

20082860e2

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

20082860e2

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

20082860e2

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;

20082860e2

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.;

20082860e2

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

20082860e2

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

20082860e2

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; clarifying

20082860e2

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

20082860e2

233
234 Be It Enacted by the Legislature of the State of Florida:
235

236 Section 1. Section 215.5595, Florida Statutes, is amended
237 to read:

238 215.5595 Insurance Capital Build-Up Incentive Program.--

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

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

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

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

254 ~~(d) Hurricane forecast experts predict that the 2006~~
255 ~~hurricane season will be an active hurricane season and that the~~
256 ~~Atlantic and Gulf Coast regions face an active hurricane cycle of~~
257 ~~10 to 20 years or longer.~~

258 (b)(e) Citizens Property Insurance Corporation has over 1.2
259 million policies in force, has the largest market share of any
260 insurer writing residential property insurer in the state, and
261 faces the threat of a catastrophic loss that ~~The number of~~

20082860e2

262 ~~cancellations or nonrenewals of residential property insurance~~
263 ~~policies is expected to increase and the number of new~~
264 ~~residential policies written in the voluntary market are likely~~
265 ~~to decrease, causing increased policy growth and exposure to the~~
266 ~~state insurer of last resort, Citizens Property Insurance~~
267 ~~Corporation, and threatening to increase the deficit of the~~
268 ~~corporation, currently estimated to be over \$1.7 billion. This~~
269 ~~defieit~~ must be funded by assessments against insurers and
270 policyholders, unless otherwise funded by the state.

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

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

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

289 ~~(e)(i)~~ Appropriating state funds to be exchanged for ~~used~~
290 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,

20082860e2

291 under conditions requiring the insurer to contribute additional
292 private sector capital and to write a minimum level of premiums
293 for residential hurricane coverage, is a valid and important
294 public purpose.

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

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

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

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

20082860e2

320 or cash equivalents as specified in s. 625.012(1).

321 (c) The insurer's surplus, new capital, and the surplus
322 note must total at least \$50 million, except for insurers writing
323 residential property insurance covering only manufactured
324 housing. The insurer's surplus, new capital, and the surplus note
325 must total at least \$14 million for insurers writing only
326 residential property insurance covering manufactured housing
327 policies as provided in paragraph (a).

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

20082860e2

349 3 years after receiving the state funds in exchange for the
350 surplus note, which shall be determined by the Office of
351 Insurance Regulation and certified annually to the board. The
352 removal of such policies must result in a reduction in the
353 probable maximum loss in the account from which the policies are
354 removed. The insurer must also commit to maintaining a level of
355 surplus and reinsurance sufficient to cover in excess of its 1-
356 in-100 year probable maximum loss, as determined by a hurricane
357 loss model accepted by the Florida Commission on Hurricane Loss
358 Projection Methodology, which shall be determined by the Office
359 of Insurance Regulation and certified annually the board. If the
360 board determines that the insurer has failed to meet any of the
361 requirements of this paragraph ~~required ratio is not maintained~~
362 during the term of the surplus note, the board may increase the
363 interest rate, accelerate the repayment of interest and
364 principal, or shorten the term of the surplus note, subject to
365 approval by the Commissioner of Insurance of payments by the
366 insurer of principal and interest as provided in paragraph (f).

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

377 (f) The surplus note must be repayable to the state with a

20082860e2

378 term of 20 years. The surplus note shall accrue interest on the
379 unpaid principal balance at a rate equivalent to the 10-year U.S.
380 Treasury Bond rate, require the payment only of interest during
381 the first 3 years, and include such other terms as approved by
382 the board. The board may charge late fees up to 5 percent for
383 late payments or other late remittances. Payment of principal, ~~or~~
384 interest, or late fees by the insurer on the surplus note must be
385 approved by the Commissioner of Insurance, who shall approve such
386 payment unless the commissioner determines that such payment will
387 substantially impair the financial condition of the insurer. If
388 such a determination is made, the commissioner shall approve such
389 payment that will not substantially impair the financial
390 condition of the insurer.

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

405 ~~(h) The board may allocate portions of the funds available~~
406 ~~for the program and establish dates for insurers to apply for~~

20082860e2

407 ~~surplus notes from such allocation which are earlier than the~~
408 ~~dates established in paragraph (b).~~

409 (h)-(i) Notwithstanding paragraph (d), a newly formed
410 manufactured housing insurer that is eligible for a surplus note
411 under this section shall meet the premium to surplus ratio
412 provisions of s. 624.4095.

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

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

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

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

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

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

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

434 (5) If an insurer that receives funds in exchange for
435 issuance of a surplus note pursuant to this section is rendered

20082860e2

436 insolvent, the state is a ~~class 3~~ creditor pursuant to s. 631.271
437 for the unpaid principal and interest on the surplus note.

438 (6) The board shall adopt rules prescribing the procedures,
439 administration, and criteria for approving the applications of
440 insurers to receive funds in exchange for issuance of surplus
441 notes pursuant to this section, which may be adopted pursuant to
442 the procedures for emergency rules of chapter 120. Otherwise,
443 actions and determinations by the board pursuant to this section
444 are exempt from chapter 120.

445 (7) The board shall invest and reinvest the funds
446 appropriated for the program in accordance with s. 215.47 and
447 consistent with board policy.

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

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

460 (10) On January 15, 2009, the State Board of Administration
461 shall transfer to Citizens Property Insurance Corporation any
462 funds that have not been committed or reserved for insurers
463 approved to receive such funds under the program, from the funds
464 that were appropriated from Citizens Property Insurance

20082860e2

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

480 Section 2. Section 542.20, Florida Statutes, is amended to
481 read:

482 542.20 Exemptions.--

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

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

20082860e2

494 notwithstanding any other provision of this chapter.

495 (b) This chapter does not prohibit a rating organization or
496 advisory organization from collecting claims, loss, or expense
497 data from insurers and filing rates or advisory rates with the
498 Office of Insurance Regulation, and does not prohibit any person
499 from engaging in acts expressly allowed by the Florida Insurance
500 Code, including, but not limited to, those listed in s. 627.314.

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

503 624.3161 Market conduct examinations.--

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

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

522 624.4211 Administrative fine in lieu of suspension or

20082860e2

523 revocation.--

524 (2) With respect to any nonwillful violation, such fine may
525 ~~shall~~ not exceed \$25,000 ~~\$2,500~~ per violation. In no event shall
526 such fine exceed an aggregate amount equal to 1 percent of the
527 insurer's surplus, as determined by the most recent financial
528 statements filed with the office, ~~of \$10,000~~ for all nonwillful
529 violations arising out of the same action. If ~~When~~ an insurer
530 discovers a nonwillful violation, the insurer shall correct the
531 violation and, if restitution is due, make restitution to all
532 affected persons. Such restitution shall include interest at 12
533 percent per year from either the date of the violation or the
534 date of inception of the affected person's policy, at the
535 insurer's option. The restitution may be a credit against future
536 premiums due provided that ~~the~~ interest accumulates ~~shall~~
537 ~~accumulate~~ until the premiums are due. If the amount of
538 restitution due to any person is \$50 or more and the insurer
539 wishes to credit it against future premiums, it shall notify such
540 person that she or he may receive a check instead of a credit. If
541 the credit is on a policy that ~~which~~ is not renewed, the insurer
542 shall pay the restitution to the person to whom it is due.

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

20082860e2

552 restitution when due in accordance with ~~the provisions of~~
553 subsection (2).

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

562 (6) In determining the amount of the fine, the office shall
563 consider:

564 (a) The degree of consumer harm caused or potentially
565 caused by the violation;

566 (b) Whether the violation constitutes an immediate danger
567 to the public;

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

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

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

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

574 Section 5. Section 624.4213, Florida Statutes, is created
575 to read:

576 624.4213 Trade secret documents.--

577 (1) If any person who is required to submit documents or
578 other information to the office or department pursuant to the
579 Insurance Code or by rule or order of the office, department, or
580 commission claims that such submission contains a trade secret,

20082860e2

581 such person may file with the office or department a notice of
582 trade secret as provided in this section. Failure to do so
583 constitutes a waiver of any claim by such person that the
584 document or information is a trade secret.

585 (a) Each page of such document or specific portion of a
586 document claimed to be a trade secret must be clearly marked as
587 "trade secret."

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

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

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

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

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

607 4. The information is not publicly available elsewhere.

608 (2) If the office or department receives a public-records
609 request for a document or information that is marked and

20082860e2

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

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

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

635 Section 6. Section 624.4305, Florida Statutes, is created to
636 read:

637 624.4305 Nonrenewal of residential property insurance
638 policies.--

20082860e2

639 (1) Any insurer planning to nonrenew more than 10,000
640 residential property insurance policies in this state within a
641 12-month period shall give notice in writing to the Office of
642 Insurance Regulation 90 days before the issuance of any notices
643 of nonrenewal. The notice provided to the office must set forth
644 the insurer's reasons for such action, the effective dates of
645 nonrenewal, and any arrangements made for other insurers to offer
646 coverage to affected policyholders.

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

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

665 626.9521 Unfair methods of competition and unfair or
666 deceptive acts or practices prohibited; penalties.--

667 (2) Any person who violates any provision of this part

20082860e2

668 shall be subject to a fine in an amount not greater than \$25,000
669 ~~\$2,500~~ for each nonwillful violation and not greater than
670 \$100,000 ~~\$20,000~~ for each willful violation. Fines under this
671 subsection imposed against an insurer may not exceed an aggregate
672 amount equal to 1 percent of the insurer's surplus ~~of \$10,000~~ for
673 all nonwillful violations arising out of the same action or an
674 aggregate amount equal to 5 percent of the insurer's surplus ~~of~~
675 ~~\$100,000~~ for all willful violations arising out of the same
676 action, as surplus is determined by the insurer's most recent
677 financial statements filed with the office. The fines authorized
678 by this subsection may be imposed in addition to any other
679 applicable penalty.

680 Section 8. Paragraph (i) of subsection (1) of section
681 626.9541, Florida Statutes, is amended to read:

682 626.9541 Unfair methods of competition and unfair or
683 deceptive acts or practices defined.--

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

687 (i) Unfair claim settlement practices.--

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

693 2. A material misrepresentation made to an insured or any
694 other person having an interest in the proceeds payable under a
695 ~~such~~ contract or policy, for the purpose and with the intent of
696 effecting settlement of such claims, loss, or damage under such

20082860e2

697 contract or policy on less favorable terms than those provided
698 in, and contemplated by, the ~~such~~ contract or policy; ~~or~~

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

701 a. Failing to adopt and implement standards for the proper
702 investigation of claims.~~†~~

703 b. Misrepresenting pertinent facts or insurance policy
704 provisions relating to coverages at issue.~~†~~

705 c. Failing to acknowledge and act promptly upon
706 communications with respect to claims.~~†~~

707 d. Denying claims without conducting reasonable
708 investigations based upon available information.~~†~~

709 e. Failing to affirm or deny full or partial coverage of
710 claims, and, as to partial coverage, the dollar amount or extent
711 of coverage, or failing to provide a written statement that the
712 claim is being investigated, upon the written request of the
713 insured within 30 days after proof-of-loss statements have been
714 completed.~~†~~

715 f. Failing to promptly provide a reasonable explanation in
716 writing to the insured of the basis in the insurance policy, in
717 relation to the facts or applicable law, for denial of a claim or
718 for the offer of a compromise settlement.~~†~~

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

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

723 4. Giving consideration to the age, race, income level,
724 education, credit score, or any other personal characteristic of
725 a policyholder when evaluating, adjusting, settling, or

20082860e2

726 attempting to settle a property insurance claim; or
727 5. Failing to pay undisputed amounts of partial or full
728 benefits owed under first-party property insurance policies
729 within 90 days after determining the amounts of partial or full
730 benefits and agreeing to coverage.

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

734 627.062 Rate standards.--

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

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

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

20082860e2

755 or notification to the insurer by the office of its preliminary
756 findings shall not toll the 90-day period during any such
757 proceedings and subsequent judicial review. The rate shall be
758 deemed approved if the office does not issue a notice of intent
759 to approve or a notice of intent to disapprove within 90 days
760 after receipt of the filing.

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

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

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

- 780 1. Past and prospective loss experience within and without
781 this state.
- 782 2. Past and prospective expenses.
- 783 3. The degree of competition among insurers for the risk

20082860e2

784 insured.

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

800 5. The reasonableness of the judgment reflected in the
801 filing.

802 6. Dividends, savings, or unabsorbed premium deposits
803 allowed or returned to Florida policyholders, members, or
804 subscribers.

805 7. The adequacy of loss reserves.

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

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

812 10. Conflagration and catastrophe hazards, if applicable.

20082860e2

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

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

824 ~~13.12. The cost of medical services, if applicable.~~

825 ~~14.13. Other relevant factors which impact upon the~~
826 ~~frequency or severity of claims or upon expenses.~~

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

20082860e2

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

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

866 (6) (a) If an insurer requests an administrative hearing
867 pursuant to s. 120.57 related to a rate filing under this
868 section, the director of the Division of Administrative Hearings
869 shall expedite the hearing and assign an administrative law judge
870 who shall commence the hearing within 30 days after the receipt

20082860e2

871 of the formal request and shall enter a recommended order within
872 30 days after the hearing or within 30 days after receipt of the
873 hearing transcript by the administrative law judge, whichever is
874 later. Each party shall be allowed 10 days in which to submit
875 written exceptions to the recommended order. The office shall
876 enter a final order within 30 days after the entry of the
877 recommended order. The provisions of this paragraph may be waived
878 upon stipulation of all parties.

