 necessary, shall certify to the association the aggregate direct
1145 premiums written for property insurance in this state by all
1146 member insurers.

1147 (II) Effective July 1, 2002, the association shall operate
1148 subject to the supervision and approval of a board of governors
1149 who are the same individuals that have been appointed by the
1150 Treasurer to serve on the board of governors of the Citizens
1151 Property Insurance Corporation.

1152 (III) The plan of operation shall provide a formula whereby
1153 a company voluntarily providing windstorm coverage in affected
1154 areas will be relieved wholly or partially from apportionment of
1155 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
1156 sub-sub-subparagraph d.(II).

1157 (IV) A company which is a member of a group of companies
1158 under common management may elect to have its credits applied on
1159 a group basis, and any company or group may elect to have its
1160 credits applied to any other company or group.

20082860e1

1161 (V) There shall be no credits or relief from apportionment
1162 to a company for emergency assessments collected from its
1163 policyholders under sub-sub-subparagraph d.(III).

1164 (VI) The plan of operation may also provide for the award
1165 of credits, for a period not to exceed 3 years, from a regular
1166 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
1167 subparagraph d.(II) as an incentive for taking policies out of
1168 the Residential Property and Casualty Joint Underwriting
1169 Association. In order to qualify for the exemption under this
1170 sub-sub-subparagraph, the take-out plan must provide that at
1171 least 40 percent of the policies removed from the Residential
1172 Property and Casualty Joint Underwriting Association cover risks
1173 located in Dade, Broward, and Palm Beach Counties or at least 30
1174 percent of the policies so removed cover risks located in Dade,
1175 Broward, and Palm Beach Counties and an additional 50 percent of
1176 the policies so removed cover risks located in other coastal
1177 counties, and must also provide that no more than 15 percent of
1178 the policies so removed may exclude windstorm coverage. With the
1179 approval of the department, the association may waive these
1180 geographic criteria for a take-out plan that removes at least the
1181 lesser of 100,000 Residential Property and Casualty Joint
1182 Underwriting Association policies or 15 percent of the total
1183 number of Residential Property and Casualty Joint Underwriting
1184 Association policies, provided the governing board of the
1185 Residential Property and Casualty Joint Underwriting Association
1186 certifies that the take-out plan will materially reduce the
1187 Residential Property and Casualty Joint Underwriting
1188 Association's 100-year probable maximum loss from hurricanes.
1189 With the approval of the department, the board may extend such

20082860e1

1190 credits for an additional year if the insurer guarantees an
1191 additional year of renewability for all policies removed from the
1192 Residential Property and Casualty Joint Underwriting Association,
1193 or for 2 additional years if the insurer guarantees 2 additional
1194 years of renewability for all policies removed from the
1195 Residential Property and Casualty Joint Underwriting Association.

1196 b. Assessments to pay deficits in the association under
1197 this subparagraph shall be included as an appropriate factor in
1198 the making of rates as provided in s. 627.3512.

1199 c. The Legislature finds that the potential for unlimited
1200 deficit assessments under this subparagraph may induce insurers
1201 to attempt to reduce their writings in the voluntary market, and
1202 that such actions would worsen the availability problems that the
1203 association was created to remedy. It is the intent of the
1204 Legislature that insurers remain fully responsible for paying
1205 regular assessments and collecting emergency assessments for any
1206 deficits of the association; however, it is also the intent of
1207 the Legislature to provide a means by which assessment
1208 liabilities may be amortized over a period of years.

1209 d.(I) When the deficit incurred in a particular calendar
1210 year is 10 percent or less of the aggregate statewide direct
1211 written premium for property insurance for the prior calendar
1212 year for all member insurers, the association shall levy an
1213 assessment on member insurers in an amount equal to the deficit.

1214 (II) When the deficit incurred in a particular calendar
1215 year exceeds 10 percent of the aggregate statewide direct written
1216 premium for property insurance for the prior calendar year for
1217 all member insurers, the association shall levy an assessment on
1218 member insurers in an amount equal to the greater of 10 percent

20082860e1

1219 of the deficit or 10 percent of the aggregate statewide direct
1220 written premium for property insurance for the prior calendar
1221 year for member insurers. Any remaining deficit shall be
1222 recovered through emergency assessments under sub-sub-
1223 subparagraph (III).

1224 (III) Upon a determination by the board of directors that a
1225 deficit exceeds the amount that will be recovered through regular
1226 assessments on member insurers, pursuant to sub-sub-subparagraph
1227 (I) or sub-sub-subparagraph (II), the board shall levy, after
1228 verification by the department, emergency assessments to be
1229 collected by member insurers and by underwriting associations
1230 created pursuant to this section which write property insurance,
1231 upon issuance or renewal of property insurance policies other
1232 than National Flood Insurance policies in the year or years
1233 following levy of the regular assessments. The amount of the
1234 emergency assessment collected in a particular year shall be a
1235 uniform percentage of that year's direct written premium for
1236 property insurance for all member insurers and underwriting
1237 associations, excluding National Flood Insurance policy premiums,
1238 as annually determined by the board and verified by the
1239 department. The department shall verify the arithmetic
1240 calculations involved in the board's determination within 30 days
1241 after receipt of the information on which the determination was
1242 based. Notwithstanding any other provision of law, each member
1243 insurer and each underwriting association created pursuant to
1244 this section shall collect emergency assessments from its
1245 policyholders without such obligation being affected by any
1246 credit, limitation, exemption, or deferment. The emergency
1247 assessments so collected shall be transferred directly to the

20082860e1

1248 association on a periodic basis as determined by the association.
1249 The aggregate amount of emergency assessments levied under this
1250 sub-sub-subparagraph in any calendar year may not exceed the
1251 greater of 10 percent of the amount needed to cover the original
1252 deficit, plus interest, fees, commissions, required reserves, and
1253 other costs associated with financing of the original deficit, or
1254 10 percent of the aggregate statewide direct written premium for
1255 property insurance written by member insurers and underwriting
1256 associations for the prior year, plus interest, fees,
1257 commissions, required reserves, and other costs associated with
1258 financing the original deficit. The board may pledge the proceeds
1259 of the emergency assessments under this sub-sub-subparagraph as
1260 the source of revenue for bonds, to retire any other debt
1261 incurred as a result of the deficit or events giving rise to the
1262 deficit, or in any other way that the board determines will
1263 efficiently recover the deficit. The emergency assessments under
1264 this sub-sub-subparagraph shall continue as long as any bonds
1265 issued or other indebtedness incurred with respect to a deficit
1266 for which the assessment was imposed remain outstanding, unless
1267 adequate provision has been made for the payment of such bonds or
1268 other indebtedness pursuant to the document governing such bonds
1269 or other indebtedness. Emergency assessments collected under this
1270 sub-sub-subparagraph are not part of an insurer's rates, are not
1271 premium, and are not subject to premium tax, fees, or
1272 commissions; however, failure to pay the emergency assessment
1273 shall be treated as failure to pay premium.

1274 (IV) Each member insurer's share of the total regular
1275 assessments under sub-sub-subparagraph (I) or sub-sub-
1276 subparagraph (II) shall be in the proportion that the insurer's

20082860e1

1277 net direct premium for property insurance in this state, for the
1278 year preceding the assessment bears to the aggregate statewide
1279 net direct premium for property insurance of all member insurers,
1280 as reduced by any credits for voluntary writings for that year.

1281 (V) If regular deficit assessments are made under sub-sub-
1282 subparagraph (I) or sub-sub-subparagraph (II), or by the
1283 Residential Property and Casualty Joint Underwriting Association
1284 under sub-subparagraph (6)(b)3.a. or sub-subparagraph (6)(b)3.b.,
1285 the association shall levy upon the association's policyholders,
1286 as part of its next rate filing, or by a separate rate filing
1287 solely for this purpose, a market equalization surcharge in a
1288 percentage equal to the total amount of such regular assessments
1289 divided by the aggregate statewide direct written premium for
1290 property insurance for member insurers for the prior calendar
1291 year. Market equalization surcharges under this sub-sub-
1292 subparagraph are not considered premium and are not subject to
1293 commissions, fees, or premium taxes; however, failure to pay a
1294 market equalization surcharge shall be treated as failure to pay
1295 premium.

1296 e. The governing body of any unit of local government, any
1297 residents of which are insured under the plan, may issue bonds as
1298 defined in s. 125.013 or s. 166.101 to fund an assistance
1299 program, in conjunction with the association, for the purpose of
1300 defraying deficits of the association. In order to avoid needless
1301 and indiscriminate proliferation, duplication, and fragmentation
1302 of such assistance programs, any unit of local government, any
1303 residents of which are insured by the association, may provide
1304 for the payment of losses, regardless of whether or not the
1305 losses occurred within or outside of the territorial jurisdiction

20082860e1

1306 of the local government. Revenue bonds may not be issued until
1307 validated pursuant to chapter 75, unless a state of emergency is
1308 declared by executive order or proclamation of the Governor
1309 pursuant to s. 252.36 making such findings as are necessary to
1310 determine that it is in the best interests of, and necessary for,
1311 the protection of the public health, safety, and general welfare
1312 of residents of this state and the protection and preservation of
1313 the economic stability of insurers operating in this state, and
1314 declaring it an essential public purpose to permit certain
1315 municipalities or counties to issue bonds as will provide relief
1316 to claimants and policyholders of the association and insurers
1317 responsible for apportionment of plan losses. Any such unit of
1318 local government may enter into such contracts with the
1319 association and with any other entity created pursuant to this
1320 subsection as are necessary to carry out this paragraph. Any
1321 bonds issued under this sub-subparagraph shall be payable from
1322 and secured by moneys received by the association from
1323 assessments under this subparagraph, and assigned and pledged to
1324 or on behalf of the unit of local government for the benefit of
1325 the holders of such bonds. The funds, credit, property, and
1326 taxing power of the state or of the unit of local government
1327 shall not be pledged for the payment of such bonds. If any of the
1328 bonds remain unsold 60 days after issuance, the department shall
1329 require all insurers subject to assessment to purchase the bonds,
1330 which shall be treated as admitted assets; each insurer shall be
1331 required to purchase that percentage of the unsold portion of the
1332 bond issue that equals the insurer's relative share of assessment
1333 liability under this subsection. An insurer shall not be required
1334 to purchase the bonds to the extent that the department

20082860e1

1335 determines that the purchase would endanger or impair the
1336 solvency of the insurer. The authority granted by this sub-
1337 subparagraph is additional to any bonding authority granted by
1338 subparagraph 6.

1339 3. The plan shall also provide that any member with a
1340 surplus as to policyholders of \$20 million or less writing 25
1341 percent or more of its total countrywide property insurance
1342 premiums in this state may petition the department, within the
1343 first 90 days of each calendar year, to qualify as a limited
1344 apportionment company. The apportionment of such a member company
1345 in any calendar year for which it is qualified shall not exceed
1346 its gross participation, which shall not be affected by the
1347 formula for voluntary writings. In no event shall a limited
1348 apportionment company be required to participate in any
1349 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1350 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
1351 \$50 million after payment of available plan funds in any calendar
1352 year. However, a limited apportionment company shall collect from
1353 its policyholders any emergency assessment imposed under sub-sub-
1354 subparagraph 2.d.(III). The plan shall provide that, if the
1355 department determines that any regular assessment will result in
1356 an impairment of the surplus of a limited apportionment company,
1357 the department may direct that all or part of such assessment be
1358 deferred. However, there shall be no limitation or deferment of
1359 an emergency assessment to be collected from policyholders under
1360 sub-sub-subparagraph 2.d.(III).

1361 4. The plan shall provide for the deferment, in whole or in
1362 part, of a regular assessment of a member insurer under sub-sub-
1363 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not

20082860e1

1364 for an emergency assessment collected from policyholders under
1365 sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1366 commissioner, payment of such regular assessment would endanger
1367 or impair the solvency of the member insurer. In the event a
1368 regular assessment against a member insurer is deferred in whole
1369 or in part, the amount by which such assessment is deferred may
1370 be assessed against the other member insurers in a manner
1371 consistent with the basis for assessments set forth in sub-sub-
1372 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1373 5.a. The plan of operation may include deductibles and
1374 rules for classification of risks and rate modifications
1375 consistent with the objective of providing and maintaining funds
1376 sufficient to pay catastrophe losses.