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

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

20082860e2

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

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

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

925 ~~(9) (a) Effective March 1, 2007,~~ The chief executive officer
926 or chief financial officer of a property insurer and the chief
927 actuary of a property insurer must certify under oath and subject
928 to the penalty of perjury, on a form approved by the commission,

20082860e2

929 the following information, which must accompany a rate filing:

930 1. The signing officer and actuary have reviewed the rate
931 filing;

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

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

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

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

954 6. Based on the signing officer's and actuary's knowledge,
955 the number and type of policies that the insurer intends to
956 nonrenew during the year following the proposed effective date of
957 the rate filing, and that the rate filing reflects the reduced

20082860e2

958 risk of loss associated with such nonrenewals.

959 (b) A signing officer or actuary knowingly making a false
960 certification under this subsection commits a violation of s.
961 626.9541(1)(e) and is subject to the penalties under s. 626.9521.

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

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

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

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

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

985 Section 11. Paragraph (c) of subsection (1) and paragraph
986 (c) of subsection (3) of section 627.0628, Florida Statutes, are

20082860e2

987 amended to read:

988 627.0628 Florida Commission on Hurricane Loss Projection
989 Methodology; public records exemption; public meetings
990 exemption.--

991 (1) LEGISLATIVE FINDINGS AND INTENT.--

992 (c) It is the intent of the Legislature to create the
993 Florida Commission on Hurricane Loss Projection Methodology as a
994 panel of experts to provide the most actuarially sophisticated
995 guidelines and standards for projection of hurricane losses
996 possible, given the current state of actuarial science. It is the
997 further intent of the Legislature that such standards and
998 guidelines must be used by the State Board of Administration in
999 developing reimbursement premium rates for the Florida Hurricane
1000 Catastrophe Fund, and, subject to paragraph (3)(c), must ~~may~~ be
1001 used by insurers in rate filings under s. 627.062 unless the way
1002 in which such standards and guidelines were applied by the
1003 insurer was erroneous, as shown by a preponderance of the
1004 evidence.

1005 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

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

20082860e2

1016 ~~appointed pursuant to s. 627.0613 have access to all of the~~
1017 ~~assumptions and factors that were used in developing the~~
1018 ~~actuarial methods, principles, standards, models, or output~~
1019 ~~ranges, and are not precluded from disclosing such information in~~
1020 ~~a rate proceeding. In any rate hearing under s. 120.57 or in any~~
1021 ~~arbitration proceeding under s. 627.062(6), the hearing officer,~~
1022 ~~judge, or arbitration panel may determine whether the office and~~
1023 ~~the consumer advocate were provided with access to all of the~~
1024 ~~assumptions and factors that were used in developing the~~
1025 ~~actuarial methods, principles, standards, models, or output~~
1026 ~~ranges and to determine their admissibility.~~

1027 Section 12. Subsection (1) of section 627.0629, Florida
1028 Statutes, is amended to read:

1029 627.0629 Residential property insurance; rate filings.--

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

20082860e2

1045 fixtures and construction techniques which meet the minimum
1046 requirements of the Florida Building Code must be included in the
1047 rate filing. All insurance companies must make a rate filing
1048 which includes the credits, discounts, or other rate
1049 differentials or reductions in deductibles by February 28, 2003.
1050 By July 1, 2007, the office shall reevaluate the discounts,
1051 credits, other rate differentials, and appropriate reductions in
1052 deductibles for fixtures and construction techniques that meet
1053 the minimum requirements of the Florida Building Code, based upon
1054 actual experience or any other loss relativity studies available
1055 to the office. The office shall determine the discounts, credits,
1056 other rate differentials, and appropriate reductions in
1057 deductibles that reflect the full actuarial value of such
1058 revaluation, which may be used by insurers in rate filings.

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

20082860e2

1074 changes to the uniform home grading scale as the commission
1075 determines are necessary, and may specify the minimum required
1076 discounts, credits, or other rate differentials. Such rate
1077 differentials must be consistent with generally accepted
1078 actuarial principles and wind-loss mitigation studies. The rules
1079 shall allow a period of at least 2 years after the effective date
1080 of the revised mitigation discounts, credits, or other rate
1081 differentials for a property owner to obtain an inspection or
1082 otherwise qualify for the revised credit, during which time the
1083 insurer shall continue to apply the mitigation credit that was
1084 applied immediately prior to the effective date of the revised
1085 credit.

1086 Section 13. Paragraph (b) of subsection (2) and paragraphs
1087 (a), (b), (c), (m), (p), (w), (dd), (ee), and (ff) of subsection
1088 (6) of section 627.351, Florida Statutes, are amended to read:

1089 627.351 Insurance risk apportionment plans.--

1090 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

20082860e2

1103 defined in s. 624.604, including insurance for fire, industrial
1104 fire, allied lines, farmowners multiperil, homeowners'
1105 multiperil, commercial multiperil, and mobile homes, and
1106 including liability coverages on all such insurance, but
1107 excluding inland marine as defined in s. 624.607(3) and excluding
1108 vehicle insurance as defined in s. 624.605(1)(a) other than
1109 insurance on mobile homes used as permanent dwellings. The
1110 department shall adopt rules that provide a formula for the
1111 recovery and repayment of any deferred assessments.

1112 1. For the purpose of this section, properties eligible for
1113 such windstorm coverage are defined as dwellings, buildings, and
1114 other structures, including mobile homes which are used as
1115 dwellings and which are tied down in compliance with mobile home
1116 tie-down requirements prescribed by the Department of Highway
1117 Safety and Motor Vehicles pursuant to s. 320.8325, and the
1118 contents of all such properties. An applicant or policyholder is
1119 eligible for coverage only if an offer of coverage cannot be
1120 obtained by or for the applicant or policyholder from an admitted
1121 insurer at approved rates.

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

20082860e2

1132 preceding calendar year. For the purposes of this subsection, the
1133 term "net direct premiums" means direct written premiums for
1134 property insurance, reduced by premium for liability coverage and
1135 for the following if included in allied lines: rain and hail on
1136 growing crops; livestock; association direct premiums booked;
1137 National Flood Insurance Program direct premiums; and similar
1138 deductions specifically authorized by the plan of operation and
1139 approved by the department. A member's participation shall begin
1140 on the first day of the calendar year following the year in which
1141 it is issued a certificate of authority to transact property
1142 insurance in the state and shall terminate 1 year after the end
1143 of the calendar year during which it no longer holds a
1144 certificate of authority to transact property insurance in the
1145 state. The commissioner, after review of annual statements, other
1146 reports, and any other statistics that the commissioner deems
1147 necessary, shall certify to the association the aggregate direct
1148 premiums written for property insurance in this state by all
1149 member insurers.

1150 (II) Effective July 1, 2002, the association shall operate
1151 subject to the supervision and approval of a board of governors
1152 who are the same individuals that have been appointed by the
1153 Treasurer to serve on the board of governors of the Citizens
1154 Property Insurance Corporation.

1155 (III) The plan of operation shall provide a formula whereby
1156 a company voluntarily providing windstorm coverage in affected
1157 areas will be relieved wholly or partially from apportionment of
1158 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
1159 sub-sub-subparagraph d.(II).

1160 (IV) A company which is a member of a group of companies

20082860e2

1161 under common management may elect to have its credits applied on
1162 a group basis, and any company or group may elect to have its
1163 credits applied to any other company or group.

1164 (V) There shall be no credits or relief from apportionment
1165 to a company for emergency assessments collected from its
1166 policyholders under sub-sub-subparagraph d.(III).

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

20082860e2

1190 Residential Property and Casualty Joint Underwriting
1191 Association's 100-year probable maximum loss from hurricanes.
1192 With the approval of the department, the board may extend such
1193 credits for an additional year if the insurer guarantees an
1194 additional year of renewability for all policies removed from the
1195 Residential Property and Casualty Joint Underwriting Association,
1196 or for 2 additional years if the insurer guarantees 2 additional
1197 years of renewability for all policies removed from the
1198 Residential Property and Casualty Joint Underwriting Association.

1199 b. Assessments to pay deficits in the association under
1200 this subparagraph shall be included as an appropriate factor in
1201 the making of rates as provided in s. 627.3512.

1202 c. The Legislature finds that the potential for unlimited
1203 deficit assessments under this subparagraph may induce insurers
1204 to attempt to reduce their writings in the voluntary market, and
1205 that such actions would worsen the availability problems that the
1206 association was created to remedy. It is the intent of the
1207 Legislature that insurers remain fully responsible for paying
1208 regular assessments and collecting emergency assessments for any
1209 deficits of the association; however, it is also the intent of
1210 the Legislature to provide a means by which assessment
1211 liabilities may be amortized over a period of years.

1212 d.(I) When the deficit incurred in a particular calendar
1213 year is 10 percent or less of the aggregate statewide direct
1214 written premium for property insurance for the prior calendar
1215 year for all member insurers, the association shall levy an
1216 assessment on member insurers in an amount equal to the deficit.

1217 (II) When the deficit incurred in a particular calendar
1218 year exceeds 10 percent of the aggregate statewide direct written

20082860e2

1219 premium for property insurance for the prior calendar year for
1220 all member insurers, the association shall levy an assessment on
1221 member insurers in an amount equal to the greater of 10 percent
1222 of the deficit or 10 percent of the aggregate statewide direct
1223 written premium for property insurance for the prior calendar
1224 year for member insurers. Any remaining deficit shall be
1225 recovered through emergency assessments under sub-sub-
1226 subparagraph (III).

1227 (III) Upon a determination by the board of directors that a
1228 deficit exceeds the amount that will be recovered through regular
1229 assessments on member insurers, pursuant to sub-sub-subparagraph
1230 (I) or sub-sub-subparagraph (II), the board shall levy, after
1231 verification by the department, emergency assessments to be
1232 collected by member insurers and by underwriting associations
1233 created pursuant to this section which write property insurance,
1234 upon issuance or renewal of property insurance policies other
1235 than National Flood Insurance policies in the year or years
1236 following levy of the regular assessments. The amount of the
1237 emergency assessment collected in a particular year shall be a
1238 uniform percentage of that year's direct written premium for
1239 property insurance for all member insurers and underwriting
1240 associations, excluding National Flood Insurance policy premiums,
1241 as annually determined by the board and verified by the
1242 department. The department shall verify the arithmetic
1243 calculations involved in the board's determination within 30 days
1244 after receipt of the information on which the determination was
1245 based. Notwithstanding any other provision of law, each member
1246 insurer and each underwriting association created pursuant to
1247 this section shall collect emergency assessments from its

20082860e2

1248 policyholders without such obligation being affected by any
1249 credit, limitation, exemption, or deferment. The emergency
1250 assessments so collected shall be transferred directly to the
1251 association on a periodic basis as determined by the association.
1252 The aggregate amount of emergency assessments levied under this
1253 sub-sub-subparagraph in any calendar year may not exceed the
1254 greater of 10 percent of the amount needed to cover the original
1255 deficit, plus interest, fees, commissions, required reserves, and
1256 other costs associated with financing of the original deficit, or
1257 10 percent of the aggregate statewide direct written premium for
1258 property insurance written by member insurers and underwriting
1259 associations for the prior year, plus interest, fees,
1260 commissions, required reserves, and other costs associated with
1261 financing the original deficit. The board may pledge the proceeds
1262 of the emergency assessments under this sub-sub-subparagraph as
1263 the source of revenue for bonds, to retire any other debt
1264 incurred as a result of the deficit or events giving rise to the
1265 deficit, or in any other way that the board determines will
1266 efficiently recover the deficit. The emergency assessments under
1267 this sub-sub-subparagraph shall continue as long as any bonds
1268 issued or other indebtedness incurred with respect to a deficit
1269 for which the assessment was imposed remain outstanding, unless
1270 adequate provision has been made for the payment of such bonds or
1271 other indebtedness pursuant to the document governing such bonds
1272 or other indebtedness. Emergency assessments collected under this
1273 sub-sub-subparagraph are not part of an insurer's rates, are not
1274 premium, and are not subject to premium tax, fees, or
1275 commissions; however, failure to pay the emergency assessment
1276 shall be treated as failure to pay premium.

20082860e2

1277 (IV) Each member insurer's share of the total regular
1278 assessments under sub-sub-subparagraph (I) or sub-sub-
1279 subparagraph (II) shall be in the proportion that the insurer's
1280 net direct premium for property insurance in this state, for the
1281 year preceding the assessment bears to the aggregate statewide
1282 net direct premium for property insurance of all member insurers,
1283 as reduced by any credits for voluntary writings for that year.

1284 (V) If regular deficit assessments are made under sub-sub-
1285 subparagraph (I) or sub-sub-subparagraph (II), or by the
1286 Residential Property and Casualty Joint Underwriting Association
1287 under sub-subparagraph (6)(b)3.a. or sub-subparagraph (6)(b)3.b.,
1288 the association shall levy upon the association's policyholders,
1289 as part of its next rate filing, or by a separate rate filing
1290 solely for this purpose, a market equalization surcharge in a
1291 percentage equal to the total amount of such regular assessments
1292 divided by the aggregate statewide direct written premium for
1293 property insurance for member insurers for the prior calendar
1294 year. Market equalization surcharges under this sub-sub-
1295 subparagraph are not considered premium and are not subject to
1296 commissions, fees, or premium taxes; however, failure to pay a
1297 market equalization surcharge shall be treated as failure to pay
1298 premium.

1299 e. The governing body of any unit of local government, any
1300 residents of which are insured under the plan, may issue bonds as
1301 defined in s. 125.013 or s. 166.101 to fund an assistance
1302 program, in conjunction with the association, for the purpose of
1303 defraying deficits of the association. In order to avoid needless
1304 and indiscriminate proliferation, duplication, and fragmentation
1305 of such assistance programs, any unit of local government, any

20082860e2

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

20082860e2

1335 bond issue that equals the insurer's relative share of assessment
1336 liability under this subsection. An insurer shall not be required
1337 to purchase the bonds to the extent that the department
1338 determines that the purchase would endanger or impair the
1339 solvency of the insurer. The authority granted by this sub-
1340 subparagraph is additional to any bonding authority granted by
1341 subparagraph 6.

1342 3. The plan shall also provide that any member with a
1343 surplus as to policyholders of \$20 million or less writing 25
1344 percent or more of its total countrywide property insurance
1345 premiums in this state may petition the department, within the
1346 first 90 days of each calendar year, to qualify as a limited
1347 apportionment company. The apportionment of such a member company
1348 in any calendar year for which it is qualified shall not exceed
1349 its gross participation, which shall not be affected by the
1350 formula for voluntary writings. In no event shall a limited
1351 apportionment company be required to participate in any
1352 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1353 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
1354 \$50 million after payment of available plan funds in any calendar
1355 year. However, a limited apportionment company shall collect from
1356 its policyholders any emergency assessment imposed under sub-sub-
1357 subparagraph 2.d.(III). The plan shall provide that, if the
1358 department determines that any regular assessment will result in
1359 an impairment of the surplus of a limited apportionment company,
1360 the department may direct that all or part of such assessment be
1361 deferred. However, there shall be no limitation or deferment of
1362 an emergency assessment to be collected from policyholders under
1363 sub-sub-subparagraph 2.d.(III).

20082860e2

1364 4. The plan shall provide for the deferment, in whole or in
1365 part, of a regular assessment of a member insurer under sub-sub-
1366 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not
1367 for an emergency assessment collected from policyholders under
1368 sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1369 commissioner, payment of such regular assessment would endanger
1370 or impair the solvency of the member insurer. In the event a
1371 regular assessment against a member insurer is deferred in whole
1372 or in part, the amount by which such assessment is deferred may
1373 be assessed against the other member insurers in a manner
1374 consistent with the basis for assessments set forth in sub-sub-
1375 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

1376 5.a. The plan of operation may include deductibles and
1377 rules for classification of risks and rate modifications
1378 consistent with the objective of providing and maintaining funds
1379 sufficient to pay catastrophe losses.

1380 ~~b. The association may require arbitration of a rate filing~~
1381 ~~under s. 627.062(6).~~ It is the intent of the Legislature that the
1382 rates for coverage provided by the association be actuarially
1383 sound and not competitive with approved rates charged in the
1384 admitted voluntary market such that the association functions as
1385 a residual market mechanism to provide insurance only when the
1386 insurance cannot be procured in the voluntary market. The plan of
1387 operation shall provide a mechanism to assure that, beginning no
1388 later than January 1, 1999, the rates charged by the association
1389 for each line of business are reflective of approved rates in the
1390 voluntary market for hurricane coverage for each line of business
1391 in the various areas eligible for association coverage.

1392 c. The association shall provide for windstorm coverage on

20082860e2

1393 residential properties in limits up to \$10 million for commercial
1394 lines residential risks and up to \$1 million for personal lines
1395 residential risks. If coverage with the association is sought for
1396 a residential risk valued in excess of these limits, coverage
1397 shall be available to the risk up to the replacement cost or
1398 actual cash value of the property, at the option of the insured,
1399 if coverage for the risk cannot be located in the authorized
1400 market. The association must accept a commercial lines
1401 residential risk with limits above \$10 million or a personal
1402 lines residential risk with limits above \$1 million if coverage
1403 is not available in the authorized market. The association may
1404 write coverage above the limits specified in this subparagraph
1405 with or without facultative or other reinsurance coverage, as the
1406 association determines appropriate.

1407 d. The plan of operation must provide objective criteria
1408 and procedures, approved by the department, to be uniformly
1409 applied for all applicants in determining whether an individual
1410 risk is so hazardous as to be uninsurable. In making this
1411 determination and in establishing the criteria and procedures,
1412 the following shall be considered:

1413 (I) Whether the likelihood of a loss for the individual
1414 risk is substantially higher than for other risks of the same
1415 class; and

1416 (II) Whether the uncertainty associated with the individual
1417 risk is such that an appropriate premium cannot be determined.

1418
1419 The acceptance or rejection of a risk by the association pursuant
1420 to such criteria and procedures must be construed as the private
1421 placement of insurance, and the provisions of chapter 120 do not

20082860e2

1422 apply.

1423 e. If the risk accepts an offer of coverage through the
1424 market assistance program or through a mechanism established by
1425 the association, either before the policy is issued by the
1426 association or during the first 30 days of coverage by the
1427 association, and the producing agent who submitted the
1428 application to the association is not currently appointed by the
1429 insurer, the insurer shall:

1430 (I) Pay to the producing agent of record of the policy, for
1431 the first year, an amount that is the greater of the insurer's
1432 usual and customary commission for the type of policy written or
1433 a fee equal to the usual and customary commission of the
1434 association; or

1435 (II) Offer to allow the producing agent of record of the
1436 policy to continue servicing the policy for a period of not less
1437 than 1 year and offer to pay the agent the greater of the
1438 insurer's or the association's usual and customary commission for
1439 the type of policy written.

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

20082860e2

1451 of eligibility, the association shall provide written notice to
1452 the policyholder and agent of record stating that the association
1453 policy must be canceled as of 60 days after the date of the
1454 notice because of the offer of coverage from an authorized
1455 insurer. Other provisions of the insurance code relating to
1456 cancellation and notice of cancellation do not apply to actions
1457 under this sub-subparagraph.

1458 f. When the association enters into a contractual agreement
1459 for a take-out plan, the producing agent of record of the
1460 association policy is entitled to retain any unearned commission
1461 on the policy, and the insurer shall:

1462 (I) Pay to the producing agent of record of the association
1463 policy, for the first year, an amount that is the greater of the
1464 insurer's usual and customary commission for the type of policy
1465 written or a fee equal to the usual and customary commission of
1466 the association; or

1467 (II) Offer to allow the producing agent of record of the
1468 association policy to continue servicing the policy for a period
1469 of not less than 1 year and offer to pay the agent the greater of
1470 the insurer's or the association's usual and customary commission
1471 for the type of policy written.

1472
1473 If the producing agent is unwilling or unable to accept
1474 appointment, the new insurer shall pay the agent in accordance
1475 with sub-sub-subparagraph (I).

1476 6.a. The plan of operation may authorize the formation of a
1477 private nonprofit corporation, a private nonprofit unincorporated
1478 association, a partnership, a trust, a limited liability company,
1479 or a nonprofit mutual company which may be empowered, among other

20082860e2

1480 things, to borrow money by issuing bonds or by incurring other
1481 indebtedness and to accumulate reserves or funds to be used for
1482 the payment of insured catastrophe losses. The plan may authorize
1483 all actions necessary to facilitate the issuance of bonds,
1484 including the pledging of assessments or other revenues.

1485 b. Any entity created under this subsection, or any entity
1486 formed for the purposes of this subsection, may sue and be sued,
1487 may borrow money; issue bonds, notes, or debt instruments; pledge
1488 or sell assessments, market equalization surcharges and other
1489 surcharges, rights, premiums, contractual rights, projected
1490 recoveries from the Florida Hurricane Catastrophe Fund, other
1491 reinsurance recoverables, and other assets as security for such
1492 bonds, notes, or debt instruments; enter into any contracts or
1493 agreements necessary or proper to accomplish such borrowings; and
1494 take other actions necessary to carry out the purposes of this
1495 subsection. The association may issue bonds or incur other
1496 indebtedness, or have bonds issued on its behalf by a unit of
1497 local government pursuant to subparagraph (6)(p)2., in the
1498 absence of a hurricane or other weather-related event, upon a
1499 determination by the association subject to approval by the
1500 department that such action would enable it to efficiently meet
1501 the financial obligations of the association and that such
1502 financings are reasonably necessary to effectuate the
1503 requirements of this subsection. Any such entity may accumulate
1504 reserves and retain surpluses as of the end of any association
1505 year to provide for the payment of losses incurred by the
1506 association during that year or any future year. The association
1507 shall incorporate and continue the plan of operation and articles
1508 of agreement in effect on the effective date of chapter 76-96,

20082860e2

1509 Laws of Florida, to the extent that it is not inconsistent with
1510 chapter 76-96, and as subsequently modified consistent with
1511 chapter 76-96. The board of directors and officers currently
1512 serving shall continue to serve until their successors are duly
1513 qualified as provided under the plan. The assets and obligations
1514 of the plan in effect immediately prior to the effective date of
1515 chapter 76-96 shall be construed to be the assets and obligations
1516 of the successor plan created herein.

1517 c. In recognition of s. 10, Art. I of the State
1518 Constitution, prohibiting the impairment of obligations of
1519 contracts, it is the intent of the Legislature that no action be
1520 taken whose purpose is to impair any bond indenture or financing
1521 agreement or any revenue source committed by contract to such
1522 bond or other indebtedness issued or incurred by the association
1523 or any other entity created under this subsection.

1524 7. On such coverage, an agent's remuneration shall be that
1525 amount of money payable to the agent by the terms of his or her
1526 contract with the company with which the business is placed.
1527 However, no commission will be paid on that portion of the
1528 premium which is in excess of the standard premium of that
1529 company.

1530 8. Subject to approval by the department, the association
1531 may establish different eligibility requirements and operational
1532 procedures for any line or type of coverage for any specified
1533 eligible area or portion of an eligible area if the board
1534 determines that such changes to the eligibility requirements and
1535 operational procedures are justified due to the voluntary market
1536 being sufficiently stable and competitive in such area or for
1537 such line or type of coverage and that consumers who, in good

20082860e2

1538 faith, are unable to obtain insurance through the voluntary
1539 market through ordinary methods would continue to have access to
1540 coverage from the association. When coverage is sought in
1541 connection with a real property transfer, such requirements and
1542 procedures shall not provide for an effective date of coverage
1543 later than the date of the closing of the transfer as established
1544 by the transferor, the transferee, and, if applicable, the
1545 lender.

1546 9. Notwithstanding any other provision of law:

1547 a. The pledge or sale of, the lien upon, and the security
1548 interest in any rights, revenues, or other assets of the
1549 association created or purported to be created pursuant to any
1550 financing documents to secure any bonds or other indebtedness of
1551 the association shall be and remain valid and enforceable,
1552 notwithstanding the commencement of and during the continuation
1553 of, and after, any rehabilitation, insolvency, liquidation,
1554 bankruptcy, receivership, conservatorship, reorganization, or
1555 similar proceeding against the association under the laws of this
1556 state or any other applicable laws.

1557 b. No such proceeding shall relieve the association of its
1558 obligation, or otherwise affect its ability to perform its
1559 obligation, to continue to collect, or levy and collect,
1560 assessments, market equalization or other surcharges, projected
1561 recoveries from the Florida Hurricane Catastrophe Fund,
1562 reinsurance recoverables, or any other rights, revenues, or other
1563 assets of the association pledged.

1564 c. Each such pledge or sale of, lien upon, and security
1565 interest in, including the priority of such pledge, lien, or
1566 security interest, any such assessments, emergency assessments,

20082860e2

1567 market equalization or renewal surcharges, projected recoveries
1568 from the Florida Hurricane Catastrophe Fund, reinsurance
1569 recoverables, or other rights, revenues, or other assets which
1570 are collected, or levied and collected, after the commencement of
1571 and during the pendency of or after any such proceeding shall
1572 continue unaffected by such proceeding.

1573 d. As used in this subsection, the term "financing
1574 documents" means any agreement, instrument, or other document now
1575 existing or hereafter created evidencing any bonds or other
1576 indebtedness of the association or pursuant to which any such
1577 bonds or other indebtedness has been or may be issued and
1578 pursuant to which any rights, revenues, or other assets of the
1579 association are pledged or sold to secure the repayment of such
1580 bonds or indebtedness, together with the payment of interest on
1581 such bonds or such indebtedness, or the payment of any other
1582 obligation of the association related to such bonds or
1583 indebtedness.