1377 ~~b. The association may require arbitration of a rate filing~~
1378 ~~under s. 627.062(6).~~ It is the intent of the Legislature that the
1379 rates for coverage provided by the association be actuarially
1380 sound and not competitive with approved rates charged in the
1381 admitted voluntary market such that the association functions as
1382 a residual market mechanism to provide insurance only when the
1383 insurance cannot be procured in the voluntary market. The plan of
1384 operation shall provide a mechanism to assure that, beginning no
1385 later than January 1, 1999, the rates charged by the association
1386 for each line of business are reflective of approved rates in the
1387 voluntary market for hurricane coverage for each line of business
1388 in the various areas eligible for association coverage.

1389 c. The association shall provide for windstorm coverage on
1390 residential properties in limits up to \$10 million for commercial
1391 lines residential risks and up to \$1 million for personal lines
1392 residential risks. If coverage with the association is sought for

20082860e1

1393 a residential risk valued in excess of these limits, coverage
1394 shall be available to the risk up to the replacement cost or
1395 actual cash value of the property, at the option of the insured,
1396 if coverage for the risk cannot be located in the authorized
1397 market. The association must accept a commercial lines
1398 residential risk with limits above \$10 million or a personal
1399 lines residential risk with limits above \$1 million if coverage
1400 is not available in the authorized market. The association may
1401 write coverage above the limits specified in this subparagraph
1402 with or without facultative or other reinsurance coverage, as the
1403 association determines appropriate.

1404 d. The plan of operation must provide objective criteria
1405 and procedures, approved by the department, to be uniformly
1406 applied for all applicants in determining whether an individual
1407 risk is so hazardous as to be uninsurable. In making this
1408 determination and in establishing the criteria and procedures,
1409 the following shall be considered:

1410 (I) Whether the likelihood of a loss for the individual
1411 risk is substantially higher than for other risks of the same
1412 class; and

1413 (II) Whether the uncertainty associated with the individual
1414 risk is such that an appropriate premium cannot be determined.

1415
1416 The acceptance or rejection of a risk by the association pursuant
1417 to such criteria and procedures must be construed as the private
1418 placement of insurance, and the provisions of chapter 120 do not
1419 apply.

1420 e. If the risk accepts an offer of coverage through the
1421 market assistance program or through a mechanism established by

20082860e1

1422 the association, either before the policy is issued by the
1423 association or during the first 30 days of coverage by the
1424 association, and the producing agent who submitted the
1425 application to the association is not currently appointed by the
1426 insurer, the insurer shall:

1427 (I) Pay to the producing agent of record of the policy, for
1428 the first year, an amount that is the greater of the insurer's
1429 usual and customary commission for the type of policy written or
1430 a fee equal to the usual and customary commission of the
1431 association; or

1432 (II) Offer to allow the producing agent of record of the
1433 policy to continue servicing the policy for a period of not less
1434 than 1 year and offer to pay the agent the greater of the
1435 insurer's or the association's usual and customary commission for
1436 the type of policy written.

1437
1438 If the producing agent is unwilling or unable to accept
1439 appointment, the new insurer shall pay the agent in accordance
1440 with sub-sub-subparagraph (I). Subject to the provisions of s.
1441 627.3517, the policies issued by the association must provide
1442 that if the association obtains an offer from an authorized
1443 insurer to cover the risk at its approved rates under either a
1444 standard policy including wind coverage or, if consistent with
1445 the insurer's underwriting rules as filed with the department, a
1446 basic policy including wind coverage, the risk is no longer
1447 eligible for coverage through the association. Upon termination
1448 of eligibility, the association shall provide written notice to
1449 the policyholder and agent of record stating that the association
1450 policy must be canceled as of 60 days after the date of the

20082860e1

1451 notice because of the offer of coverage from an authorized
1452 insurer. Other provisions of the insurance code relating to
1453 cancellation and notice of cancellation do not apply to actions
1454 under this sub-subparagraph.

1455 f. When the association enters into a contractual agreement
1456 for a take-out plan, the producing agent of record of the
1457 association policy is entitled to retain any unearned commission
1458 on the policy, and the insurer shall:

1459 (I) Pay to the producing agent of record of the association
1460 policy, for the first year, an amount that is the greater of the
1461 insurer's usual and customary commission for the type of policy
1462 written or a fee equal to the usual and customary commission of
1463 the association; or

1464 (II) Offer to allow the producing agent of record of the
1465 association policy to continue servicing the policy for a period
1466 of not less than 1 year and offer to pay the agent the greater of
1467 the insurer's or the association's usual and customary commission
1468 for the type of policy written.

1469
1470 If the producing agent is unwilling or unable to accept
1471 appointment, the new insurer shall pay the agent in accordance
1472 with sub-sub-subparagraph (I).

1473 6.a. The plan of operation may authorize the formation of a
1474 private nonprofit corporation, a private nonprofit unincorporated
1475 association, a partnership, a trust, a limited liability company,
1476 or a nonprofit mutual company which may be empowered, among other
1477 things, to borrow money by issuing bonds or by incurring other
1478 indebtedness and to accumulate reserves or funds to be used for
1479 the payment of insured catastrophe losses. The plan may authorize

20082860e1

1480 all actions necessary to facilitate the issuance of bonds,
1481 including the pledging of assessments or other revenues.

1482 b. Any entity created under this subsection, or any entity
1483 formed for the purposes of this subsection, may sue and be sued,
1484 may borrow money; issue bonds, notes, or debt instruments; pledge
1485 or sell assessments, market equalization surcharges and other
1486 surcharges, rights, premiums, contractual rights, projected
1487 recoveries from the Florida Hurricane Catastrophe Fund, other
1488 reinsurance recoverables, and other assets as security for such
1489 bonds, notes, or debt instruments; enter into any contracts or
1490 agreements necessary or proper to accomplish such borrowings; and
1491 take other actions necessary to carry out the purposes of this
1492 subsection. The association may issue bonds or incur other
1493 indebtedness, or have bonds issued on its behalf by a unit of
1494 local government pursuant to subparagraph (6)(p)2., in the
1495 absence of a hurricane or other weather-related event, upon a
1496 determination by the association subject to approval by the
1497 department that such action would enable it to efficiently meet
1498 the financial obligations of the association and that such
1499 financings are reasonably necessary to effectuate the
1500 requirements of this subsection. Any such entity may accumulate
1501 reserves and retain surpluses as of the end of any association
1502 year to provide for the payment of losses incurred by the
1503 association during that year or any future year. The association
1504 shall incorporate and continue the plan of operation and articles
1505 of agreement in effect on the effective date of chapter 76-96,
1506 Laws of Florida, to the extent that it is not inconsistent with
1507 chapter 76-96, and as subsequently modified consistent with
1508 chapter 76-96. The board of directors and officers currently

20082860e1

1509 serving shall continue to serve until their successors are duly
1510 qualified as provided under the plan. The assets and obligations
1511 of the plan in effect immediately prior to the effective date of
1512 chapter 76-96 shall be construed to be the assets and obligations
1513 of the successor plan created herein.

1514 c. In recognition of s. 10, Art. I of the State
1515 Constitution, prohibiting the impairment of obligations of
1516 contracts, it is the intent of the Legislature that no action be
1517 taken whose purpose is to impair any bond indenture or financing
1518 agreement or any revenue source committed by contract to such
1519 bond or other indebtedness issued or incurred by the association
1520 or any other entity created under this subsection.

1521 7. On such coverage, an agent's remuneration shall be that
1522 amount of money payable to the agent by the terms of his or her
1523 contract with the company with which the business is placed.
1524 However, no commission will be paid on that portion of the
1525 premium which is in excess of the standard premium of that
1526 company.

1527 8. Subject to approval by the department, the association
1528 may establish different eligibility requirements and operational
1529 procedures for any line or type of coverage for any specified
1530 eligible area or portion of an eligible area if the board
1531 determines that such changes to the eligibility requirements and
1532 operational procedures are justified due to the voluntary market
1533 being sufficiently stable and competitive in such area or for
1534 such line or type of coverage and that consumers who, in good
1535 faith, are unable to obtain insurance through the voluntary
1536 market through ordinary methods would continue to have access to
1537 coverage from the association. When coverage is sought in

20082860e1

1538 connection with a real property transfer, such requirements and
1539 procedures shall not provide for an effective date of coverage
1540 later than the date of the closing of the transfer as established
1541 by the transferor, the transferee, and, if applicable, the
1542 lender.

1543 9. Notwithstanding any other provision of law:

1544 a. The pledge or sale of, the lien upon, and the security
1545 interest in any rights, revenues, or other assets of the
1546 association created or purported to be created pursuant to any
1547 financing documents to secure any bonds or other indebtedness of
1548 the association shall be and remain valid and enforceable,
1549 notwithstanding the commencement of and during the continuation
1550 of, and after, any rehabilitation, insolvency, liquidation,
1551 bankruptcy, receivership, conservatorship, reorganization, or
1552 similar proceeding against the association under the laws of this
1553 state or any other applicable laws.

1554 b. No such proceeding shall relieve the association of its
1555 obligation, or otherwise affect its ability to perform its
1556 obligation, to continue to collect, or levy and collect,
1557 assessments, market equalization or other surcharges, projected
1558 recoveries from the Florida Hurricane Catastrophe Fund,
1559 reinsurance recoverables, or any other rights, revenues, or other
1560 assets of the association pledged.

1561 c. Each such pledge or sale of, lien upon, and security
1562 interest in, including the priority of such pledge, lien, or
1563 security interest, any such assessments, emergency assessments,
1564 market equalization or renewal surcharges, projected recoveries
1565 from the Florida Hurricane Catastrophe Fund, reinsurance
1566 recoverables, or other rights, revenues, or other assets which

20082860e1

1567 are collected, or levied and collected, after the commencement of
1568 and during the pendency of or after any such proceeding shall
1569 continue unaffected by such proceeding.

1570 d. As used in this subsection, the term "financing
1571 documents" means any agreement, instrument, or other document now
1572 existing or hereafter created evidencing any bonds or other
1573 indebtedness of the association or pursuant to which any such
1574 bonds or other indebtedness has been or may be issued and
1575 pursuant to which any rights, revenues, or other assets of the
1576 association are pledged or sold to secure the repayment of such
1577 bonds or indebtedness, together with the payment of interest on
1578 such bonds or such indebtedness, or the payment of any other
1579 obligation of the association related to such bonds or
1580 indebtedness.

1581 e. Any such pledge or sale of assessments, revenues,
1582 contract rights or other rights or assets of the association
1583 shall constitute a lien and security interest, or sale, as the
1584 case may be, that is immediately effective and attaches to such
1585 assessments, revenues, contract, or other rights or assets,
1586 whether or not imposed or collected at the time the pledge or
1587 sale is made. Any such pledge or sale is effective, valid,
1588 binding, and enforceable against the association or other entity
1589 making such pledge or sale, and valid and binding against and
1590 superior to any competing claims or obligations owed to any other
1591 person or entity, including policyholders in this state,
1592 asserting rights in any such assessments, revenues, contract, or
1593 other rights or assets to the extent set forth in and in
1594 accordance with the terms of the pledge or sale contained in the
1595 applicable financing documents, whether or not any such person or

20082860e1

1596 entity has notice of such pledge or sale and without the need for
1597 any physical delivery, recordation, filing, or other action.

1598 f. There shall be no liability on the part of, and no cause
1599 of action of any nature shall arise against, any member insurer
1600 or its agents or employees, agents or employees of the
1601 association, members of the board of directors of the
1602 association, or the department or its representatives, for any
1603 action taken by them in the performance of their duties or
1604 responsibilities under this subsection. Such immunity does not
1605 apply to actions for breach of any contract or agreement
1606 pertaining to insurance, or any willful tort.