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

20082860e2

1596 other rights or assets to the extent set forth in and in
1597 accordance with the terms of the pledge or sale contained in the
1598 applicable financing documents, whether or not any such person or
1599 entity has notice of such pledge or sale and without the need for
1600 any physical delivery, recordation, filing, or other action.

1601 f. There shall be no liability on the part of, and no cause
1602 of action of any nature shall arise against, any member insurer
1603 or its agents or employees, agents or employees of the
1604 association, members of the board of directors of the
1605 association, or the department or its representatives, for any
1606 action taken by them in the performance of their duties or
1607 responsibilities under this subsection. Such immunity does not
1608 apply to actions for breach of any contract or agreement
1609 pertaining to insurance, or any willful tort.

1610 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

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

20082860e2

1625 economy of the state, and to the revenues of the state and local
1626 governments which are needed to provide for the public welfare.
1627 It is necessary, therefore, to provide affordable property
1628 insurance to applicants who are in good faith entitled to procure
1629 insurance through the voluntary market but are unable to do so.
1630 The Legislature intends by this subsection that affordable
1631 property insurance be provided and that it continue to be
1632 provided, as long as necessary, through Citizens Property
1633 Insurance Corporation, a government entity that is an integral
1634 part of the state, and that is not a private insurance company.
1635 To that end, Citizens Property Insurance Corporation shall strive
1636 to increase the availability of affordable property insurance in
1637 this state, while achieving efficiencies and economies, and while
1638 providing service to policyholders, applicants, and agents which
1639 is no less than the quality generally provided in the voluntary
1640 market, for the achievement of the foregoing public purposes.
1641 Because it is essential for this government entity to have the
1642 maximum financial resources to pay claims following a
1643 catastrophic hurricane, it is the intent of the Legislature that
1644 Citizens Property Insurance Corporation continue to be an
1645 integral part of the state and that the income of the corporation
1646 be exempt from federal income taxation and that interest on the
1647 debt obligations issued by the corporation be exempt from federal
1648 income taxation.

1649 2. The Residential Property and Casualty Joint Underwriting
1650 Association originally created by this statute shall be known, as
1651 of July 1, 2002, as the Citizens Property Insurance Corporation.
1652 The corporation shall provide insurance for residential and
1653 commercial property, for applicants who are in good faith

20082860e2

1654 entitled, but are unable, to procure insurance through the
1655 voluntary market. The corporation shall operate pursuant to a
1656 plan of operation approved by order of the Financial Services
1657 Commission. The plan is subject to continuous review by the
1658 commission. The commission may, by order, withdraw approval of
1659 all or part of a plan if the commission determines that
1660 conditions have changed since approval was granted and that the
1661 purposes of the plan require changes in the plan. The corporation
1662 shall continue to operate pursuant to the plan of operation
1663 approved by the Office of Insurance Regulation until October 1,
1664 2006. For the purposes of this subsection, residential coverage
1665 includes both personal lines residential coverage, which consists
1666 of the type of coverage provided by homeowner's, mobile home
1667 owner's, dwelling, tenant's, condominium unit owner's, and
1668 similar policies, and commercial lines residential coverage,
1669 which consists of the type of coverage provided by condominium
1670 association, apartment building, and similar policies.

1671 ~~3. For the purposes of this subsection, the term "homestead~~
1672 ~~property" means:~~

1673 ~~a. Property that has been granted a homestead exemption~~
1674 ~~under chapter 196;~~

1675 ~~b. Property for which the owner has a current, written~~
1676 ~~lease with a renter for a term of at least 7 months and for which~~
1677 ~~the dwelling is insured by the corporation for \$200,000 or less;~~

1678 ~~c. An owner-occupied mobile home or manufactured home, as~~
1679 ~~defined in s. 320.01, which is permanently affixed to real~~
1680 ~~property, is owned by a Florida resident, and has been granted a~~
1681 ~~homestead exemption under chapter 196 or, if the owner does not~~
1682 ~~own the real property, the owner certifies that the mobile home~~

20082860e2

1683 or manufactured home is his or her principal place of residence;
1684 ~~d. Tenant's coverage;~~
1685 ~~e. Commercial lines residential property; or~~
1686 ~~f. Any county, district, or municipal hospital; a hospital~~
1687 ~~licensed by any not-for-profit corporation qualified under s.~~
1688 ~~501(c)(3) of the United States Internal Revenue Code; or a~~
1689 ~~continuing care retirement community that is certified under~~
1690 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1691 ~~under chapter 196.~~

1692 ~~4. For the purposes of this subsection, the term~~
1693 ~~"nonhomestead property" means property that is not homestead~~
1694 ~~property.~~

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

20082860e2

1712 by the corporation for up to 3 years, after which time the
1713 dwelling is ineligible for coverage. The office shall approve the
1714 method used by the corporation for valuing the dwelling
1715 replacement cost for the purposes of this subparagraph. If a
1716 policyholder is insured by the corporation prior to being
1717 determined to be ineligible pursuant to this subparagraph and
1718 such policyholder files a lawsuit challenging the determination,
1719 the policyholder may remain insured by the corporation until the
1720 conclusion of the litigation.

1721 ~~6.~~ For properties constructed on or after January 1, 2009,
1722 the corporation may not insure any property located within 2,500
1723 feet landward of the coastal construction control line created
1724 pursuant to s. 161.053 unless the property meets the requirements
1725 of the code plus building standards developed by the Florida
1726 Building Commission.

1727 3.7. It is the intent of the Legislature that
1728 policyholders, applicants, and agents of the corporation receive
1729 service and treatment of the highest possible level but never
1730 less than that generally provided in the voluntary market. It
1731 also is intended that the corporation be held to service
1732 standards no less than those applied to insurers in the voluntary
1733 market by the office with respect to responsiveness, timeliness,
1734 customer courtesy, and overall dealings with policyholders,
1735 applicants, or agents of the corporation.

1736 4.8. Effective January 1, 2009, a personal lines
1737 residential structure that is located in the "wind-borne debris
1738 region," as defined in s. 1609.2, International Building Code
1739 (2006), and that has an insured value on the structure of
1740 \$750,000 or more is not eligible for coverage by the corporation

20082860e2

1741 unless the structure has opening protections as required under
1742 the Florida Building Code for a newly constructed residential
1743 structure in that area. A residential structure shall be deemed
1744 to comply with the requirements of this subparagraph if it has
1745 shutters or opening protections on all openings and if such
1746 opening protections complied with the Florida Building Code at
1747 the time they were installed. Effective January 1, 2011, the
1748 requirements of this subparagraph apply to a personal lines
1749 residential structure that is located in the wind-borne debris
1750 region and that has an insured value on the structure of \$500,000
1751 or more.

1752 (b)1. All insurers authorized to write one or more subject
1753 lines of business in this state are subject to assessment by the
1754 corporation and, for the purposes of this subsection, are
1755 referred to collectively as "assessable insurers." Insurers
1756 writing one or more subject lines of business in this state
1757 pursuant to part VIII of chapter 626 are not assessable insurers,
1758 but insureds who procure one or more subject lines of business in
1759 this state pursuant to part VIII of chapter 626 are subject to
1760 assessment by the corporation and are referred to collectively as
1761 "assessable insureds." An authorized insurer's assessment
1762 liability shall begin on the first day of the calendar year
1763 following the year in which the insurer was issued a certificate
1764 of authority to transact insurance for subject lines of business
1765 in this state and shall terminate 1 year after the end of the
1766 first calendar year during which the insurer no longer holds a
1767 certificate of authority to transact insurance for subject lines
1768 of business in this state.

1769 2.a. All revenues, assets, liabilities, losses, and

20082860e2

1770 expenses of the corporation shall be divided into three separate
1771 accounts as follows:

1772 (I) A personal lines account for personal residential
1773 policies issued by the corporation or issued by the Residential
1774 Property and Casualty Joint Underwriting Association and renewed
1775 by the corporation that provide comprehensive, multiperil
1776 coverage on risks that are not located in areas eligible for
1777 coverage in the Florida Windstorm Underwriting Association as
1778 those areas were defined on January 1, 2002, and for such
1779 policies that do not provide coverage for the peril of wind on
1780 risks that are located in such areas;

1781 (II) A commercial lines account for commercial residential
1782 and commercial nonresidential policies issued by the corporation
1783 or issued by the Residential Property and Casualty Joint
1784 Underwriting Association and renewed by the corporation that
1785 provide coverage for basic property perils on risks that are not
1786 located in areas eligible for coverage in the Florida Windstorm
1787 Underwriting Association as those areas were defined on January
1788 1, 2002, and for such policies that do not provide coverage for
1789 the peril of wind on risks that are located in such areas; and

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

20082860e2

1799 ~~earlier than March 31, 2007,~~ The corporation shall ~~may~~ offer
1800 policies that provide multiperil coverage and the corporation
1801 shall ~~continue to~~ offer policies that provide coverage only for
1802 the peril of wind for risks located in areas eligible for
1803 coverage in the high-risk account. Beginning July 1, 2008, the
1804 corporation may not issue new policies that provide coverage only
1805 for the peril of wind, but may continue to renew such policies
1806 that were in force on that date. In issuing multiperil coverage,
1807 the corporation may use its approved policy forms and rates for
1808 the personal lines account. An applicant or insured who is
1809 eligible to purchase a multiperil policy from the corporation may
1810 purchase a multiperil policy from an authorized insurer without
1811 prejudice to the applicant's or insured's eligibility to
1812 prospectively purchase a policy that provides coverage only for
1813 the peril of wind from the corporation prior to July 1, 2008. An
1814 applicant or insured who is eligible for a corporation policy
1815 that provides coverage only for the peril of wind may elect to
1816 purchase or retain such policy and also purchase or retain
1817 coverage excluding wind from an authorized insurer without
1818 prejudice to the applicant's or insured's eligibility to
1819 prospectively purchase a policy that provides multiperil coverage
1820 from the corporation. It is the goal of the Legislature that
1821 there would be an overall average savings of 10 percent or more
1822 for a policyholder who currently has a wind-only policy with the
1823 corporation, and an ex-wind policy with a voluntary insurer or
1824 the corporation, and who then obtains a multiperil policy from
1825 the corporation. It is the intent of the Legislature that the
1826 offer of multiperil coverage in the high-risk account be made and
1827 implemented in a manner that does not adversely affect the tax-

20082860e2

1828 exempt status of the corporation or creditworthiness of or
1829 security for currently outstanding financing obligations or
1830 credit facilities of the high-risk account, the personal lines
1831 account, or the commercial lines account. ~~By March 1, 2007, the~~
1832 ~~corporation shall prepare and submit for approval by the~~
1833 ~~Financial Services Commission and Legislative Budget Commission a~~
1834 ~~report detailing the corporation's business plan for issuing~~
1835 ~~multi-peril coverage in the high-risk account. The business plan~~
1836 ~~shall be approved or disapproved within 30 days after receipt, as~~
1837 ~~submitted or modified and resubmitted by the corporation. The~~
1838 ~~business plan must include: the impact of such multi-peril~~
1839 ~~coverage on the corporation's financial resources, the impact of~~
1840 ~~such multi-peril coverage on the corporation's tax-exempt status,~~
1841 ~~the manner in which the corporation plans to implement the~~
1842 ~~processing of applications and policy forms for new and existing~~
1843 ~~policyholders, the impact of such multi-peril coverage on the~~
1844 ~~corporation's ability to deliver customer service at the high~~
1845 ~~level required by this subsection, the ability of the corporation~~
1846 ~~to process claims, the ability of the corporation to quote and~~
1847 ~~issue policies, the impact of such multi-peril coverage on the~~
1848 ~~corporation's agents, the impact of such multi-peril coverage on~~
1849 ~~the corporation's existing policyholders, and the impact of such~~
1850 ~~multi-peril coverage on rates and premium. The high-risk account~~
1851 must also include quota share primary insurance under
1852 subparagraph (c)2. The area eligible for coverage under the high-
1853 risk account also includes the area within Port Canaveral, which
1854 is bordered on the south by the City of Cape Canaveral, bordered
1855 on the west by the Banana River, and bordered on the north by
1856 Federal Government property.

20082860e2

1857 b. The three separate accounts must be maintained as long
1858 as financing obligations entered into by the Florida Windstorm
1859 Underwriting Association or Residential Property and Casualty
1860 Joint Underwriting Association are outstanding, in accordance
1861 with the terms of the corresponding financing documents. When the
1862 financing obligations are no longer outstanding, in accordance
1863 with the terms of the corresponding financing documents, the
1864 corporation may use a single account for all revenues, assets,
1865 liabilities, losses, and expenses of the corporation. Consistent
1866 with the requirement of this subparagraph and prudent investment
1867 policies that minimize the cost of carrying debt, the board shall
1868 exercise its best efforts to retire existing debt or to obtain
1869 approval of necessary parties to amend the terms of existing
1870 debt, so as to structure the most efficient plan to consolidate
1871 the three separate accounts into a single account. By February 1,
1872 2007, the board shall submit a report to the Financial Services
1873 Commission, the President of the Senate, and the Speaker of the
1874 House of Representatives which includes an analysis of
1875 consolidating the accounts, the actions the board has taken to
1876 minimize the cost of carrying debt, and its recommendations for
1877 executing the most efficient plan.

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

20082860e2

1886 sub-sub-subparagraph a.(III) and shall have no claim against, or
1887 recourse to, the accounts referred to in sub-sub-subparagraphs
1888 a.(I) and (II).

1889 d. Revenues, assets, liabilities, losses, and expenses not
1890 attributable to particular accounts shall be prorated among the
1891 accounts.

1892 e. The Legislature finds that the revenues of the
1893 corporation are revenues that are necessary to meet the
1894 requirements set forth in documents authorizing the issuance of
1895 bonds under this subsection.

1896 f. No part of the income of the corporation may inure to
1897 the benefit of any private person.

1898 3. With respect to a deficit in an account:

1899 a. When the deficit incurred in a particular calendar year
1900 is not greater than 8 ~~10~~ percent of the aggregate statewide
1901 direct written premium for the subject lines of business for the
1902 prior calendar year, the entire deficit shall be recovered
1903 through regular assessments of assessable insurers under
1904 paragraph (p) and assessable insureds.

1905 b. When the deficit incurred in a particular calendar year
1906 exceeds 8 ~~10~~ percent of the aggregate statewide direct written
1907 premium for the subject lines of business for the prior calendar
1908 year, the corporation shall levy regular assessments on
1909 assessable insurers under paragraph (p) and on assessable
1910 insureds in an amount equal to the greater of 8 ~~10~~ percent of the
1911 deficit or 8 ~~10~~ percent of the aggregate statewide direct written
1912 premium for the subject lines of business for the prior calendar
1913 year. Any remaining deficit shall be recovered through emergency
1914 assessments under sub-subparagraph d.

20082860e2

1915 c. Each assessable insurer's share of the amount being
1916 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1917 be in the proportion that the assessable insurer's direct written
1918 premium for the subject lines of business for the year preceding
1919 the assessment bears to the aggregate statewide direct written
1920 premium for the subject lines of business for that year. The
1921 assessment percentage applicable to each assessable insured is
1922 the ratio of the amount being assessed under sub-subparagraph a.
1923 or sub-subparagraph b. to the aggregate statewide direct written
1924 premium for the subject lines of business for the prior year.
1925 Assessments levied by the corporation on assessable insurers
1926 under sub-subparagraphs a. and b. shall be paid as required by
1927 the corporation's plan of operation and paragraph (p).
1928 notwithstanding any other provision of this subsection, the
1929 aggregate amount of a regular assessment for a deficit incurred
1930 in a particular calendar year shall be reduced by the estimated
1931 amount to be received by the corporation from the Citizens
1932 policyholder surcharge ~~under subparagraph (c)10. and the amount~~
1933 ~~collected or estimated to be collected from the assessment on~~
1934 ~~Citizens policyholders~~ pursuant to sub-subparagraph i.
1935 Assessments levied by the corporation on assessable insureds
1936 under sub-subparagraphs a. and b. shall be collected by the
1937 surplus lines agent at the time the surplus lines agent collects
1938 the surplus lines tax required by s. 626.932 and shall be paid to
1939 the Florida Surplus Lines Service Office at the time the surplus
1940 lines agent pays the surplus lines tax to the Florida Surplus
1941 Lines Service Office. Upon receipt of regular assessments from
1942 surplus lines agents, the Florida Surplus Lines Service Office
1943 shall transfer the assessments directly to the corporation as

20082860e2

1944 determined by the corporation.

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

20082860e2

1973 pays the surplus lines tax to the Florida Surplus Lines Service
1974 Office. The emergency assessments so collected shall be
1975 transferred directly to the corporation on a periodic basis as
1976 determined by the corporation and shall be held by the
1977 corporation solely in the applicable account. The aggregate
1978 amount of emergency assessments levied for an account under this
1979 sub-subparagraph in any calendar year may, at the discretion of
1980 the board of governors, be less than but may not exceed the
1981 greater of 10 percent of the amount needed to cover the ~~original~~
1982 deficit, plus interest, fees, commissions, required reserves, and
1983 other costs associated with financing of the original deficit, or
1984 10 percent of the aggregate statewide direct written premium for
1985 subject lines of business and for all accounts of the corporation
1986 for the prior year, plus interest, fees, commissions, required
1987 reserves, and other costs associated with financing the ~~original~~
1988 deficit.

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

20082860e2

2002 expenses attributable to a catastrophe. As used in this
2003 subsection, the term "assessments" includes regular assessments
2004 under sub-subparagraph a., sub-subparagraph b., or subparagraph
2005 (p)1. and emergency assessments under sub-subparagraph d.
2006 Emergency assessments collected under sub-subparagraph d. are not
2007 part of an insurer's rates, are not premium, and are not subject
2008 to premium tax, fees, or commissions; however, failure to pay the
2009 emergency assessment shall be treated as failure to pay premium.
2010 The emergency assessments under sub-subparagraph d. shall
2011 continue as long as any bonds issued or other indebtedness
2012 incurred with respect to a deficit for which the assessment was
2013 imposed remain outstanding, unless adequate provision has been
2014 made for the payment of such bonds or other indebtedness pursuant
2015 to the documents governing such bonds or other indebtedness.

2016 f. As used in this subsection for purposes of any deficit
2017 incurred on or after January 25, 2007, the term "subject lines of
2018 business" means insurance written by assessable insurers or
2019 procured by assessable insureds for all property and casualty
2020 lines of business in this state, but not including workers'
2021 compensation or medical malpractice. As used in the sub-
2022 subparagraph, the term "property and casualty lines of business"
2023 includes all lines of business identified on Form 2, Exhibit of
2024 Premiums and Losses, in the annual statement required of
2025 authorized insurers by s. 624.424 and any rule adopted under this
2026 section, except for those lines identified as accident and health
2027 insurance and except for policies written under the National
2028 Flood Insurance Program or the Federal Crop Insurance Program.
2029 For purposes of this sub-subparagraph, the term "workers'
2030 compensation" includes both workers' compensation insurance and

20082860e2

2031 excess workers' compensation insurance.

2032 g. The Florida Surplus Lines Service Office shall determine
2033 annually the aggregate statewide written premium in subject lines
2034 of business procured by assessable insureds and shall report that
2035 information to the corporation in a form and at a time the
2036 corporation specifies to ensure that the corporation can meet the
2037 requirements of this subsection and the corporation's financing
2038 obligations.

2039 h. The Florida Surplus Lines Service Office shall verify
2040 the proper application by surplus lines agents of assessment
2041 percentages for regular assessments and emergency assessments
2042 levied under this subparagraph on assessable insureds and shall
2043 assist the corporation in ensuring the accurate, timely
2044 collection and payment of assessments by surplus lines agents as
2045 required by the corporation.

2046 i. If a deficit is incurred in any account in 2008 or
2047 thereafter, the board of governors shall levy a Citizens
2048 policyholder surcharge ~~an immediate assessment against the~~
2049 ~~premium of each nonhomestead property policyholder in all~~
2050 ~~accounts of the corporation, as a uniform percentage of the~~
2051 ~~premium of the policy of up to 10 percent of such premium, which~~
2052 ~~funds shall be used to offset the deficit. If this assessment is~~
2053 ~~insufficient to eliminate the deficit, the board of governors~~
2054 ~~shall levy an additional assessment against all policyholders of~~
2055 ~~the corporation for a 12-month period, which shall be collected~~
2056 ~~at the time of issuance or renewal of a policy, as a uniform~~
2057 ~~percentage of the premium for the policy of up to 10 percent of~~
2058 ~~such premium, which funds shall be used to further offset the~~
2059 deficit and reduce the amount of the regular assessment as

20082860e2

2060 provided in sub-subparagraphs a. and b. Citizens policyholder
2061 surcharges under this sub-subparagraph are not considered premium
2062 and are not subject to commissions, fees, or premium taxes.
2063 However, failure to pay such surcharges shall be treated as
2064 failure to pay premium.

2065 j. If the amount of any assessments or surcharges collected
2066 from corporation policyholders, assessable insurers or their
2067 policyholders, or assessable insureds exceeds the amount of the
2068 deficits, such excess amounts shall be remitted to and retained
2069 by the corporation in a reserve to be used by the corporation, as
2070 determined by the board of governors and approved by the office,
2071 to pay claims or reduce any past, present, or future plan-year
2072 deficits or to reduce outstanding debt. ~~The board of governors~~
2073 ~~shall maintain separate accounting records that consolidate data~~
2074 ~~for nonhomestead properties, including, but not limited to,~~
2075 ~~number of policies, insured values, premiums written, and losses.~~
2076 ~~The board of governors shall annually report to the office and~~
2077 ~~the Legislature a summary of such data.~~

2078 (c) The plan of operation of the corporation:

2079 1. Must provide for adoption of residential property and
2080 casualty insurance policy forms and commercial residential and
2081 nonresidential property insurance forms, which forms must be
2082 approved by the office prior to use. The corporation shall adopt
2083 the following policy forms:

2084 a. Standard personal lines policy forms that are
2085 comprehensive multiperil policies providing full coverage of a
2086 residential property equivalent to the coverage provided in the
2087 private insurance market under an HO-3, HO-4, or HO-6 policy.

2088 b. Basic personal lines policy forms that are policies

20082860e2

2089 similar to an HO-8 policy or a dwelling fire policy that provide
2090 coverage meeting the requirements of the secondary mortgage
2091 market, but which coverage is more limited than the coverage
2092 under a standard policy.

2093 c. Commercial lines residential and nonresidential policy
2094 forms that are generally similar to the basic perils of full
2095 coverage obtainable for commercial residential structures and
2096 commercial nonresidential structures in the admitted voluntary
2097 market.

2098 d. Personal lines and commercial lines residential property
2099 insurance forms that cover the peril of wind only. The forms are
2100 applicable only to residential properties located in areas
2101 eligible for coverage under the high-risk account referred to in
2102 sub-subparagraph (b)2.a.

2103 e. Commercial lines nonresidential property insurance forms
2104 that cover the peril of wind only. The forms are applicable only
2105 to nonresidential properties located in areas eligible for
2106 coverage under the high-risk account referred to in sub-
2107 subparagraph (b)2.a.

2108 f. The corporation may adopt variations of the policy forms
2109 listed in sub-subparagraphs a.-e. that contain more restrictive
2110 coverage.

2111 2.a. Must provide that the corporation adopt a program in
2112 which the corporation and authorized insurers enter into quota
2113 share primary insurance agreements for hurricane coverage, as
2114 defined in s. 627.4025(2)(a), for eligible risks, and adopt
2115 property insurance forms for eligible risks which cover the peril
2116 of wind only. As used in this subsection, the term:

2117 (I) "Quota share primary insurance" means an arrangement in

20082860e2

2118 | which the primary hurricane coverage of an eligible risk is
2119 | provided in specified percentages by the corporation and an
2120 | authorized insurer. The corporation and authorized insurer are
2121 | each solely responsible for a specified percentage of hurricane
2122 | coverage of an eligible risk as set forth in a quota share
2123 | primary insurance agreement between the corporation and an
2124 | authorized insurer and the insurance contract. The responsibility
2125 | of the corporation or authorized insurer to pay its specified
2126 | percentage of hurricane losses of an eligible risk, as set forth
2127 | in the quota share primary insurance agreement, may not be
2128 | altered by the inability of the other party to the agreement to
2129 | pay its specified percentage of hurricane losses. Eligible risks
2130 | that are provided hurricane coverage through a quota share
2131 | primary insurance arrangement must be provided policy forms that
2132 | set forth the obligations of the corporation and authorized
2133 | insurer under the arrangement, clearly specify the percentages of
2134 | quota share primary insurance provided by the corporation and
2135 | authorized insurer, and conspicuously and clearly state that
2136 | neither the authorized insurer nor the corporation may be held
2137 | responsible beyond its specified percentage of coverage of
2138 | hurricane losses.

2139 | (II) "Eligible risks" means personal lines residential and
2140 | commercial lines residential risks that meet the underwriting
2141 | criteria of the corporation and are located in areas that were
2142 | eligible for coverage by the Florida Windstorm Underwriting
2143 | Association on January 1, 2002.

2144 | b. The corporation may enter into quota share primary
2145 | insurance agreements with authorized insurers at corporation
2146 | coverage levels of 90 percent and 50 percent.

20082860e2

2147 c. If the corporation determines that additional coverage
2148 levels are necessary to maximize participation in quota share
2149 primary insurance agreements by authorized insurers, the
2150 corporation may establish additional coverage levels. However,
2151 the corporation's quota share primary insurance coverage level
2152 may not exceed 90 percent.

2153 d. Any quota share primary insurance agreement entered into
2154 between an authorized insurer and the corporation must provide
2155 for a uniform specified percentage of coverage of hurricane
2156 losses, by county or territory as set forth by the corporation
2157 board, for all eligible risks of the authorized insurer covered
2158 under the quota share primary insurance agreement.

2159 e. Any quota share primary insurance agreement entered into
2160 between an authorized insurer and the corporation is subject to
2161 review and approval by the office. However, such agreement shall
2162 be authorized only as to insurance contracts entered into between
2163 an authorized insurer and an insured who is already insured by
2164 the corporation for wind coverage.