1607 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1608 (a)1. It is the public purpose of this subsection to ensure
1609 the existence of an orderly market for property insurance for
1610 Floridians and Florida businesses. The Legislature finds that
1611 private insurers are unwilling or unable to provide affordable
1612 property insurance coverage in this state to the extent sought
1613 and needed. The absence of affordable property insurance
1614 threatens the public health, safety, and welfare and likewise
1615 threatens the economic health of the state. The state therefore
1616 has a compelling public interest and a public purpose to assist
1617 in assuring that property in the state is insured and that it is
1618 insured at affordable rates so as to facilitate the remediation,
1619 reconstruction, and replacement of damaged or destroyed property
1620 in order to reduce or avoid the negative effects otherwise
1621 resulting to the public health, safety, and welfare, to the
1622 economy of the state, and to the revenues of the state and local
1623 governments which are needed to provide for the public welfare.
1624 It is necessary, therefore, to provide affordable property

20082860e1

1625 insurance to applicants who are in good faith entitled to procure
1626 insurance through the voluntary market but are unable to do so.
1627 The Legislature intends by this subsection that affordable
1628 property insurance be provided and that it continue to be
1629 provided, as long as necessary, through Citizens Property
1630 Insurance Corporation, a government entity that is an integral
1631 part of the state, and that is not a private insurance company.
1632 To that end, Citizens Property Insurance Corporation shall strive
1633 to increase the availability of affordable property insurance in
1634 this state, while achieving efficiencies and economies, and while
1635 providing service to policyholders, applicants, and agents which
1636 is no less than the quality generally provided in the voluntary
1637 market, for the achievement of the foregoing public purposes.
1638 Because it is essential for this government entity to have the
1639 maximum financial resources to pay claims following a
1640 catastrophic hurricane, it is the intent of the Legislature that
1641 Citizens Property Insurance Corporation continue to be an
1642 integral part of the state and that the income of the corporation
1643 be exempt from federal income taxation and that interest on the
1644 debt obligations issued by the corporation be exempt from federal
1645 income taxation.

1646 2. The Residential Property and Casualty Joint Underwriting
1647 Association originally created by this statute shall be known, as
1648 of July 1, 2002, as the Citizens Property Insurance Corporation.
1649 The corporation shall provide insurance for residential and
1650 commercial property, for applicants who are in good faith
1651 entitled, but are unable, to procure insurance through the
1652 voluntary market. The corporation shall operate pursuant to a
1653 plan of operation approved by order of the Financial Services

20082860e1

1654 Commission. The plan is subject to continuous review by the
1655 commission. The commission may, by order, withdraw approval of
1656 all or part of a plan if the commission determines that
1657 conditions have changed since approval was granted and that the
1658 purposes of the plan require changes in the plan. The corporation
1659 shall continue to operate pursuant to the plan of operation
1660 approved by the Office of Insurance Regulation until October 1,
1661 2006. For the purposes of this subsection, residential coverage
1662 includes both personal lines residential coverage, which consists
1663 of the type of coverage provided by homeowner's, mobile home
1664 owner's, dwelling, tenant's, condominium unit owner's, and
1665 similar policies, and commercial lines residential coverage,
1666 which consists of the type of coverage provided by condominium
1667 association, apartment building, and similar policies.

1668 ~~3. For the purposes of this subsection, the term "homestead~~
1669 ~~property" means:~~

1670 ~~a. Property that has been granted a homestead exemption~~
1671 ~~under chapter 196;~~

1672 ~~b. Property for which the owner has a current, written~~
1673 ~~lease with a renter for a term of at least 7 months and for which~~
1674 ~~the dwelling is insured by the corporation for \$200,000 or less;~~

1675 ~~c. An owner-occupied mobile home or manufactured home, as~~
1676 ~~defined in s. 320.01, which is permanently affixed to real~~
1677 ~~property, is owned by a Florida resident, and has been granted a~~
1678 ~~homestead exemption under chapter 196 or, if the owner does not~~
1679 ~~own the real property, the owner certifies that the mobile home~~
1680 ~~or manufactured home is his or her principal place of residence;~~

1681 ~~d. Tenant's coverage;~~

1682 ~~e. Commercial lines residential property; or~~

20082860e1

1683 ~~f. Any county, district, or municipal hospital; a hospital~~
1684 ~~licensed by any not-for-profit corporation qualified under s.~~
1685 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
1686 ~~continuing care retirement community that is certified under~~
1687 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1688 ~~under chapter 196.~~

1689 ~~4. For the purposes of this subsection, the term~~
1690 ~~"nonhomestead property" means property that is not homestead~~
1691 ~~property.~~

1692 ~~5. Effective January 1, 2009, a personal lines residential~~
1693 ~~structure that has a dwelling replacement cost of \$1 million or~~
1694 ~~more, or a single condominium unit that has a combined dwelling~~
1695 ~~and content replacement cost of \$1 million or more is not~~
1696 ~~eligible for coverage by the corporation. Such dwellings insured~~
1697 ~~by the corporation on December 31, 2008, may continue to be~~
1698 ~~covered by the corporation until the end of the policy term.~~
1699 ~~However, such dwellings that are insured by the corporation and~~
1700 ~~become ineligible for coverage due to the provisions of this~~
1701 ~~subparagraph may reapply and obtain coverage in the high-risk~~
1702 ~~account and be considered "nonhomestead property" if the property~~
1703 ~~owner provides the corporation with a sworn affidavit from one or~~
1704 ~~more insurance agents, on a form provided by the corporation,~~
1705 ~~stating that the agents have made their best efforts to obtain~~
1706 ~~coverage and that the property has been rejected for coverage by~~
1707 ~~at least one authorized insurer and at least three surplus lines~~
1708 ~~insurers. If such conditions are met, the dwelling may be insured~~
1709 ~~by the corporation for up to 3 years, after which time the~~
1710 ~~dwelling is ineligible for coverage. The office shall approve the~~
1711 ~~method used by the corporation for valuing the dwelling~~

20082860e1

1712 ~~replacement cost for the purposes of this subparagraph. If a~~
1713 ~~policyholder is insured by the corporation prior to being~~
1714 ~~determined to be ineligible pursuant to this subparagraph and~~
1715 ~~such policyholder files a lawsuit challenging the determination,~~
1716 ~~the policyholder may remain insured by the corporation until the~~
1717 ~~conclusion of the litigation.~~

1718 ~~6. For properties constructed on or after January 1, 2009,~~
1719 ~~the corporation may not insure any property located within 2,500~~
1720 ~~feet landward of the coastal construction control line created~~
1721 ~~pursuant to s. 161.053 unless the property meets the requirements~~
1722 ~~of the code plus building standards developed by the Florida~~
1723 ~~Building Commission.~~

1724 3.7. It is the intent of the Legislature that
1725 policyholders, applicants, and agents of the corporation receive
1726 service and treatment of the highest possible level but never
1727 less than that generally provided in the voluntary market. It
1728 also is intended that the corporation be held to service
1729 standards no less than those applied to insurers in the voluntary
1730 market by the office with respect to responsiveness, timeliness,
1731 customer courtesy, and overall dealings with policyholders,
1732 applicants, or agents of the corporation.

1733 4.8. Effective January 1, 2009, a personal lines
1734 residential structure that is located in the "wind-borne debris
1735 region," as defined in s. 1609.2, International Building Code
1736 (2006), and that has an insured value on the structure of
1737 \$750,000 or more is not eligible for coverage by the corporation
1738 unless the structure has opening protections as required under
1739 the Florida Building Code for a newly constructed residential
1740 structure in that area. A residential structure shall be deemed

20082860e1

1741 to comply with the requirements of this subparagraph if it has
1742 shutters or opening protections on all openings and if such
1743 opening protections complied with the Florida Building Code at
1744 the time they were installed. Effective January 1, 2011, the
1745 requirements of this subparagraph apply to a personal lines
1746 residential structure that is located in the wind-borne debris
1747 region and that has an insured value on the structure of \$500,000
1748 or more.

1749 (b)1. All insurers authorized to write one or more subject
1750 lines of business in this state are subject to assessment by the
1751 corporation and, for the purposes of this subsection, are
1752 referred to collectively as "assessable insurers." Insurers
1753 writing one or more subject lines of business in this state
1754 pursuant to part VIII of chapter 626 are not assessable insurers,
1755 but insureds who procure one or more subject lines of business in
1756 this state pursuant to part VIII of chapter 626 are subject to
1757 assessment by the corporation and are referred to collectively as
1758 "assessable insureds." An authorized insurer's assessment
1759 liability shall begin on the first day of the calendar year
1760 following the year in which the insurer was issued a certificate
1761 of authority to transact insurance for subject lines of business
1762 in this state and shall terminate 1 year after the end of the
1763 first calendar year during which the insurer no longer holds a
1764 certificate of authority to transact insurance for subject lines
1765 of business in this state.

1766 2.a. All revenues, assets, liabilities, losses, and
1767 expenses of the corporation shall be divided into three separate
1768 accounts as follows:

1769 (I) A personal lines account for personal residential

20082860e1

1770 policies issued by the corporation or issued by the Residential
1771 Property and Casualty Joint Underwriting Association and renewed
1772 by the corporation that provide comprehensive, multiperil
1773 coverage on risks that are not located in areas eligible for
1774 coverage in the Florida Windstorm Underwriting Association as
1775 those areas were defined on January 1, 2002, and for such
1776 policies that do not provide coverage for the peril of wind on
1777 risks that are located in such areas;

1778 (II) A commercial lines account for commercial residential
1779 and commercial nonresidential policies issued by the corporation
1780 or issued by the Residential Property and Casualty Joint
1781 Underwriting Association and renewed by the corporation that
1782 provide coverage for basic property perils on risks that are not
1783 located in areas eligible for coverage in the Florida Windstorm
1784 Underwriting Association as those areas were defined on January
1785 1, 2002, and for such policies that do not provide coverage for
1786 the peril of wind on risks that are located in such areas; and

1787 (III) A high-risk account for personal residential policies
1788 and commercial residential and commercial nonresidential property
1789 policies issued by the corporation or transferred to the
1790 corporation that provide coverage for the peril of wind on risks
1791 that are located in areas eligible for coverage in the Florida
1792 Windstorm Underwriting Association as those areas were defined on
1793 January 1, 2002. ~~Subject to the approval of a business plan by~~
1794 ~~the Financial Services Commission and Legislative Budget~~
1795 ~~Commission as provided in this sub-sub-subparagraph, but no~~
1796 ~~earlier than March 31, 2007,~~ The corporation shall ~~may~~ offer
1797 policies that provide multiperil coverage and the corporation
1798 shall ~~continue to~~ offer policies that provide coverage only for

20082860e1

1799 the peril of wind for risks located in areas eligible for
1800 coverage in the high-risk account. Beginning July 1, 2008, the
1801 corporation may not issue new policies that provide coverage only
1802 for the peril of wind, but may continue to renew such policies
1803 that were in force on that date. In issuing multiperil coverage,
1804 the corporation may use its approved policy forms and rates for
1805 the personal lines account. An applicant or insured who is
1806 eligible to purchase a multiperil policy from the corporation may
1807 purchase a multiperil policy from an authorized insurer without
1808 prejudice to the applicant's or insured's eligibility to
1809 prospectively purchase a policy that provides coverage only for
1810 the peril of wind from the corporation prior to July 1, 2008. An
1811 applicant or insured who is eligible for a corporation policy
1812 that provides coverage only for the peril of wind may elect to
1813 purchase or retain such policy and also purchase or retain
1814 coverage excluding wind from an authorized insurer without
1815 prejudice to the applicant's or insured's eligibility to
1816 prospectively purchase a policy that provides multiperil coverage
1817 from the corporation. It is the goal of the Legislature that
1818 there would be an overall average savings of 10 percent or more
1819 for a policyholder who currently has a wind-only policy with the
1820 corporation, and an ex-wind policy with a voluntary insurer or
1821 the corporation, and who then obtains a multiperil policy from
1822 the corporation. It is the intent of the Legislature that the
1823 offer of multiperil coverage in the high-risk account be made and
1824 implemented in a manner that does not adversely affect the tax-
1825 exempt status of the corporation or creditworthiness of or
1826 security for currently outstanding financing obligations or
1827 credit facilities of the high-risk account, the personal lines

20082860e1

1828 account, or the commercial lines account. ~~By March 1, 2007, the~~
1829 ~~corporation shall prepare and submit for approval by the~~
1830 ~~Financial Services Commission and Legislative Budget Commission a~~
1831 ~~report detailing the corporation's business plan for issuing~~
1832 ~~multi-peril coverage in the high-risk account. The business plan~~
1833 ~~shall be approved or disapproved within 30 days after receipt, as~~
1834 ~~submitted or modified and resubmitted by the corporation. The~~
1835 ~~business plan must include: the impact of such multi-peril~~
1836 ~~coverage on the corporation's financial resources, the impact of~~
1837 ~~such multi-peril coverage on the corporation's tax exempt status,~~
1838 ~~the manner in which the corporation plans to implement the~~
1839 ~~processing of applications and policy forms for new and existing~~
1840 ~~policyholders, the impact of such multi-peril coverage on the~~
1841 ~~corporation's ability to deliver customer service at the high~~
1842 ~~level required by this subsection, the ability of the corporation~~
1843 ~~to process claims, the ability of the corporation to quote and~~
1844 ~~issue policies, the impact of such multi-peril coverage on the~~
1845 ~~corporation's agents, the impact of such multi-peril coverage on~~
1846 ~~the corporation's existing policyholders, and the impact of such~~
1847 ~~multi-peril coverage on rates and premium. The high-risk account~~
1848 must also include quota share primary insurance under
1849 subparagraph (c)2. The area eligible for coverage under the high-
1850 risk account also includes the area within Port Canaveral, which
1851 is bordered on the south by the City of Cape Canaveral, bordered
1852 on the west by the Banana River, and bordered on the north by
1853 Federal Government property.