2165 f. For all eligible risks covered under quota share primary
2166 insurance agreements, the exposure and coverage levels for both
2167 the corporation and authorized insurers shall be reported by the
2168 corporation to the Florida Hurricane Catastrophe Fund. For all
2169 policies of eligible risks covered under quota share primary
2170 insurance agreements, the corporation and the authorized insurer
2171 shall maintain complete and accurate records for the purpose of
2172 exposure and loss reimbursement audits as required by Florida
2173 Hurricane Catastrophe Fund rules. The corporation and the
2174 authorized insurer shall each maintain duplicate copies of policy
2175 declaration pages and supporting claims documents.

20082860e2

2176 g. The corporation board shall establish in its plan of
2177 operation standards for quota share agreements which ensure that
2178 there is no discriminatory application among insurers as to the
2179 terms of quota share agreements, pricing of quota share
2180 agreements, incentive provisions if any, and consideration paid
2181 for servicing policies or adjusting claims.

2182 h. The quota share primary insurance agreement between the
2183 corporation and an authorized insurer must set forth the specific
2184 terms under which coverage is provided, including, but not
2185 limited to, the sale and servicing of policies issued under the
2186 agreement by the insurance agent of the authorized insurer
2187 producing the business, the reporting of information concerning
2188 eligible risks, the payment of premium to the corporation, and
2189 arrangements for the adjustment and payment of hurricane claims
2190 incurred on eligible risks by the claims adjuster and personnel
2191 of the authorized insurer. Entering into a quota sharing
2192 insurance agreement between the corporation and an authorized
2193 insurer shall be voluntary and at the discretion of the
2194 authorized insurer.

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

20082860e2

2205 judicial validation of its bonds or other indebtedness under
2206 chapter 75. The corporation may issue bonds or incur other
2207 indebtedness, or have bonds issued on its behalf by a unit of
2208 local government pursuant to subparagraph (p)2., in the absence
2209 of a hurricane or other weather-related event, upon a
2210 determination by the corporation, subject to approval by the
2211 office, that such action would enable it to efficiently meet the
2212 financial obligations of the corporation and that such financings
2213 are reasonably necessary to effectuate the requirements of this
2214 subsection. The corporation is authorized to take all actions
2215 needed to facilitate tax-free status for any such bonds or
2216 indebtedness, including formation of trusts or other affiliated
2217 entities. The corporation shall have the authority to pledge
2218 assessments, projected recoveries from the Florida Hurricane
2219 Catastrophe Fund, other reinsurance recoverables, market
2220 equalization and other surcharges, and other funds available to
2221 the corporation as security for bonds or other indebtedness. In
2222 recognition of s. 10, Art. I of the State Constitution,
2223 prohibiting the impairment of obligations of contracts, it is the
2224 intent of the Legislature that no action be taken whose purpose
2225 is to impair any bond indenture or financing agreement or any
2226 revenue source committed by contract to such bond or other
2227 indebtedness.

2228 4.a. Must require that the corporation operate subject to
2229 the supervision and approval of a board of governors consisting
2230 of eight individuals who are residents of this state, from
2231 different geographical areas of this state. The Governor, the
2232 Chief Financial Officer, the President of the Senate, and the
2233 Speaker of the House of Representatives shall each appoint two

20082860e2

2234 members of the board. At least one of the two members appointed
2235 by each appointing officer must have demonstrated expertise in
2236 insurance. The Chief Financial Officer shall designate one of the
2237 appointees as chair. All board members serve at the pleasure of
2238 the appointing officer. All members of the board of governors are
2239 subject to removal at will by the officers who appointed them.
2240 All board members, including the chair, must be appointed to
2241 serve for 3-year terms beginning annually on a date designated by
2242 the plan. Any board vacancy shall be filled for the unexpired
2243 term by the appointing officer. The Chief Financial Officer shall
2244 appoint a technical advisory group to provide information and
2245 advice to the board of governors in connection with the board's
2246 duties under this subsection. The executive director and senior
2247 managers of the corporation shall be engaged by the board and
2248 serve at the pleasure of the board. Any executive director
2249 appointed on or after July 1, 2006, is subject to confirmation by
2250 the Senate. The executive director is responsible for employing
2251 other staff as the corporation may require, subject to review and
2252 concurrence by the board.

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

20082860e2

2263 Latin American Association of Insurance Agencies; three
2264 representatives appointed by the insurers with the three highest
2265 voluntary market share of residential property insurance business
2266 in the state; one representative from the Office of Insurance
2267 Regulation; one consumer appointed by the board who is insured by
2268 the corporation at the time of appointment to the committee; one
2269 representative appointed by the Florida Association of Realtors;
2270 and one representative appointed by the Florida Bankers
2271 Association. All members must serve for 3-year terms and may
2272 serve for consecutive terms. The committee shall report to the
2273 corporation at each board meeting on insurance market issues
2274 which may include rates and rate competition with the voluntary
2275 market; service, including policy issuance, claims processing,
2276 and general responsiveness to policyholders, applicants, and
2277 agents; and matters relating to depopulation.

2278 5. Must provide a procedure for determining the eligibility
2279 of a risk for coverage, as follows:

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

20082860e2

2292 coverage or a basic policy including wind coverage issued by the
2293 corporation; however, if the risk could not be insured under a
2294 standard policy including wind coverage regardless of market
2295 conditions, the risk shall be eligible for a basic policy
2296 including wind coverage unless rejected under subparagraph 9.
2297 However, with regard to a policyholder of the corporation or a
2298 policyholder removed from the corporation through an assumption
2299 agreement until the end of the assumption period, the
2300 policyholder remains eligible for coverage from the corporation
2301 regardless of any offer of coverage from an authorized insurer or
2302 surplus lines insurer. The corporation shall determine the type
2303 of policy to be provided on the basis of objective standards
2304 specified in the underwriting manual and based on generally
2305 accepted underwriting practices.

2306 (I) If the risk accepts an offer of coverage through the
2307 market assistance plan or an offer of coverage through a
2308 mechanism established by the corporation before a policy is
2309 issued to the risk by the corporation or during the first 30 days
2310 of coverage by the corporation, and the producing agent who
2311 submitted the application to the plan or to the corporation is
2312 not currently appointed by the insurer, the insurer shall:

2313 (A) Pay to the producing agent of record of the policy, for
2314 the first year, an amount that is the greater of the insurer's
2315 usual and customary commission for the type of policy written or
2316 a fee equal to the usual and customary commission of the
2317 corporation; or

2318 (B) Offer to allow the producing agent of record of the
2319 policy to continue servicing the policy for a period of not less
2320 than 1 year and offer to pay the agent the greater of the

20082860e2

2321 insurer's or the corporation's usual and customary commission for
2322 the type of policy written.

2323

2324 If the producing agent is unwilling or unable to accept
2325 appointment, the new insurer shall pay the agent in accordance
2326 with sub-sub-sub-subparagraph (A).

2327 (II) When the corporation enters into a contractual
2328 agreement for a take-out plan, the producing agent of record of
2329 the corporation policy is entitled to retain any unearned
2330 commission on the policy, and the insurer shall:

2331 (A) Pay to the producing agent of record of the corporation
2332 policy, for the first year, an amount that is the greater of the
2333 insurer's usual and customary commission for the type of policy
2334 written or a fee equal to the usual and customary commission of
2335 the corporation; or

2336 (B) Offer to allow the producing agent of record of the
2337 corporation policy to continue servicing the policy for a period
2338 of not less than 1 year and offer to pay the agent the greater of
2339 the insurer's or the corporation's usual and customary commission
2340 for the type of policy written.

2341

2342 If the producing agent is unwilling or unable to accept
2343 appointment, the new insurer shall pay the agent in accordance
2344 with sub-sub-sub-subparagraph (A).

2345 b. With respect to commercial lines residential risks, for
2346 a new application to the corporation for coverage, if the risk is
2347 offered coverage under a policy including wind coverage from an
2348 authorized insurer at its approved rate, the risk is not eligible
2349 for any policy issued by the corporation unless the premium for

20082860e2

2350 coverage from the authorized insurer is more than 15 percent
2351 greater than the premium for comparable coverage from the
2352 corporation. If the risk is not able to obtain any such offer,
2353 the risk is eligible for a policy including wind coverage issued
2354 by the corporation. However, with regard to a policyholder of the
2355 corporation or a policyholder removed from the corporation
2356 through an assumption agreement until the end of the assumption
2357 period, the policyholder remains eligible for coverage from the
2358 corporation regardless of any offer of coverage from an
2359 authorized insurer or surplus lines insurer.

2360 (I) If the risk accepts an offer of coverage through the
2361 market assistance plan or an offer of coverage through a
2362 mechanism established by the corporation before a policy is
2363 issued to the risk by the corporation or during the first 30 days
2364 of coverage by the corporation, and the producing agent who
2365 submitted the application to the plan or the corporation is not
2366 currently appointed by the insurer, the insurer shall:

2367 (A) Pay to the producing agent of record of the policy, for
2368 the first year, an amount that is the greater of the insurer's
2369 usual and customary commission for the type of policy written or
2370 a fee equal to the usual and customary commission of the
2371 corporation; or

2372 (B) Offer to allow the producing agent of record of the
2373 policy to continue servicing the policy for a period of not less
2374 than 1 year and offer to pay the agent the greater of the
2375 insurer's or the corporation's usual and customary commission for
2376 the type of policy written.

2377

2378 If the producing agent is unwilling or unable to accept

20082860e2

2379 appointment, the new insurer shall pay the agent in accordance
2380 with sub-sub-sub-subparagraph (A).

2381 (II) When the corporation enters into a contractual
2382 agreement for a take-out plan, the producing agent of record of
2383 the corporation policy is entitled to retain any unearned
2384 commission on the policy, and the insurer shall:

2385 (A) Pay to the producing agent of record of the corporation
2386 policy, for the first year, an amount that is the greater of the
2387 insurer's usual and customary commission for the type of policy
2388 written or a fee equal to the usual and customary commission of
2389 the corporation; or

2390 (B) Offer to allow the producing agent of record of the
2391 corporation policy to continue servicing the policy for a period
2392 of not less than 1 year and offer to pay the agent the greater of
2393 the insurer's or the corporation's usual and customary commission
2394 for the type of policy written.

2395
2396 If the producing agent is unwilling or unable to accept
2397 appointment, the new insurer shall pay the agent in accordance
2398 with sub-sub-sub-subparagraph (A).

2399 c. For purposes of determining comparable coverage under
2400 sub-subparagraphs a. and b., the comparison shall be based on
2401 those forms and coverages that are reasonably comparable. The
2402 corporation may rely on a determination of comparable coverage
2403 and premium made by the producing agent who submits the
2404 application to the corporation, made in the agent's capacity as
2405 the corporation's agent. A comparison may be made solely of the
2406 premium with respect to the main building or structure only on
2407 the following basis: the same coverage A or other building

20082860e2

2408 limits; the same percentage hurricane deductible that applies on
2409 an annual basis or that applies to each hurricane for commercial
2410 residential property; the same percentage of ordinance and law
2411 coverage, if the same limit is offered by both the corporation
2412 and the authorized insurer; the same mitigation credits, to the
2413 extent the same types of credits are offered both by the
2414 corporation and the authorized insurer; the same method for loss
2415 payment, such as replacement cost or actual cash value, if the
2416 same method is offered both by the corporation and the authorized
2417 insurer in accordance with underwriting rules; and any other form
2418 or coverage that is reasonably comparable as determined by the
2419 board. If an application is submitted to the corporation for
2420 wind-only coverage in the high-risk account, the premium for the
2421 corporation's wind-only policy plus the premium for the ex-wind
2422 policy that is offered by an authorized insurer to the applicant
2423 shall be compared to the premium for multiperil coverage offered
2424 by an authorized insurer, subject to the standards for comparison
2425 specified in this subparagraph. If the corporation or the
2426 applicant requests from the authorized insurer a breakdown of the
2427 premium of the offer by types of coverage so that a comparison
2428 may be made by the corporation or its agent and the authorized
2429 insurer refuses or is unable to provide such information, the
2430 corporation may treat the offer as not being an offer of coverage
2431 from an authorized insurer at the insurer's approved rate.

2432 6. Must include rules for classifications of risks and
2433 rates therefor.

2434 7. Must provide that if premium and investment income for
2435 an account attributable to a particular calendar year are in
2436 excess of projected losses and expenses for the account

20082860e2

2437 attributable to that year, such excess shall be held in surplus
2438 in the account. Such surplus shall be available to defray
2439 deficits in that account as to future years and shall be used for
2440 that purpose prior to assessing assessable insurers and
2441 assessable insureds as to any calendar year.

2442 8. Must provide objective criteria and procedures to be
2443 uniformly applied for all applicants in determining whether an
2444 individual risk is so hazardous as to be uninsurable. In making
2445 this determination and in establishing the criteria and
2446 procedures, the following shall be considered:

2447 a. Whether the likelihood of a loss for the individual risk
2448 is substantially higher than for other risks of the same class;
2449 and

2450 b. Whether the uncertainty associated with the individual
2451 risk is such that an appropriate premium cannot be determined.

2452
2453 The acceptance or rejection of a risk by the corporation shall be
2454 construed as the private placement of insurance, and the
2455 provisions of chapter 120 shall not apply.