1854 b. The three separate accounts must be maintained as long
1855 as financing obligations entered into by the Florida Windstorm
1856 Underwriting Association or Residential Property and Casualty

20082860e1

1857 Joint Underwriting Association are outstanding, in accordance
1858 with the terms of the corresponding financing documents. When the
1859 financing obligations are no longer outstanding, in accordance
1860 with the terms of the corresponding financing documents, the
1861 corporation may use a single account for all revenues, assets,
1862 liabilities, losses, and expenses of the corporation. Consistent
1863 with the requirement of this subparagraph and prudent investment
1864 policies that minimize the cost of carrying debt, the board shall
1865 exercise its best efforts to retire existing debt or to obtain
1866 approval of necessary parties to amend the terms of existing
1867 debt, so as to structure the most efficient plan to consolidate
1868 the three separate accounts into a single account. By February 1,
1869 2007, the board shall submit a report to the Financial Services
1870 Commission, the President of the Senate, and the Speaker of the
1871 House of Representatives which includes an analysis of
1872 consolidating the accounts, the actions the board has taken to
1873 minimize the cost of carrying debt, and its recommendations for
1874 executing the most efficient plan.

1875 c. Creditors of the Residential Property and Casualty Joint
1876 Underwriting Association and of the accounts specified in sub-
1877 sub-subparagraphs a.(I) and (II) may have a claim against, and
1878 recourse to, the accounts referred to in sub-sub-subparagraphs
1879 a.(I) and (II) and shall have no claim against, or recourse to,
1880 the account referred to in sub-sub-subparagraph a.(III).
1881 Creditors of the Florida Windstorm Underwriting Association shall
1882 have a claim against, and recourse to, the account referred to in
1883 sub-sub-subparagraph a.(III) and shall have no claim against, or
1884 recourse to, the accounts referred to in sub-sub-subparagraphs
1885 a.(I) and (II).

20082860e1

1886 d. Revenues, assets, liabilities, losses, and expenses not
1887 attributable to particular accounts shall be prorated among the
1888 accounts.

1889 e. The Legislature finds that the revenues of the
1890 corporation are revenues that are necessary to meet the
1891 requirements set forth in documents authorizing the issuance of
1892 bonds under this subsection.

1893 f. No part of the income of the corporation may inure to
1894 the benefit of any private person.

1895 3. With respect to a deficit in an account:

1896 a. When the deficit incurred in a particular calendar year
1897 is not greater than 8 ~~10~~ percent of the aggregate statewide
1898 direct written premium for the subject lines of business for the
1899 prior calendar year, the entire deficit shall be recovered
1900 through regular assessments of assessable insurers under
1901 paragraph (p) and assessable insureds.

1902 b. When the deficit incurred in a particular calendar year
1903 exceeds 8 ~~10~~ percent of the aggregate statewide direct written
1904 premium for the subject lines of business for the prior calendar
1905 year, the corporation shall levy regular assessments on
1906 assessable insurers under paragraph (p) and on assessable
1907 insureds in an amount equal to the greater of 8 ~~10~~ percent of the
1908 deficit or 8 ~~10~~ percent of the aggregate statewide direct written
1909 premium for the subject lines of business for the prior calendar
1910 year. Any remaining deficit shall be recovered through emergency
1911 assessments under sub-subparagraph d.

1912 c. Each assessable insurer's share of the amount being
1913 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1914 be in the proportion that the assessable insurer's direct written

20082860e1

1915 premium for the subject lines of business for the year preceding
1916 the assessment bears to the aggregate statewide direct written
1917 premium for the subject lines of business for that year. The
1918 assessment percentage applicable to each assessable insured is
1919 the ratio of the amount being assessed under sub-subparagraph a.
1920 or sub-subparagraph b. to the aggregate statewide direct written
1921 premium for the subject lines of business for the prior year.
1922 Assessments levied by the corporation on assessable insurers
1923 under sub-subparagraphs a. and b. shall be paid as required by
1924 the corporation's plan of operation and paragraph (p).
1925 notwithstanding any other provision of this subsection, the
1926 aggregate amount of a regular assessment for a deficit incurred
1927 in a particular calendar year shall be reduced by the estimated
1928 amount to be received by the corporation from the Citizens
1929 policyholder surcharge ~~under subparagraph (c)10. and the amount~~
1930 ~~collected or estimated to be collected from the assessment on~~
1931 ~~Citizens policyholders~~ pursuant to sub-subparagraph i.
1932 Assessments levied by the corporation on assessable insureds
1933 under sub-subparagraphs a. and b. shall be collected by the
1934 surplus lines agent at the time the surplus lines agent collects
1935 the surplus lines tax required by s. 626.932 and shall be paid to
1936 the Florida Surplus Lines Service Office at the time the surplus
1937 lines agent pays the surplus lines tax to the Florida Surplus
1938 Lines Service Office. Upon receipt of regular assessments from
1939 surplus lines agents, the Florida Surplus Lines Service Office
1940 shall transfer the assessments directly to the corporation as
1941 determined by the corporation.

1942 d. Upon a determination by the board of governors that a
1943 deficit in an account exceeds the amount that will be recovered

20082860e1

1944 through regular assessments under sub-subparagraph a. or sub-
1945 subparagraph b., plus the amount that is expected to be recovered
1946 through surcharges under sub-subparagraph i., as to the remaining
1947 projected deficit the board shall levy, after verification by the
1948 office, emergency assessments, for as many years as necessary to
1949 cover the deficits, to be collected by assessable insurers and
1950 the corporation and collected from assessable insureds upon
1951 issuance or renewal of policies for subject lines of business,
1952 excluding National Flood Insurance policies. The amount of the
1953 emergency assessment collected in a particular year shall be a
1954 uniform percentage of that year's direct written premium for
1955 subject lines of business and all accounts of the corporation,
1956 excluding National Flood Insurance Program policy premiums, as
1957 annually determined by the board and verified by the office. The
1958 office shall verify the arithmetic calculations involved in the
1959 board's determination within 30 days after receipt of the
1960 information on which the determination was based. Notwithstanding
1961 any other provision of law, the corporation and each assessable
1962 insurer that writes subject lines of business shall collect
1963 emergency assessments from its policyholders without such
1964 obligation being affected by any credit, limitation, exemption,
1965 or deferment. Emergency assessments levied by the corporation on
1966 assessable insureds shall be collected by the surplus lines agent
1967 at the time the surplus lines agent collects the surplus lines
1968 tax required by s. 626.932 and shall be paid to the Florida
1969 Surplus Lines Service Office at the time the surplus lines agent
1970 pays the surplus lines tax to the Florida Surplus Lines Service
1971 Office. The emergency assessments so collected shall be
1972 transferred directly to the corporation on a periodic basis as

20082860e1

1973 determined by the corporation and shall be held by the
1974 corporation solely in the applicable account. The aggregate
1975 amount of emergency assessments levied for an account under this
1976 sub-subparagraph in any calendar year may, at the discretion of
1977 the board of governors, be less than but may not exceed the
1978 greater of 10 percent of the amount needed to cover the ~~original~~
1979 deficit, plus interest, fees, commissions, required reserves, and
1980 other costs associated with financing of the original deficit, or
1981 10 percent of the aggregate statewide direct written premium for
1982 subject lines of business and for all accounts of the corporation
1983 for the prior year, plus interest, fees, commissions, required
1984 reserves, and other costs associated with financing the ~~original~~
1985 deficit.

1986 e. The corporation may pledge the proceeds of assessments,
1987 projected recoveries from the Florida Hurricane Catastrophe Fund,
1988 other insurance and reinsurance recoverables, policyholder
1989 surcharges and other surcharges, and other funds available to the
1990 corporation as the source of revenue for and to secure bonds
1991 issued under paragraph (p), bonds or other indebtedness issued
1992 under subparagraph (c)3., or lines of credit or other financing
1993 mechanisms issued or created under this subsection, or to retire
1994 any other debt incurred as a result of deficits or events giving
1995 rise to deficits, or in any other way that the board determines
1996 will efficiently recover such deficits. The purpose of the lines
1997 of credit or other financing mechanisms is to provide additional
1998 resources to assist the corporation in covering claims and
1999 expenses attributable to a catastrophe. As used in this
2000 subsection, the term "assessments" includes regular assessments
2001 under sub-subparagraph a., sub-subparagraph b., or subparagraph

20082860e1

2002 (p)1. and emergency assessments under sub-subparagraph d.
2003 Emergency assessments collected under sub-subparagraph d. are not
2004 part of an insurer's rates, are not premium, and are not subject
2005 to premium tax, fees, or commissions; however, failure to pay the
2006 emergency assessment shall be treated as failure to pay premium.
2007 The emergency assessments under sub-subparagraph d. shall
2008 continue as long as any bonds issued or other indebtedness
2009 incurred with respect to a deficit for which the assessment was
2010 imposed remain outstanding, unless adequate provision has been
2011 made for the payment of such bonds or other indebtedness pursuant
2012 to the documents governing such bonds or other indebtedness.

2013 f. As used in this subsection for purposes of any deficit
2014 incurred on or after January 25, 2007, the term "subject lines of
2015 business" means insurance written by assessable insurers or
2016 procured by assessable insureds for all property and casualty
2017 lines of business in this state, but not including workers'
2018 compensation or medical malpractice. As used in the sub-
2019 subparagraph, the term "property and casualty lines of business"
2020 includes all lines of business identified on Form 2, Exhibit of
2021 Premiums and Losses, in the annual statement required of
2022 authorized insurers by s. 624.424 and any rule adopted under this
2023 section, except for those lines identified as accident and health
2024 insurance and except for policies written under the National
2025 Flood Insurance Program or the Federal Crop Insurance Program.
2026 For purposes of this sub-subparagraph, the term "workers'
2027 compensation" includes both workers' compensation insurance and
2028 excess workers' compensation insurance.

2029 g. The Florida Surplus Lines Service Office shall determine
2030 annually the aggregate statewide written premium in subject lines

20082860e1

2031 of business procured by assessable insureds and shall report that
2032 information to the corporation in a form and at a time the
2033 corporation specifies to ensure that the corporation can meet the
2034 requirements of this subsection and the corporation's financing
2035 obligations.

2036 h. The Florida Surplus Lines Service Office shall verify
2037 the proper application by surplus lines agents of assessment
2038 percentages for regular assessments and emergency assessments
2039 levied under this subparagraph on assessable insureds and shall
2040 assist the corporation in ensuring the accurate, timely
2041 collection and payment of assessments by surplus lines agents as
2042 required by the corporation.

2043 i. If a deficit is incurred in any account in 2008 or
2044 thereafter, the board of governors shall levy a Citizens
2045 policyholder surcharge ~~an immediate assessment against the~~
2046 ~~premium of each nonhomestead property policyholder in all~~
2047 ~~accounts of the corporation, as a uniform percentage of the~~
2048 ~~premium of the policy of up to 10 percent of such premium, which~~
2049 ~~funds shall be used to offset the deficit. If this assessment is~~
2050 ~~insufficient to eliminate the deficit, the board of governors~~
2051 ~~shall levy an additional assessment against all policyholders of~~
2052 ~~the corporation for a 12-month period, which shall be collected~~
2053 ~~at the time of issuance or renewal of a policy, as a uniform~~
2054 ~~percentage of the premium for the policy of up to 10 percent of~~
2055 ~~such premium, which funds shall be used to further offset the~~
2056 ~~deficit and reduce the amount of the regular assessment as~~
2057 provided in sub-subparagraphs a. and b. Citizens policyholder
2058 surcharges under this sub-subparagraph are not considered premium
2059 and are not subject to commissions, fees, or premium taxes.

20082860e1

2060 However, failure to pay such surcharges shall be treated as
2061 failure to pay premium.

2062 j. If the amount of any assessments or surcharges collected
2063 from corporation policyholders, assessable insurers or their
2064 policyholders, or assessable insureds exceeds the amount of the
2065 deficits, such excess amounts shall be remitted to and retained
2066 by the corporation in a reserve to be used by the corporation, as
2067 determined by the board of governors and approved by the office,
2068 to pay claims or reduce any past, present, or future plan-year
2069 deficits or to reduce outstanding debt. ~~The board of governors~~
2070 ~~shall maintain separate accounting records that consolidate data~~
2071 ~~for nonhomestead properties, including, but not limited to,~~
2072 ~~number of policies, insured values, premiums written, and losses.~~
2073 ~~The board of governors shall annually report to the office and~~
2074 ~~the Legislature a summary of such data.~~

2075 (c) The plan of operation of the corporation:

2076 1. Must provide for adoption of residential property and
2077 casualty insurance policy forms and commercial residential and
2078 nonresidential property insurance forms, which forms must be
2079 approved by the office prior to use. The corporation shall adopt
2080 the following policy forms:

2081 a. Standard personal lines policy forms that are
2082 comprehensive multiperil policies providing full coverage of a
2083 residential property equivalent to the coverage provided in the
2084 private insurance market under an HO-3, HO-4, or HO-6 policy.

2085 b. Basic personal lines policy forms that are policies
2086 similar to an HO-8 policy or a dwelling fire policy that provide
2087 coverage meeting the requirements of the secondary mortgage
2088 market, but which coverage is more limited than the coverage

20082860e1

2089 under a standard policy.

2090 c. Commercial lines residential and nonresidential policy
2091 forms that are generally similar to the basic perils of full
2092 coverage obtainable for commercial residential structures and
2093 commercial nonresidential structures in the admitted voluntary
2094 market.

2095 d. Personal lines and commercial lines residential property
2096 insurance forms that cover the peril of wind only. The forms are
2097 applicable only to residential properties located in areas
2098 eligible for coverage under the high-risk account referred to in
2099 sub-subparagraph (b)2.a.

2100 e. Commercial lines nonresidential property insurance forms
2101 that cover the peril of wind only. The forms are applicable only
2102 to nonresidential properties located in areas eligible for
2103 coverage under the high-risk account referred to in sub-
2104 subparagraph (b)2.a.

2105 f. The corporation may adopt variations of the policy forms
2106 listed in sub-subparagraphs a.-e. that contain more restrictive
2107 coverage.

2108 2.a. Must provide that the corporation adopt a program in
2109 which the corporation and authorized insurers enter into quota
2110 share primary insurance agreements for hurricane coverage, as
2111 defined in s. 627.4025(2)(a), for eligible risks, and adopt
2112 property insurance forms for eligible risks which cover the peril
2113 of wind only. As used in this subsection, the term:

2114 (I) "Quota share primary insurance" means an arrangement in
2115 which the primary hurricane coverage of an eligible risk is
2116 provided in specified percentages by the corporation and an
2117 authorized insurer. The corporation and authorized insurer are

20082860e1

2118 each solely responsible for a specified percentage of hurricane
2119 coverage of an eligible risk as set forth in a quota share
2120 primary insurance agreement between the corporation and an
2121 authorized insurer and the insurance contract. The responsibility
2122 of the corporation or authorized insurer to pay its specified
2123 percentage of hurricane losses of an eligible risk, as set forth
2124 in the quota share primary insurance agreement, may not be
2125 altered by the inability of the other party to the agreement to
2126 pay its specified percentage of hurricane losses. Eligible risks
2127 that are provided hurricane coverage through a quota share
2128 primary insurance arrangement must be provided policy forms that
2129 set forth the obligations of the corporation and authorized
2130 insurer under the arrangement, clearly specify the percentages of
2131 quota share primary insurance provided by the corporation and
2132 authorized insurer, and conspicuously and clearly state that
2133 neither the authorized insurer nor the corporation may be held
2134 responsible beyond its specified percentage of coverage of
2135 hurricane losses.

2136 (II) "Eligible risks" means personal lines residential and
2137 commercial lines residential risks that meet the underwriting
2138 criteria of the corporation and are located in areas that were
2139 eligible for coverage by the Florida Windstorm Underwriting
2140 Association on January 1, 2002.

2141 b. The corporation may enter into quota share primary
2142 insurance agreements with authorized insurers at corporation
2143 coverage levels of 90 percent and 50 percent.

2144 c. If the corporation determines that additional coverage
2145 levels are necessary to maximize participation in quota share
2146 primary insurance agreements by authorized insurers, the

20082860e1

2147 corporation may establish additional coverage levels. However,
2148 the corporation's quota share primary insurance coverage level
2149 may not exceed 90 percent.

2150 d. Any quota share primary insurance agreement entered into
2151 between an authorized insurer and the corporation must provide
2152 for a uniform specified percentage of coverage of hurricane
2153 losses, by county or territory as set forth by the corporation
2154 board, for all eligible risks of the authorized insurer covered
2155 under the quota share primary insurance agreement.

2156 e. Any quota share primary insurance agreement entered into
2157 between an authorized insurer and the corporation is subject to
2158 review and approval by the office. However, such agreement shall
2159 be authorized only as to insurance contracts entered into between
2160 an authorized insurer and an insured who is already insured by
2161 the corporation for wind coverage.

2162 f. For all eligible risks covered under quota share primary
2163 insurance agreements, the exposure and coverage levels for both
2164 the corporation and authorized insurers shall be reported by the
2165 corporation to the Florida Hurricane Catastrophe Fund. For all
2166 policies of eligible risks covered under quota share primary
2167 insurance agreements, the corporation and the authorized insurer
2168 shall maintain complete and accurate records for the purpose of
2169 exposure and loss reimbursement audits as required by Florida
2170 Hurricane Catastrophe Fund rules. The corporation and the
2171 authorized insurer shall each maintain duplicate copies of policy
2172 declaration pages and supporting claims documents.

2173 g. The corporation board shall establish in its plan of
2174 operation standards for quota share agreements which ensure that
2175 there is no discriminatory application among insurers as to the

20082860e1

2176 terms of quota share agreements, pricing of quota share
2177 agreements, incentive provisions if any, and consideration paid
2178 for servicing policies or adjusting claims.

2179 h. The quota share primary insurance agreement between the
2180 corporation and an authorized insurer must set forth the specific
2181 terms under which coverage is provided, including, but not
2182 limited to, the sale and servicing of policies issued under the
2183 agreement by the insurance agent of the authorized insurer
2184 producing the business, the reporting of information concerning
2185 eligible risks, the payment of premium to the corporation, and
2186 arrangements for the adjustment and payment of hurricane claims
2187 incurred on eligible risks by the claims adjuster and personnel
2188 of the authorized insurer. Entering into a quota sharing
2189 insurance agreement between the corporation and an authorized
2190 insurer shall be voluntary and at the discretion of the
2191 authorized insurer.

2192 3. May provide that the corporation may employ or otherwise
2193 contract with individuals or other entities to provide
2194 administrative or professional services that may be appropriate
2195 to effectuate the plan. The corporation shall have the power to
2196 borrow funds, by issuing bonds or by incurring other
2197 indebtedness, and shall have other powers reasonably necessary to
2198 effectuate the requirements of this subsection, including,
2199 without limitation, the power to issue bonds and incur other
2200 indebtedness in order to refinance outstanding bonds or other
2201 indebtedness. The corporation may, but is not required to, seek
2202 judicial validation of its bonds or other indebtedness under
2203 chapter 75. The corporation may issue bonds or incur other
2204 indebtedness, or have bonds issued on its behalf by a unit of

20082860e1

2205 local government pursuant to subparagraph (p)2., in the absence
2206 of a hurricane or other weather-related event, upon a
2207 determination by the corporation, subject to approval by the
2208 office, that such action would enable it to efficiently meet the
2209 financial obligations of the corporation and that such financings
2210 are reasonably necessary to effectuate the requirements of this
2211 subsection. The corporation is authorized to take all actions
2212 needed to facilitate tax-free status for any such bonds or
2213 indebtedness, including formation of trusts or other affiliated
2214 entities. The corporation shall have the authority to pledge
2215 assessments, projected recoveries from the Florida Hurricane
2216 Catastrophe Fund, other reinsurance recoverables, market
2217 equalization and other surcharges, and other funds available to
2218 the corporation as security for bonds or other indebtedness. In
2219 recognition of s. 10, Art. I of the State Constitution,
2220 prohibiting the impairment of obligations of contracts, it is the
2221 intent of the Legislature that no action be taken whose purpose
2222 is to impair any bond indenture or financing agreement or any
2223 revenue source committed by contract to such bond or other
2224 indebtedness.

2225 4.a. Must require that the corporation operate subject to
2226 the supervision and approval of a board of governors consisting
2227 of eight individuals who are residents of this state, from
2228 different geographical areas of this state. The Governor, the
2229 Chief Financial Officer, the President of the Senate, and the
2230 Speaker of the House of Representatives shall each appoint two
2231 members of the board. At least one of the two members appointed
2232 by each appointing officer must have demonstrated expertise in
2233 insurance. The Chief Financial Officer shall designate one of the

20082860e1

2234 appointees as chair. All board members serve at the pleasure of
2235 the appointing officer. All members of the board of governors are
2236 subject to removal at will by the officers who appointed them.
2237 All board members, including the chair, must be appointed to
2238 serve for 3-year terms beginning annually on a date designated by
2239 the plan. Any board vacancy shall be filled for the unexpired
2240 term by the appointing officer. The Chief Financial Officer shall
2241 appoint a technical advisory group to provide information and
2242 advice to the board of governors in connection with the board's
2243 duties under this subsection. The executive director and senior
2244 managers of the corporation shall be engaged by the board and
2245 serve at the pleasure of the board. Any executive director
2246 appointed on or after July 1, 2006, is subject to confirmation by
2247 the Senate. The executive director is responsible for employing
2248 other staff as the corporation may require, subject to review and
2249 concurrence by the board.

2250 b. The board shall create a Market Accountability Advisory
2251 Committee to assist the corporation in developing awareness of
2252 its rates and its customer and agent service levels in
2253 relationship to the voluntary market insurers writing similar
2254 coverage. The members of the advisory committee shall consist of
2255 the following 11 persons, one of whom must be elected chair by
2256 the members of the committee: four representatives, one appointed
2257 by the Florida Association of Insurance Agents, one by the
2258 Florida Association of Insurance and Financial Advisors, one by
2259 the Professional Insurance Agents of Florida, and one by the
2260 Latin American Association of Insurance Agencies; three
2261 representatives appointed by the insurers with the three highest
2262 voluntary market share of residential property insurance business

20082860e1

2263 in the state; one representative from the Office of Insurance
2264 Regulation; one consumer appointed by the board who is insured by
2265 the corporation at the time of appointment to the committee; one
2266 representative appointed by the Florida Association of Realtors;
2267 and one representative appointed by the Florida Bankers
2268 Association. All members must serve for 3-year terms and may
2269 serve for consecutive terms. The committee shall report to the
2270 corporation at each board meeting on insurance market issues
2271 which may include rates and rate competition with the voluntary
2272 market; service, including policy issuance, claims processing,
2273 and general responsiveness to policyholders, applicants, and
2274 agents; and matters relating to depopulation.