2456 9. Must provide that the corporation shall make its best
2457 efforts to procure catastrophe reinsurance at reasonable rates,
2458 to cover its projected 100-year probable maximum loss as
2459 determined by the board of governors.

2460 ~~10. Must provide that in the event of regular deficit~~
2461 ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2462 ~~(b)3.b., in the personal lines account, the commercial lines~~
2463 ~~residential account, or the high-risk account, the corporation~~
2464 ~~shall levy upon corporation policyholders in its next rate~~
2465 ~~filing, or by a separate rate filing solely for this purpose, a~~

20082860e2

2466 ~~Citizens policyholder surcharge arising from a regular assessment~~
2467 ~~in such account in a percentage equal to the total amount of such~~
2468 ~~regular assessments divided by the aggregate statewide direct~~
2469 ~~written premium for subject lines of business for the prior~~
2470 ~~calendar year. For purposes of calculating the Citizens~~
2471 ~~policyholder surcharge to be levied under this subparagraph, the~~
2472 ~~total amount of the regular assessment to which this surcharge is~~
2473 ~~related shall be determined as set forth in subparagraph (b)3.,~~
2474 ~~without deducting the estimated Citizens policyholder surcharge.~~
2475 ~~Citizens policyholder surcharges under this subparagraph are not~~
2476 ~~considered premium and are not subject to commissions, fees, or~~
2477 ~~premium taxes; however, failure to pay a market equalization~~
2478 ~~surcharge shall be treated as failure to pay premium.~~

2479 10.11. The policies issued by the corporation must provide
2480 that, if the corporation or the market assistance plan obtains an
2481 offer from an authorized insurer to cover the risk at its
2482 approved rates, the risk is no longer eligible for renewal
2483 through the corporation, except as otherwise provided in this
2484 subsection.

2485 11.12. Corporation policies and applications must include a
2486 notice that the corporation policy could, under this section, be
2487 replaced with a policy issued by an authorized insurer that does
2488 not provide coverage identical to the coverage provided by the
2489 corporation. The notice shall also specify that acceptance of
2490 corporation coverage creates a conclusive presumption that the
2491 applicant or policyholder is aware of this potential.

2492 12.13. May establish, subject to approval by the office,
2493 different eligibility requirements and operational procedures for
2494 any line or type of coverage for any specified county or area if

20082860e2

2495 the board determines that such changes to the eligibility
2496 requirements and operational procedures are justified due to the
2497 voluntary market being sufficiently stable and competitive in
2498 such area or for such line or type of coverage and that consumers
2499 who, in good faith, are unable to obtain insurance through the
2500 voluntary market through ordinary methods would continue to have
2501 access to coverage from the corporation. When coverage is sought
2502 in connection with a real property transfer, such requirements
2503 and procedures shall not provide for an effective date of
2504 coverage later than the date of the closing of the transfer as
2505 established by the transferor, the transferee, and, if
2506 applicable, the lender.

2507 13.14. Must provide that, with respect to the high-risk
2508 account, any assessable insurer with a surplus as to
2509 policyholders of \$25 million or less writing 25 percent or more
2510 of its total countrywide property insurance premiums in this
2511 state may petition the office, within the first 90 days of each
2512 calendar year, to qualify as a limited apportionment company. A
2513 regular assessment levied by the corporation on a limited
2514 apportionment company for a deficit incurred by the corporation
2515 for the high-risk account in 2006 or thereafter may be paid to
2516 the corporation on a monthly basis as the assessments are
2517 collected by the limited apportionment company from its insureds
2518 pursuant to s. 627.3512, but the regular assessment must be paid
2519 in full within 12 months after being levied by the corporation. A
2520 limited apportionment company shall collect from its
2521 policyholders any emergency assessment imposed under sub-
2522 subparagraph (b)3.d. The plan shall provide that, if the office
2523 determines that any regular assessment will result in an

20082860e2

2524 impairment of the surplus of a limited apportionment company, the
2525 office may direct that all or part of such assessment be deferred
2526 as provided in subparagraph (p)4. However, there shall be no
2527 limitation or deferment of an emergency assessment to be
2528 collected from policyholders under sub-subparagraph (b)3.d.

2529 14.15. Must provide that the corporation appoint as its
2530 licensed agents only those agents who also hold an appointment as
2531 defined in s. 626.015(3) with an insurer who at the time of the
2532 agent's initial appointment by the corporation is authorized to
2533 write and is actually writing personal lines residential property
2534 coverage, commercial residential property coverage, or commercial
2535 nonresidential property coverage within the state.

2536 15.16. Must provide, by July 1, 2007, a premium payment
2537 plan option to its policyholders which allows at a minimum for
2538 quarterly and semiannual payment of premiums. A monthly payment
2539 plan may, but is not required to, be offered.

2540 16.17. Must limit coverage on mobile homes or manufactured
2541 homes built prior to 1994 to actual cash value of the dwelling
2542 rather than replacement costs of the dwelling.

2543 17.18. May provide such limits of coverage as the board
2544 determines, consistent with the requirements of this subsection.

2545 18.19. May require commercial property to meet specified
2546 hurricane mitigation construction features as a condition of
2547 eligibility for coverage.

2548 (m)1. Rates for coverage provided by the corporation shall
2549 be actuarially sound and subject to the requirements of s.
2550 627.062, except as otherwise provided in this paragraph. The
2551 corporation shall file its recommended rates with the office at
2552 least annually. The corporation shall provide any additional

20082860e2

2553 information regarding the rates which the office requires. The
2554 office shall consider the recommendations of the board and issue
2555 a final order establishing the rates for the corporation within
2556 45 days after the recommended rates are filed. The corporation
2557 may not pursue an administrative challenge or judicial review of
2558 the final order of the office.

2559 2. In addition to the rates otherwise determined pursuant
2560 to this paragraph, the corporation shall impose and collect an
2561 amount equal to the premium tax provided for in s. 624.509 to
2562 augment the financial resources of the corporation.

2563 3. After the public hurricane loss-projection model under
2564 s. 627.06281 has been found to be accurate and reliable by the
2565 Florida Commission on Hurricane Loss Projection Methodology, that
2566 model shall serve as the minimum benchmark for determining the
2567 windstorm portion of the corporation's rates. This subparagraph
2568 does not require or allow the corporation to adopt rates lower
2569 than the rates otherwise required or allowed by this paragraph.

2570 4. The rate filings for the corporation which were approved
2571 by the office and which took effect January 1, 2007, are
2572 rescinded, except for those rates that were lowered. As soon as
2573 possible, the corporation shall begin using the lower rates that
2574 were in effect on December 31, 2006, and shall provide refunds to
2575 policyholders who have paid higher rates as a result of that rate
2576 filing. The rates in effect on December 31, 2006, shall remain in
2577 effect for the 2007 and 2008 calendar years except for any rate
2578 change that results in a lower rate. The next rate change that
2579 may increase rates shall take effect ~~January 1, 2009,~~ pursuant to
2580 a new rate filing recommended by the corporation and established
2581 by the office, subject to the requirements of this paragraph.

20082860e2

2582 5.a. Beginning on January 15, 2009, and each year
2583 thereafter, the corporation must make a recommended actuarially
2584 sound rate filing for each personal and commercial line of
2585 business it writes, to be effective no earlier than July 1, 2009.

2586 b. For the 36-month period beginning with the effective
2587 date for each of the rate filings made by the corporation on
2588 January 15, 2009, the rates established by the office for the
2589 corporation for its personal residential multiperil policies, its
2590 commercial residential multiperil policies, and its commercial
2591 nonresidential multiperil policies may not result in an overall
2592 average statewide premium increase of more than 5 percent or an
2593 increase for any single policyholder of more than 5 percent,
2594 during the first 12-month period, and may not result in an
2595 overall average statewide premium increase of more than 10
2596 percent, or an increase for any single policyholder of more than
2597 10 percent, during each of the two subsequent 12-month periods,
2598 excluding coverage changes and surcharges.

2599 c. For the 36-month period beginning with the effective
2600 date for the rate filings made by the corporation on January 15,
2601 2009, the rates established by the office for the corporation for
2602 its personal residential wind-only policies, its commercial
2603 residential wind-only policies, and its commercial nonresidential
2604 wind-only policies 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 the first 12-
2607 month period, and may not result in an overall average statewide
2608 premium increase of more than 10 percent, or an increase for any
2609 single policyholder of more than 10 percent, during each of the
2610 two subsequent 12-month periods, excluding coverage changes and

20082860e2

2611 surcharges.

2612 (p)1. The corporation shall certify to the office its needs
2613 for annual assessments as to a particular calendar year, and for
2614 any interim assessments that it deems to be necessary to sustain
2615 operations as to a particular year pending the receipt of annual
2616 assessments. Upon verification, the office shall approve such
2617 certification, and the corporation shall levy such annual or
2618 interim assessments. Such assessments shall be prorated as
2619 provided in paragraph (b). The corporation shall take all
2620 reasonable and prudent steps necessary to collect the amount of
2621 assessment due from each assessable insurer, including, if
2622 prudent, filing suit to collect such assessment. If the
2623 corporation is unable to collect an assessment from any
2624 assessable insurer, the uncollected assessments shall be levied
2625 as an additional assessment against the assessable insurers and
2626 any assessable insurer required to pay an additional assessment
2627 as a result of such failure to pay shall have a cause of action
2628 against such nonpaying assessable insurer. Assessments shall be
2629 included as an appropriate factor in the making of rates. The
2630 failure of a surplus lines agent to collect and remit any regular
2631 or emergency assessment levied by the corporation is considered
2632 to be a violation of s. 626.936 and subjects the surplus lines
2633 agent to the penalties provided in that section.

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

20082860e2

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

20082860e2

2669 ~~that equals the insurer's relative share of assessment liability~~
2670 ~~under this subsection. An insurer shall not be required to~~
2671 ~~purchase the bonds to the extent that the office determines that~~
2672 ~~the purchase would endanger or impair the solvency of the~~
2673 ~~insurer.~~

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

20082860e2

2698 corporation enters into a contractual agreement for a take-out
2699 plan, the producing agent of record of the corporation policy is
2700 entitled to retain any unearned commission on such policy, and
2701 the insurer shall either:

2702 (I) Pay to the producing agent of record of the policy, for
2703 the first year, an amount which is the greater of the insurer's
2704 usual and customary commission for the type of policy written or
2705 a policy fee equal to the usual and customary commission of the
2706 corporation; or

2707 (II) Offer to allow the producing agent of record of the
2708 policy to continue servicing the policy for a period of not less
2709 than 1 year and offer to pay the agent the insurer's usual and
2710 customary commission for the type of policy written. If the
2711 producing agent is unwilling or unable to accept appointment by
2712 the new insurer, the new insurer shall pay the agent in
2713 accordance with sub-sub-subparagraph (I).

2714 b. Any credit or exemption from regular assessments adopted
2715 under this subparagraph shall last no longer than the 3 years
2716 following the cancellation or expiration of the policy by the
2717 corporation. With the approval of the office, the board may
2718 extend such credits for an additional year if the insurer
2719 guarantees an additional year of renewability for all policies
2720 removed from the corporation, or for 2 additional years if the
2721 insurer guarantees 2 additional years of renewability for all
2722 policies so removed.

2723 c. There shall be no credit, limitation, exemption, or
2724 deferment from emergency assessments to be collected from
2725 policyholders pursuant to sub-subparagraph (b)3.d.

2726 d. Subject to the execution of the confidentiality

20082860e2

2727 agreement required by paragraph (w), the corporation shall make
2728 its database of policies available to prospective take-out
2729 insurers considering underwriting a risk insured by the
2730 corporation, without categorically eliminating policies from
2731 eligibility for removal. The corporation may not instruct or
2732 encourage prospective take-out insurers to avoid the selection of
2733 policies for which the agent has disapproved policy removals. The
2734 corporation must require agents to accept or decline appointment
2735 or a contract with the insurer for any policy selected and, in
2736 the case of a declination, must notify the policyholder that an
2737 insurer, identified by name, selected his or her policy for a
2738 take-out offer, but that the policyholder's agent did not accept
2739 an appointment or contract with the insurer. The notice must also
2740 provide the policyholder with the take-out insurer's contact
2741 information so that the policyholder may contact the company
2742 directly and make his or her own determination of whether to seek
2743 coverage from the take-out insurer.

2744 4. The plan shall provide for the deferment, in whole or in
2745 part, of the assessment of an assessable insurer, other than an
2746 emergency assessment collected from policyholders pursuant to
2747 sub-subparagraph (b)3.d., if the office finds that payment of the
2748 assessment would endanger or impair the solvency of the insurer.
2749 In the event an assessment against an assessable insurer is
2750 deferred in whole or in part, the amount by which such assessment
2751 is deferred may be assessed against the other assessable insurers
2752 in a manner consistent with the basis for assessments set forth
2753 in paragraph (b).

2754 5. Effective July 1, 2007, in order to evaluate the costs
2755 and benefits of approved take-out plans, if the corporation pays

20082860e2

2756 a bonus or other payment to an insurer for an approved take-out
2757 plan, it shall maintain a record of the address or such other
2758 identifying information on the property or risk removed in order
2759 to track if and when the property or risk is later insured by the
2760 corporation.