2275 5. Must provide a procedure for determining the eligibility
2276 of a risk for coverage, as follows:

2277 a. Subject to the provisions of s. 627.3517, with respect
2278 to personal lines residential risks, if the risk is offered
2279 coverage from an authorized insurer at the insurer's approved
2280 rate under either a standard policy including wind coverage or,
2281 if consistent with the insurer's underwriting rules as filed with
2282 the office, a basic policy including wind coverage, for a new
2283 application to the corporation for coverage, the risk is not
2284 eligible for any policy issued by the corporation unless the
2285 premium for coverage from the authorized insurer is more than 15
2286 percent greater than the premium for comparable coverage from the
2287 corporation. If the risk is not able to obtain any such offer,
2288 the risk is eligible for either a standard policy including wind
2289 coverage or a basic policy including wind coverage issued by the
2290 corporation; however, if the risk could not be insured under a
2291 standard policy including wind coverage regardless of market

20082860e1

2292 conditions, the risk shall be eligible for a basic policy
2293 including wind coverage unless rejected under subparagraph 9.
2294 However, with regard to a policyholder of the corporation or a
2295 policyholder removed from the corporation through an assumption
2296 agreement until the end of the assumption period, the
2297 policyholder remains eligible for coverage from the corporation
2298 regardless of any offer of coverage from an authorized insurer or
2299 surplus lines insurer. The corporation shall determine the type
2300 of policy to be provided on the basis of objective standards
2301 specified in the underwriting manual and based on generally
2302 accepted underwriting practices.

2303 (I) If the risk accepts an offer of coverage through the
2304 market assistance plan or an offer of coverage through a
2305 mechanism established by the corporation before a policy is
2306 issued to the risk by the corporation or during the first 30 days
2307 of coverage by the corporation, and the producing agent who
2308 submitted the application to the plan or to the corporation is
2309 not currently appointed by the insurer, the insurer shall:

2310 (A) Pay to the producing agent of record of the policy, for
2311 the first year, an amount that is the greater of the insurer's
2312 usual and customary commission for the type of policy written or
2313 a fee equal to the usual and customary commission of the
2314 corporation; or

2315 (B) Offer to allow the producing agent of record of the
2316 policy to continue servicing the policy for a period of not less
2317 than 1 year and offer to pay the agent the greater of the
2318 insurer's or the corporation's usual and customary commission for
2319 the type of policy written.

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20082860e1

2321 If the producing agent is unwilling or unable to accept
2322 appointment, the new insurer shall pay the agent in accordance
2323 with sub-sub-sub-subparagraph (A).

2324 (II) When the corporation enters into a contractual
2325 agreement for a take-out plan, the producing agent of record of
2326 the corporation policy is entitled to retain any unearned
2327 commission on the policy, and the insurer shall:

2328 (A) Pay to the producing agent of record of the corporation
2329 policy, for the first year, an amount that is the greater of the
2330 insurer's usual and customary commission for the type of policy
2331 written or a fee equal to the usual and customary commission of
2332 the corporation; or

2333 (B) Offer to allow the producing agent of record of the
2334 corporation policy to continue servicing the policy for a period
2335 of not less than 1 year and offer to pay the agent the greater of
2336 the insurer's or the corporation's usual and customary commission
2337 for the type of policy written.

2338

2339 If the producing agent is unwilling or unable to accept
2340 appointment, the new insurer shall pay the agent in accordance
2341 with sub-sub-sub-subparagraph (A).

2342 b. With respect to commercial lines residential risks, for
2343 a new application to the corporation for coverage, if the risk is
2344 offered coverage under a policy including wind coverage from an
2345 authorized insurer at its approved rate, the risk is not eligible
2346 for any policy issued by the corporation unless the premium for
2347 coverage from the authorized insurer is more than 15 percent
2348 greater than the premium for comparable coverage from the
2349 corporation. If the risk is not able to obtain any such offer,

20082860e1

2350 the risk is eligible for a policy including wind coverage issued
2351 by the corporation. However, with regard to a policyholder of the
2352 corporation or a policyholder removed from the corporation
2353 through an assumption agreement until the end of the assumption
2354 period, the policyholder remains eligible for coverage from the
2355 corporation regardless of any offer of coverage from an
2356 authorized insurer or surplus lines insurer.

2357 (I) If the risk accepts an offer of coverage through the
2358 market assistance plan or an offer of coverage through a
2359 mechanism established by the corporation before a policy is
2360 issued to the risk by the corporation or during the first 30 days
2361 of coverage by the corporation, and the producing agent who
2362 submitted the application to the plan or the corporation is not
2363 currently appointed by the insurer, the insurer shall:

2364 (A) Pay to the producing agent of record of the policy, for
2365 the first year, an amount that is the greater of the insurer's
2366 usual and customary commission for the type of policy written or
2367 a fee equal to the usual and customary commission of the
2368 corporation; or

2369 (B) Offer to allow the producing agent of record of the
2370 policy to continue servicing the policy for a period of not less
2371 than 1 year and offer to pay the agent the greater of the
2372 insurer's or the corporation's usual and customary commission for
2373 the type of policy written.

2374

2375 If the producing agent is unwilling or unable to accept
2376 appointment, the new insurer shall pay the agent in accordance
2377 with sub-sub-sub-subparagraph (A).

2378 (II) When the corporation enters into a contractual

20082860e1

2379 agreement for a take-out plan, the producing agent of record of
2380 the corporation policy is entitled to retain any unearned
2381 commission on the policy, and the insurer shall:

2382 (A) Pay to the producing agent of record of the corporation
2383 policy, for the first year, an amount that is the greater of the
2384 insurer's usual and customary commission for the type of policy
2385 written or a fee equal to the usual and customary commission of
2386 the corporation; or

2387 (B) Offer to allow the producing agent of record of the
2388 corporation policy to continue servicing the policy for a period
2389 of not less than 1 year and offer to pay the agent the greater of
2390 the insurer's or the corporation's usual and customary commission
2391 for the type of policy written.

2392

2393 If the producing agent is unwilling or unable to accept
2394 appointment, the new insurer shall pay the agent in accordance
2395 with sub-sub-sub-subparagraph (A).

2396 c. For purposes of determining comparable coverage under
2397 sub-subparagraphs a. and b., the comparison shall be based on
2398 those forms and coverages that are reasonably comparable. The
2399 corporation may rely on a determination of comparable coverage
2400 and premium made by the producing agent who submits the
2401 application to the corporation, made in the agent's capacity as
2402 the corporation's agent. A comparison may be made solely of the
2403 premium with respect to the main building or structure only on
2404 the following basis: the same coverage A or other building
2405 limits; the same percentage hurricane deductible that applies on
2406 an annual basis or that applies to each hurricane for commercial
2407 residential property; the same percentage of ordinance and law

20082860e1

2408 coverage, if the same limit is offered by both the corporation
2409 and the authorized insurer; the same mitigation credits, to the
2410 extent the same types of credits are offered both by the
2411 corporation and the authorized insurer; the same method for loss
2412 payment, such as replacement cost or actual cash value, if the
2413 same method is offered both by the corporation and the authorized
2414 insurer in accordance with underwriting rules; and any other form
2415 or coverage that is reasonably comparable as determined by the
2416 board. If an application is submitted to the corporation for
2417 wind-only coverage in the high-risk account, the premium for the
2418 corporation's wind-only policy plus the premium for the ex-wind
2419 policy that is offered by an authorized insurer to the applicant
2420 shall be compared to the premium for multiperil coverage offered
2421 by an authorized insurer, subject to the standards for comparison
2422 specified in this subparagraph. If the corporation or the
2423 applicant requests from the authorized insurer a breakdown of the
2424 premium of the offer by types of coverage so that a comparison
2425 may be made by the corporation or its agent and the authorized
2426 insurer refuses or is unable to provide such information, the
2427 corporation may treat the offer as not being an offer of coverage
2428 from an authorized insurer at the insurer's approved rate.

2429 6. Must include rules for classifications of risks and
2430 rates therefor.

2431 7. Must provide that if premium and investment income for
2432 an account attributable to a particular calendar year are in
2433 excess of projected losses and expenses for the account
2434 attributable to that year, such excess shall be held in surplus
2435 in the account. Such surplus shall be available to defray
2436 deficits in that account as to future years and shall be used for

20082860e1

2437 that purpose prior to assessing assessable insurers and
2438 assessable insureds as to any calendar year.

2439 8. Must provide objective criteria and procedures to be
2440 uniformly applied for all applicants in determining whether an
2441 individual risk is so hazardous as to be uninsurable. In making
2442 this determination and in establishing the criteria and
2443 procedures, the following shall be considered:

2444 a. Whether the likelihood of a loss for the individual risk
2445 is substantially higher than for other risks of the same class;
2446 and

2447 b. Whether the uncertainty associated with the individual
2448 risk is such that an appropriate premium cannot be determined.

2449
2450 The acceptance or rejection of a risk by the corporation shall be
2451 construed as the private placement of insurance, and the
2452 provisions of chapter 120 shall not apply.

2453 9. Must provide that the corporation shall make its best
2454 efforts to procure catastrophe reinsurance at reasonable rates,
2455 to cover its projected 100-year probable maximum loss as
2456 determined by the board of governors.

2457 ~~10. Must provide that in the event of regular deficit~~
2458 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2459 ~~(b)3.b., in the personal lines account, the commercial lines~~
2460 ~~residential account, or the high-risk account, the corporation~~
2461 ~~shall levy upon corporation policyholders in its next rate~~
2462 ~~filing, or by a separate rate filing solely for this purpose, a~~
2463 ~~Citizens policyholder surcharge arising from a regular assessment~~
2464 ~~in such account in a percentage equal to the total amount of such~~
2465 ~~regular assessments divided by the aggregate statewide direct~~

20082860e1

2466 ~~written premium for subject lines of business for the prior~~
2467 ~~calendar year. For purposes of calculating the Citizens~~
2468 ~~policyholder surcharge to be levied under this subparagraph, the~~
2469 ~~total amount of the regular assessment to which this surcharge is~~
2470 ~~related shall be determined as set forth in subparagraph (b)3.,~~
2471 ~~without deducting the estimated Citizens policyholder surcharge.~~
2472 ~~Citizens policyholder surcharges under this subparagraph are not~~
2473 ~~considered premium and are not subject to commissions, fees, or~~
2474 ~~premium taxes; however, failure to pay a market equalization~~
2475 ~~surcharge shall be treated as failure to pay premium.~~

2476 10.11. The policies issued by the corporation must provide
2477 that, if the corporation or the market assistance plan obtains an
2478 offer from an authorized insurer to cover the risk at its
2479 approved rates, the risk is no longer eligible for renewal
2480 through the corporation, except as otherwise provided in this
2481 subsection.

2482 11.12. Corporation policies and applications must include a
2483 notice that the corporation policy could, under this section, be
2484 replaced with a policy issued by an authorized insurer that does
2485 not provide coverage identical to the coverage provided by the
2486 corporation. The notice shall also specify that acceptance of
2487 corporation coverage creates a conclusive presumption that the
2488 applicant or policyholder is aware of this potential.

2489 12.13. May establish, subject to approval by the office,
2490 different eligibility requirements and operational procedures for
2491 any line or type of coverage for any specified county or area if
2492 the board determines that such changes to the eligibility
2493 requirements and operational procedures are justified due to the
2494 voluntary market being sufficiently stable and competitive in

20082860e1

2495 such area or for such line or type of coverage and that consumers
2496 who, in good faith, are unable to obtain insurance through the
2497 voluntary market through ordinary methods would continue to have
2498 access to coverage from the corporation. When coverage is sought
2499 in connection with a real property transfer, such requirements
2500 and procedures shall not provide for an effective date of
2501 coverage later than the date of the closing of the transfer as
2502 established by the transferor, the transferee, and, if
2503 applicable, the lender.

2504 13.14. Must provide that, with respect to the high-risk
2505 account, any assessable insurer with a surplus as to
2506 policyholders of \$25 million or less writing 25 percent or more
2507 of its total countrywide property insurance premiums in this
2508 state may petition the office, within the first 90 days of each
2509 calendar year, to qualify as a limited apportionment company. A
2510 regular assessment levied by the corporation on a limited
2511 apportionment company for a deficit incurred by the corporation
2512 for the high-risk account in 2006 or thereafter may be paid to
2513 the corporation on a monthly basis as the assessments are
2514 collected by the limited apportionment company from its insureds
2515 pursuant to s. 627.3512, but the regular assessment must be paid
2516 in full within 12 months after being levied by the corporation. A
2517 limited apportionment company shall collect from its
2518 policyholders any emergency assessment imposed under sub-
2519 subparagraph (b)3.d. The plan shall provide that, if the office
2520 determines that any regular assessment will result in an
2521 impairment of the surplus of a limited apportionment company, the
2522 office may direct that all or part of such assessment be deferred
2523 as provided in subparagraph (p)4. However, there shall be no

20082860e1

2524 limitation or deferment of an emergency assessment to be
2525 collected from policyholders under sub-subparagraph (b)3.d.

2526 ~~14.15.~~ Must provide that the corporation appoint as its
2527 licensed agents only those agents who also hold an appointment as
2528 defined in s. 626.015(3) with an insurer who at the time of the
2529 agent's initial appointment by the corporation is authorized to
2530 write and is actually writing personal lines residential property
2531 coverage, commercial residential property coverage, or commercial
2532 nonresidential property coverage within the state.

2533 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
2534 plan option to its policyholders which allows at a minimum for
2535 quarterly and semiannual payment of premiums. A monthly payment
2536 plan may, but is not required to, be offered.

2537 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
2538 homes built prior to 1994 to actual cash value of the dwelling
2539 rather than replacement costs of the dwelling.

2540 ~~17.18.~~ May provide such limits of coverage as the board
2541 determines, consistent with the requirements of this subsection.

2542 ~~18.19.~~ May require commercial property to meet specified
2543 hurricane mitigation construction features as a condition of
2544 eligibility for coverage.

2545 (m)1. Rates for coverage provided by the corporation shall
2546 be actuarially sound and subject to the requirements of s.
2547 627.062, except as otherwise provided in this paragraph. The
2548 corporation shall file its recommended rates with the office at
2549 least annually. The corporation shall provide any additional
2550 information regarding the rates which the office requires. The
2551 office shall consider the recommendations of the board and issue
2552 a final order establishing the rates for the corporation within

20082860e1

2553 45 days after the recommended rates are filed. The corporation
2554 may not pursue an administrative challenge or judicial review of
2555 the final order of the office.

2556 2. In addition to the rates otherwise determined pursuant
2557 to this paragraph, the corporation shall impose and collect an
2558 amount equal to the premium tax provided for in s. 624.509 to
2559 augment the financial resources of the corporation.

2560 3. After the public hurricane loss-projection model under
2561 s. 627.06281 has been found to be accurate and reliable by the
2562 Florida Commission on Hurricane Loss Projection Methodology, that
2563 model shall serve as the minimum benchmark for determining the
2564 windstorm portion of the corporation's rates. This subparagraph
2565 does not require or allow the corporation to adopt rates lower
2566 than the rates otherwise required or allowed by this paragraph.

2567 4. The rate filings for the corporation which were approved
2568 by the office and which took effect January 1, 2007, are
2569 rescinded, except for those rates that were lowered. As soon as
2570 possible, the corporation shall begin using the lower rates that
2571 were in effect on December 31, 2006, and shall provide refunds to
2572 policyholders who have paid higher rates as a result of that rate
2573 filing. The rates in effect on December 31, 2006, shall remain in
2574 effect for the 2007 and 2008 calendar years except for any rate
2575 change that results in a lower rate. The next rate change that
2576 may increase rates shall take effect ~~January 1, 2009~~, pursuant to
2577 a new rate filing recommended by the corporation and established
2578 by the office, subject to the requirements of this paragraph.

2579 5.a. Beginning on January 15, 2009, and each year
2580 thereafter, the corporation must make a recommended actuarially
2581 sound rate filing for each personal and commercial line of

20082860e1

2582 business it writes, to be effective no earlier than July 1, 2009.

2583 b. For the 36-month period beginning with the effective
2584 date for each of the rate filings made by the corporation on
2585 January 15, 2009, the rates established by the office for the
2586 corporation for its personal residential multiperil policies, its
2587 commercial residential multiperil policies, and its commercial
2588 nonresidential multiperil policies may not result in an overall
2589 average statewide premium increase of more than 5 percent or an
2590 increase for any single policyholder of more than 5 percent,
2591 during the first 12-month period, and may not result in an
2592 overall average statewide premium increase of more than 10
2593 percent, or an increase for any single policyholder of more than
2594 10 percent, during each of the two subsequent 12-month periods,
2595 excluding coverage changes and surcharges.

2596 c. For the 36-month period beginning with the effective
2597 date for the rate filings made by the corporation on January 15,
2598 2009, the rates established by the office for the corporation for
2599 its personal residential wind-only policies, its commercial
2600 residential wind-only policies, and its commercial nonresidential
2601 wind-only policies may not result in an overall average statewide
2602 premium increase of more than 10 percent, or an increase for any
2603 single policyholder of more than 10 percent, during the first 12-
2604 month period, and may not result in an overall average statewide
2605 premium increase of more than 10 percent, or an increase for any
2606 single policyholder of more than 10 percent, during each of the
2607 two subsequent 12-month periods, excluding coverage changes and
2608 surcharges.

2609 (p)1. The corporation shall certify to the office its needs
2610 for annual assessments as to a particular calendar year, and for

20082860e1

2611 any interim assessments that it deems to be necessary to sustain
2612 operations as to a particular year pending the receipt of annual
2613 assessments. Upon verification, the office shall approve such
2614 certification, and the corporation shall levy such annual or
2615 interim assessments. Such assessments shall be prorated as
2616 provided in paragraph (b). The corporation shall take all
2617 reasonable and prudent steps necessary to collect the amount of
2618 assessment due from each assessable insurer, including, if
2619 prudent, filing suit to collect such assessment. If the
2620 corporation is unable to collect an assessment from any
2621 assessable insurer, the uncollected assessments shall be levied
2622 as an additional assessment against the assessable insurers and
2623 any assessable insurer required to pay an additional assessment
2624 as a result of such failure to pay shall have a cause of action
2625 against such nonpaying assessable insurer. Assessments shall be
2626 included as an appropriate factor in the making of rates. The
2627 failure of a surplus lines agent to collect and remit any regular
2628 or emergency assessment levied by the corporation is considered
2629 to be a violation of s. 626.936 and subjects the surplus lines
2630 agent to the penalties provided in that section.

2631 2. The governing body of any unit of local government, any
2632 residents of which are insured by the corporation, may issue
2633 bonds as defined in s. 125.013 or s. 166.101 from time to time to
2634 fund an assistance program, in conjunction with the corporation,
2635 for the purpose of defraying deficits of the corporation. In
2636 order to avoid needless and indiscriminate proliferation,
2637 duplication, and fragmentation of such assistance programs, any
2638 unit of local government, any residents of which are insured by
2639 the corporation, may provide for the payment of losses,

20082860e1

2640 regardless of whether or not the losses occurred within or
2641 outside of the territorial jurisdiction of the local government.
2642 Revenue bonds under this subparagraph may not be issued until
2643 validated pursuant to chapter 75, unless a state of emergency is
2644 declared by executive order or proclamation of the Governor
2645 pursuant to s. 252.36 making such findings as are necessary to
2646 determine that it is in the best interests of, and necessary for,
2647 the protection of the public health, safety, and general welfare
2648 of residents of this state and declaring it an essential public
2649 purpose to permit certain municipalities or counties to issue
2650 such bonds as will permit relief to claimants and policyholders
2651 of the corporation. Any such unit of local government may enter
2652 into such contracts with the corporation and with any other
2653 entity created pursuant to this subsection as are necessary to
2654 carry out this paragraph. Any bonds issued under this
2655 subparagraph shall be payable from and secured by moneys received
2656 by the corporation from emergency assessments under sub-
2657 subparagraph (b)3.d., and assigned and pledged to or on behalf of
2658 the unit of local government for the benefit of the holders of
2659 such bonds. The funds, credit, property, and taxing power of the
2660 state or of the unit of local government shall not be pledged for
2661 the payment of such bonds. ~~If any of the bonds remain unsold 60~~
2662 ~~days after issuance, the office shall require all insurers~~
2663 ~~subject to assessment to purchase the bonds, which shall be~~
2664 ~~treated as admitted assets; each insurer shall be required to~~
2665 ~~purchase that percentage of the unsold portion of the bond issue~~
2666 ~~that equals the insurer's relative share of assessment liability~~
2667 ~~under this subsection. An insurer shall not be required to~~
2668 ~~purchase the bonds to the extent that the office determines that~~

20082860e1

2669 ~~the purchase would endanger or impair the solvency of the~~
2670 ~~insurer.~~

2671 3.a. The corporation shall adopt one or more programs
2672 subject to approval by the office for the reduction of both new
2673 and renewal writings in the corporation. Beginning January 1,
2674 2008, any program the corporation adopts for the payment of
2675 bonuses to an insurer for each risk the insurer removes from the
2676 corporation shall comply with s. 627.3511(2) and may not exceed
2677 the amount referenced in s. 627.3511(2) for each risk removed.
2678 The corporation may consider any prudent and not unfairly
2679 discriminatory approach to reducing corporation writings, and may
2680 adopt a credit against assessment liability or other liability
2681 that provides an incentive for insurers to take risks out of the
2682 corporation and to keep risks out of the corporation by
2683 maintaining or increasing voluntary writings in counties or areas
2684 in which corporation risks are highly concentrated and a program
2685 to provide a formula under which an insurer voluntarily taking
2686 risks out of the corporation by maintaining or increasing
2687 voluntary writings will be relieved wholly or partially from
2688 assessments under sub-subparagraphs (b)3.a. and b. However, any
2689 "take-out bonus" or payment to an insurer must be conditioned on
2690 the property being insured for at least 5 years by the insurer,
2691 unless canceled or nonrenewed by the policyholder. If the policy
2692 is canceled or nonrenewed by the policyholder before the end of
2693 the 5-year period, the amount of the take-out bonus must be
2694 prorated for the time period the policy was insured. When the
2695 corporation enters into a contractual agreement for a take-out
2696 plan, the producing agent of record of the corporation policy is
2697 entitled to retain any unearned commission on such policy, and

20082860e1

2698 the insurer shall either:

2699 (I) Pay to the producing agent of record of the policy, for
2700 the first year, an amount which is the greater of the insurer's
2701 usual and customary commission for the type of policy written or
2702 a policy fee equal to the usual and customary commission of the
2703 corporation; or

2704 (II) Offer to allow the producing agent of record of the
2705 policy to continue servicing the policy for a period of not less
2706 than 1 year and offer to pay the agent the insurer's usual and
2707 customary commission for the type of policy written. If the
2708 producing agent is unwilling or unable to accept appointment by
2709 the new insurer, the new insurer shall pay the agent in
2710 accordance with sub-sub-subparagraph (I).

2711 b. Any credit or exemption from regular assessments adopted
2712 under this subparagraph shall last no longer than the 3 years
2713 following the cancellation or expiration of the policy by the
2714 corporation. With the approval of the office, the board may
2715 extend such credits for an additional year if the insurer
2716 guarantees an additional year of renewability for all policies
2717 removed from the corporation, or for 2 additional years if the
2718 insurer guarantees 2 additional years of renewability for all
2719 policies so removed.

2720 c. There shall be no credit, limitation, exemption, or
2721 deferment from emergency assessments to be collected from
2722 policyholders pursuant to sub-subparagraph (b)3.d.

2723 d. Subject to the execution of the confidentiality
2724 agreement required by paragraph (w), the corporation shall make
2725 its database of policies available to prospective take-out
2726 insurers considering underwriting a risk insured by the

20082860e1

2727 corporation, without categorically eliminating policies from
2728 eligibility for removal. The corporation may not instruct or
2729 encourage prospective take-out insurers to avoid the selection of
2730 policies for which the agent has disapproved policy removals. The
2731 corporation must require agents to accept or decline appointment
2732 or a contract with the insurer for any policy selected and, in
2733 the case of a declination, must notify the policyholder that an
2734 insurer, identified by name, selected his or her policy for a
2735 take-out offer, but that the policyholder's agent did not accept
2736 an appointment or contract with the insurer. The notice must also
2737 provide the policyholder with the take-out insurer's contact
2738 information so that the policyholder may contact the company
2739 directly and make his or her own determination of whether to seek
2740 coverage from the take-out insurer.

2741 4. The plan shall provide for the deferment, in whole or in
2742 part, of the assessment of an assessable insurer, other than an
2743 emergency assessment collected from policyholders pursuant to
2744 sub-subparagraph (b)3.d., if the office finds that payment of the
2745 assessment would endanger or impair the solvency of the insurer.
2746 In the event an assessment against an assessable insurer is
2747 deferred in whole or in part, the amount by which such assessment
2748 is deferred may be assessed against the other assessable insurers
2749 in a manner consistent with the basis for assessments set forth
2750 in paragraph (b).

2751 5. Effective July 1, 2007, in order to evaluate the costs
2752 and benefits of approved take-out plans, if the corporation pays
2753 a bonus or other payment to an insurer for an approved take-out
2754 plan, it shall maintain a record of the address or such other
2755 identifying information on the property or risk removed in order

20082860e1

2756 to track if and when the property or risk is later insured by the
2757 corporation.

2758 6. Any policy taken out, assumed, or removed from the
2759 corporation is, as of the effective date of the take-out,
2760 assumption, or removal, direct insurance issued by the insurer
2761 and not by the corporation, even if the corporation continues to
2762 service the policies. This subparagraph applies to policies of
2763 the corporation and not policies taken out, assumed, or removed
2764 from any other entity.

2765 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2766 ~~the risk being no longer eligible for coverage due to being~~
2767 ~~valued at \$1 million or more, the corporation shall, directly or~~
2768 ~~through the market assistance plan, make information from~~
2769 ~~confidential underwriting and claims files of policyholders~~
2770 ~~available only to licensed general lines agents who register with~~
2771 ~~the corporation to receive such information according to the~~
2772 ~~following procedures:~~

2773 2. ~~By August 1, 2006, the corporation shall provide such~~
2774 ~~policyholders who are not eligible for renewal the opportunity to~~
2775 ~~request in writing, within 30 days after the notification is~~
2776 ~~sent, that information from their confidential underwriting and~~
2777 ~~claims files not be released to licensed general lines agents~~
2778 ~~registered pursuant to this paragraph.~~

2779 3. ~~By August 1, 2006, the corporation shall make available~~
2780 ~~to licensed general lines agents the registration procedures to~~
2781 ~~be used to obtain confidential information from underwriting and~~
2782 ~~claims files for such policies not eligible for renewal. As a~~
2783 ~~condition of registration, the corporation shall require the~~
2784 ~~licensed general lines agent to attest that the agent has the~~

20082860e1

2785 ~~experience and relationships with authorized or surplus lines~~
2786 ~~carriers to attempt to offer replacement coverage for such~~
2787 ~~policies.~~

2788 ~~4. By September 1, 2006, the corporation shall make~~
2789 ~~available through a secured website to licensed general lines~~
2790 ~~agents registered pursuant to this paragraph application, rating,~~
2791 ~~loss history, mitigation, and policy type information relating to~~
2792 ~~such policies not eligible for renewal and for which the~~
2793 ~~policyholder has not requested the corporation withhold such~~
2794 ~~information. The registered licensed general lines agent may use~~
2795 ~~such information to contact and assist the policyholder in~~
2796 ~~securing replacement policies, and the agent may disclose to the~~
2797 ~~policyholder that such information was obtained from the~~
2798 ~~corporation.~~

2799 ~~(dd)~~(ee) The assets of the corporation may be invested and
2800 managed by the State Board of Administration.

2801 ~~(ee)~~(ff) The office may establish a pilot program to offer
2802 optional sinkhole coverage in one or more counties or other
2803 territories of the corporation for the purpose of implementing s.
2804 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.
2805 Under the pilot program, the corporation is not required to issue
2806 a notice of nonrenewal to exclude sinkhole coverage upon the
2807 renewal of existing policies, but may exclude such coverage using
2808 a notice of coverage change.

2809 Section 14. Paragraph (b) of subsection (2) of section
2810 627.4133, Florida Statutes, is amended to read:

2811 (2) With respect to any personal lines or commercial
2812 residential property insurance policy, including, but not limited
2813 to, any homeowner's, mobile home owner's, farmowner's,

20082860e1

2814 condominium association, condominium unit owner's, apartment
2815 building, or other policy covering a residential structure or its
2816 contents:

2817 (b) The insurer shall give the named insured written notice
2818 of nonrenewal, cancellation, or termination at least 180 ~~100~~ days
2819 prior to the effective date of the nonrenewal, cancellation, or
2820 termination. ~~However, the insurer shall give at least 100 days'~~
2821 ~~written notice, or written notice by June 1, whichever is~~
2822 ~~earlier, for any nonrenewal, cancellation, or termination that~~
2823 ~~would be effective between June 1 and November 30.~~ The notice
2824 must include the reason or reasons for the nonrenewal,
2825 cancellation, or termination, except that:

2826 1. When cancellation is for nonpayment of premium, at least
2827 10 days' written notice of cancellation accompanied by the reason
2828 therefor shall be given. As used in this subparagraph, the term
2829 "nonpayment of premium" means failure of the named insured to
2830 discharge when due any of her or his obligations in connection
2831 with the payment of premiums on a policy or any installment of
2832 such premium, whether the premium is payable directly to the
2833 insurer or its agent or indirectly under any premium finance plan
2834 or extension of credit, or failure to maintain membership in an
2835 organization if such membership is a condition precedent to
2836 insurance coverage. "Nonpayment of premium" also means the
2837 failure of a financial institution to honor an insurance
2838 applicant's check after delivery to a licensed agent for payment
2839 of a premium, even if the agent has previously delivered or
2840 transferred the premium to the insurer. If a dishonored check
2841 represents the initial premium payment, the contract and all
2842 contractual obligations shall be void ab initio unless the

20082860e1

2843 nonpayment is cured within the earlier of 5 days after actual
2844 notice by certified mail is received by the applicant or 15 days
2845 after notice is sent to the applicant by certified mail or
2846 registered mail, and if the contract is void, any premium
2847 received by the insurer from a third party shall be refunded to
2848 that party in full.

2849 2. When such cancellation or termination occurs during the
2850 first 90 days during which the insurance is in force and the
2851 insurance is canceled or terminated for reasons other than
2852 nonpayment of premium, at least 20 days' written notice of
2853 cancellation or termination accompanied by the reason therefor
2854 shall be given except where there has been a material
2855 misstatement or misrepresentation or failure to comply with the
2856 underwriting requirements established by the insurer.

2857 ~~3. The requirement for providing written notice of~~
2858 ~~nonrenewal by June 1 of any nonrenewal that would be effective~~
2859 ~~between June 1 and November 30 does not apply to the following~~
2860 ~~situations, but the insurer remains subject to the requirement to~~
2861 ~~provide such notice at least 100 days prior to the effective date~~
2862 ~~of nonrenewal:~~

2863 ~~a. A policy that is nonrenewed due to a revision in the~~
2864 ~~coverage for sinkhole losses and catastrophic ground cover~~
2865 ~~collapse pursuant to s. 627.730, as amended by s. 30, chapter~~
2866 ~~2007-1, Laws of Florida.~~

2867 ~~b. A policy that is nonrenewed by Citizens Property~~
2868 ~~Insurance Corporation, pursuant to s. 627.351(6), for a policy~~
2869 ~~that has been assumed by an authorized insurer offering~~
2870 ~~replacement or renewal coverage to the policyholder.~~

2871

20082860e1

2872 After the policy has been in effect for 90 days, the policy shall
2873 not be canceled by the insurer except when there has been a
2874 material misstatement, a nonpayment of premium, a failure to
2875 comply with underwriting requirements established by the insurer
2876 within 90 days of the date of effectuation of coverage, or a
2877 substantial change in the risk covered by the policy or when the
2878 cancellation is for all insureds under such policies for a given
2879 class of insureds. This paragraph does not apply to individually
2880 rated risks having a policy term of less than 90 days.

2881 Section 15. Effective January 1, 2009, and applicable to
2882 policies issued or renewed on or after that date, section
2883 627.714, Florida Statutes, is created to read:

2884 627.714 Guaranteed renewability for mitigated homes.--A
2885 personal lines residential insurance policy shall be guaranteed
2886 renewable for at least 3 years if the dwelling has been built or
2887 retrofitted to meet the wind-borne-debris protection requirements
2888 of the Florida Building Code which apply to the wind-borne debris
2889 region as defined in the Florida Building Code. This requirement
2890 applies only for one 3-year period after the policy is issued or
2891 first renewed after the dwelling has been built or retrofitted to
2892 meet the wind-borne-debris protection requirements.

2893 Section 16. Effective January 1, 2011, section 689.262,
2894 Florida Statutes, is created to read:

2895 689.262 Sale of residential property; disclosure of
2896 windstorm mitigation rating.--A purchaser of residential property
2897 must be informed of the windstorm mitigation rating of the
2898 structure, based on the uniform home grading scale adopted
2899 pursuant to s. 215.55865. The rating must be included in the
2900 contract for sale or as a separate document attached to the

20082860e1

2901 contract for sale. The Financial Services Commission may adopt
2902 rules, consistent with other state laws, to administer this
2903 section, including the form of the disclosure and the
2904 requirements for the windstorm mitigation inspection or report
2905 that is required for purposes of determining the rating.

2906 Section 17. Effective October 1, 2008, subsection (1) of
2907 section 817.2341, Florida Statutes, is amended to read:

2908 817.2341 False or misleading statements or supporting
2909 documents; penalty.--

2910 (1) Any person who willfully files with the department or
2911 office, or who willfully signs for filing with the department or
2912 office, a materially false or materially misleading financial
2913 statement or document in support of such statement required by
2914 law or rule, or a materially false or materially misleading rate
2915 filing, with intent to deceive and with knowledge that the
2916 statement or document is materially false or materially
2917 misleading, commits a felony of the third degree, punishable as
2918 provided in s. 775.082, s. 775.083, or s. 775.084.

2919 Section 18. (1) By December 15, 2008, Citizens Property
2920 Insurance Corporation shall transfer \$250 million to the General
2921 Revenue Fund by transferring an amount from the Personal Lines
2922 Account and the Commercial Lines Account, as defined in s.
2923 627.351(6), Florida Statutes, in proportion to the surplus of
2924 each account, if the combined losses in the Personal Lines
2925 Account and the Commercial Lines Account from one or more named
2926 hurricanes in 2008 do not exceed \$750 million. The board of
2927 governors of Citizens Property Insurance Corporation must make a
2928 reasonable estimate of such losses on or after December 1, 2008,
2929 and no later than December 14, 2008, using generally accepted

20082860e1

2930 actuarial and accounting practices, recognizing that audited
2931 financial statements will not yet be available and that all
2932 losses will have not been reported or developed.

2933 (2) If Citizens Property Insurance Corporation transfers
2934 \$250 million to General Revenue as provided in subsection (1),
2935 effective December 15, 2008, and for the 2008-2009 fiscal year,
2936 the sum of \$250 million is appropriated from the General Revenue
2937 Fund on a nonrecurring basis to the State Board of Administration
2938 for purposes of the Insurance Capital Build-Up Incentive Program
2939 established pursuant to s. 215.5595, Florida Statutes, as amended
2940 by this act. Costs and fees incurred by the board in
2941 administering this program, including fees for investment
2942 services, shall be paid from funds appropriated by the
2943 Legislature for this program, but are limited to 1 percent of the
2944 amount appropriated. Notwithstanding the provisions of s.
2945 216.301, Florida Statutes, to the contrary, the unexpended
2946 balance of this appropriation shall not revert to the General
2947 Revenue Fund until June 30, 2009.

2948 Section 19. Except as otherwise expressly provided in this
2949 act, this act shall take effect July 1, 2008.