2761 6. Any policy taken out, assumed, or removed from the
2762 corporation is, as of the effective date of the take-out,
2763 assumption, or removal, direct insurance issued by the insurer
2764 and not by the corporation, even if the corporation continues to
2765 service the policies. This subparagraph applies to policies of
2766 the corporation and not policies taken out, assumed, or removed
2767 from any other entity.

2768 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2769 ~~the risk being no longer eligible for coverage due to being~~
2770 ~~valued at \$1 million or more, the corporation shall, directly or~~
2771 ~~through the market assistance plan, make information from~~
2772 ~~confidential underwriting and claims files of policyholders~~
2773 ~~available only to licensed general lines agents who register with~~
2774 ~~the corporation to receive such information according to the~~
2775 ~~following procedures:~~

2776 ~~2. By August 1, 2006, the corporation shall provide such~~
2777 ~~policyholders who are not eligible for renewal the opportunity to~~
2778 ~~request in writing, within 30 days after the notification is~~
2779 ~~sent, that information from their confidential underwriting and~~
2780 ~~claims files not be released to licensed general lines agents~~
2781 ~~registered pursuant to this paragraph.~~

2782 ~~3. By August 1, 2006, the corporation shall make available~~
2783 ~~to licensed general lines agents the registration procedures to~~
2784 ~~be used to obtain confidential information from underwriting and~~

20082860e2

2785 ~~claims files for such policies not eligible for renewal. As a~~
2786 ~~condition of registration, the corporation shall require the~~
2787 ~~licensed general lines agent to attest that the agent has the~~
2788 ~~experience and relationships with authorized or surplus lines~~
2789 ~~carriers to attempt to offer replacement coverage for such~~
2790 ~~policies.~~

2791 ~~4. By September 1, 2006, the corporation shall make~~
2792 ~~available through a secured website to licensed general lines~~
2793 ~~agents registered pursuant to this paragraph application, rating,~~
2794 ~~loss history, mitigation, and policy type information relating to~~
2795 ~~such policies not eligible for renewal and for which the~~
2796 ~~policyholder has not requested the corporation withhold such~~
2797 ~~information. The registered licensed general lines agent may use~~
2798 ~~such information to contact and assist the policyholder in~~
2799 ~~securing replacement policies, and the agent may disclose to the~~
2800 ~~policyholder that such information was obtained from the~~
2801 ~~corporation.~~

2802 (w)1. The following records of the corporation are
2803 confidential and exempt from the provisions of s. 119.07(1) and
2804 s. 24(a), Art. I of the State Constitution:

2805 a. Underwriting files, except that a policyholder or an
2806 applicant shall have access to his or her own underwriting files.
2807 Confidential and exempt underwriting file records may also be
2808 released to other governmental agencies upon written request and
2809 demonstration of need; such records held by the receiving agency
2810 remain confidential and exempt as provided herein.

2811 b. Claims files, until termination of all litigation and
2812 settlement of all claims arising out of the same incident,
2813 although portions of the claims files may remain exempt, as

20082860e2

2814 otherwise provided by law. Confidential and exempt claims file
2815 records may be released to other governmental agencies upon
2816 written request and demonstration of need; such records held by
2817 the receiving agency remain confidential and exempt as provided
2818 ~~for~~ herein.

2819 c. Records obtained or generated by an internal auditor
2820 pursuant to a routine audit, until the audit is completed, or if
2821 the audit is conducted as part of an investigation, until the
2822 investigation is closed or ceases to be active. An investigation
2823 is considered "active" while the investigation is being conducted
2824 with a reasonable, good faith belief that it could lead to the
2825 filing of administrative, civil, or criminal proceedings.

2826 d. Matters reasonably encompassed in privileged attorney-
2827 client communications.

2828 e. Proprietary information licensed to the corporation
2829 under contract and the contract provides for the confidentiality
2830 of such proprietary information.

2831 f. All information relating to the medical condition or
2832 medical status of a corporation employee which is not relevant to
2833 the employee's capacity to perform his or her duties, except as
2834 otherwise provided in this paragraph. Information that ~~which~~ is
2835 exempt shall include, but is not limited to, information relating
2836 to workers' compensation, insurance benefits, and retirement or
2837 disability benefits.

2838 g. Upon an employee's entrance into the employee assistance
2839 program, a program to assist any employee who has a behavioral or
2840 medical disorder, substance abuse problem, or emotional
2841 difficulty which affects the employee's job performance, all
2842 records relative to that participation shall be confidential and

20082860e2

2843 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
2844 of the State Constitution, except as otherwise provided in s.
2845 112.0455(11).

2846 h. Information relating to negotiations for financing,
2847 reinsurance, depopulation, or contractual services, until the
2848 conclusion of the negotiations.

2849 i. Minutes of closed meetings regarding underwriting files,
2850 and minutes of closed meetings regarding an open claims file
2851 until termination of all litigation and settlement of all claims
2852 with regard to that claim, except that information otherwise
2853 confidential or exempt by law shall ~~will~~ be redacted.

2854 2. ~~If~~ When an authorized insurer is considering
2855 underwriting a risk insured by the corporation, relevant
2856 underwriting files and confidential claims files may be released
2857 to the insurer provided the insurer agrees in writing, notarized
2858 and under oath, to maintain the confidentiality of such files. If
2859 ~~When~~ a file is transferred to an insurer that file is no longer a
2860 public record because it is not held by an agency subject to the
2861 provisions of the public records law. Underwriting files and
2862 confidential claims files may also be released to staff ~~of~~ and
2863 the board of governors of the market assistance plan established
2864 pursuant to s. 627.3515, who must retain the confidentiality of
2865 such files, except such files may be released to authorized
2866 insurers that are considering assuming the risks to which the
2867 files apply, provided the insurer agrees in writing, notarized
2868 and under oath, to maintain the confidentiality of such files.
2869 Finally, the corporation or the board or staff of the market
2870 assistance plan may make the following information obtained from
2871 underwriting files and confidential claims files available to

20082860e2

2872 licensed general lines insurance agents: name, address, and
2873 telephone number of the residential property owner or insured;
2874 location of the risk; rating information; loss history; and
2875 policy type. The receiving licensed general lines insurance agent
2876 must retain the confidentiality of the information received.

2877 3. A policyholder who has filed suit against the
2878 corporation has the right to discover the contents of his or her
2879 own claims file to the same extent that discovery of such
2880 contents would be available from a private insurer in litigation
2881 as provided by the Florida Rules of Civil Procedure, the Florida
2882 Evidence Code, and other applicable law. Pursuant to subpoena, a
2883 third party has the right to discover the contents of an
2884 insured's or applicant's underwriting or claims file to the same
2885 extent that discovery of such contents would be available from a
2886 private insurer by subpoena as provided by the Florida Rules of
2887 Civil Procedure, the Florida Evidence Code, and other applicable
2888 law, and subject to any confidentiality protections requested by
2889 the corporation and agreed to by the seeking party or ordered by
2890 the court. The corporation may release confidential underwriting
2891 and claims file contents and information as it deems necessary
2892 and appropriate to underwrite or service insurance policies and
2893 claims, subject to any confidentiality protections deemed
2894 necessary and appropriate by the corporation.

2895 4.2- Portions of meetings of the corporation are exempt
2896 from the provisions of s. 286.011 and s. 24(b), Art. I of the
2897 State Constitution wherein confidential underwriting files or
2898 confidential open claims files are discussed. All portions of
2899 corporation meetings which are closed to the public shall be
2900 recorded by a court reporter. The court reporter shall record the

20082860e2

2901 times of commencement and termination of the meeting, all
2902 discussion and proceedings, the names of all persons present at
2903 any time, and the names of all persons speaking. No portion of
2904 any closed meeting shall be off the record. Subject to the
2905 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
2906 notes of any closed meeting shall be retained by the corporation
2907 for a minimum of 5 years. A copy of the transcript, less any
2908 exempt matters, of any closed meeting wherein claims are
2909 discussed shall become public as to individual claims after
2910 settlement of the claim.

2911 (dd)~~(ee)~~ The assets of the corporation may be invested and
2912 managed by the State Board of Administration.

2913 (ee)~~(ff)~~ The office may establish a pilot program to offer
2914 optional sinkhole coverage in one or more counties or other
2915 territories of the corporation for the purpose of implementing s.
2916 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.
2917 Under the pilot program, the corporation is not required to issue
2918 a notice of nonrenewal to exclude sinkhole coverage upon the
2919 renewal of existing policies, but may exclude such coverage using
2920 a notice of coverage change.

2921 Section 14. Paragraph (b) of subsection (2) of section
2922 627.4133, Florida Statutes, is amended to read:

2923 627.4133 Notice of cancellation, nonrenewal, or renewal
2924 premium.--

2925 (2) With respect to any personal lines or commercial
2926 residential property insurance policy, including, but not limited
2927 to, any homeowner's, mobile home owner's, farmowner's,
2928 condominium association, condominium unit owner's, apartment
2929 building, or other policy covering a residential structure or its

20082860e2

2930 contents:

2931 (b) The insurer shall give the named insured written notice
2932 of nonrenewal, cancellation, or termination at least 180 ~~100~~ days
2933 prior to the effective date of the nonrenewal, cancellation, or
2934 termination. ~~However, the insurer shall give at least 100 days'~~
2935 ~~written notice, or written notice by June 1, whichever is~~
2936 ~~earlier, for any nonrenewal, cancellation, or termination that~~
2937 ~~would be effective between June 1 and November 30.~~ The notice
2938 must include the reason or reasons for the nonrenewal,
2939 cancellation, or termination, except that:

2940 1. When cancellation is for nonpayment of premium, at least
2941 10 days' written notice of cancellation accompanied by the reason
2942 therefor shall be given. As used in this subparagraph, the term
2943 "nonpayment of premium" means failure of the named insured to
2944 discharge when due any of her or his obligations in connection
2945 with the payment of premiums on a policy or any installment of
2946 such premium, whether the premium is payable directly to the
2947 insurer or its agent or indirectly under any premium finance plan
2948 or extension of credit, or failure to maintain membership in an
2949 organization if such membership is a condition precedent to
2950 insurance coverage. "Nonpayment of premium" also means the
2951 failure of a financial institution to honor an insurance
2952 applicant's check after delivery to a licensed agent for payment
2953 of a premium, even if the agent has previously delivered or
2954 transferred the premium to the insurer. If a dishonored check
2955 represents the initial premium payment, the contract and all
2956 contractual obligations shall be void ab initio unless the
2957 nonpayment is cured within the earlier of 5 days after actual
2958 notice by certified mail is received by the applicant or 15 days

20082860e2

2959 after notice is sent to the applicant by certified mail or
2960 registered mail, and if the contract is void, any premium
2961 received by the insurer from a third party shall be refunded to
2962 that party in full.

2963 2. When such cancellation or termination occurs during the
2964 first 90 days during which the insurance is in force and the
2965 insurance is canceled or terminated for reasons other than
2966 nonpayment of premium, at least 20 days' written notice of
2967 cancellation or termination accompanied by the reason therefor
2968 shall be given except where there has been a material
2969 misstatement or misrepresentation or failure to comply with the
2970 underwriting requirements established by the insurer.

2971 ~~3. The requirement for providing written notice of~~
2972 ~~nonrenewal by June 1 of any nonrenewal that would be effective~~
2973 ~~between June 1 and November 30 does not apply to the following~~
2974 ~~situations, but the insurer remains subject to the requirement to~~
2975 ~~provide such notice at least 100 days prior to the effective date~~
2976 ~~of nonrenewal:~~

2977 a. ~~A policy that is nonrenewed due to a revision in the~~
2978 ~~coverage for sinkhole losses and catastrophic ground cover~~
2979 ~~collapse pursuant to s. 627.730, as amended by s. 30, chapter~~
2980 ~~2007-1, Laws of Florida.~~

2981 b. ~~A policy that is nonrenewed by Citizens Property~~
2982 ~~Insurance Corporation, pursuant to s. 627.351(6), for a policy~~
2983 ~~that has been assumed by an authorized insurer offering~~
2984 ~~replacement or renewal coverage to the policyholder.~~

2985

2986 After the policy has been in effect for 90 days, the policy shall
2987 not be canceled by the insurer except when there has been a

20082860e2

2988 material misstatement, a nonpayment of premium, a failure to
2989 comply with underwriting requirements established by the insurer
2990 within 90 days of the date of effectuation of coverage, or a
2991 substantial change in the risk covered by the policy or when the
2992 cancellation is for all insureds under such policies for a given
2993 class of insureds. This paragraph does not apply to individually
2994 rated risks having a policy term of less than 90 days.

2995 Section 15. Effective January 1, 2009, and applicable to
2996 policies issued or renewed on or after that date, section
2997 627.714, Florida Statutes, is created to read:

2998 627.714 Guaranteed renewability for mitigated homes.--A
2999 personal lines residential insurance policy shall be guaranteed
3000 renewable for at least 3 years if the dwelling has been built or
3001 retrofitted to meet the wind-borne-debris protection requirements
3002 of the Florida Building Code which apply to the wind-borne debris
3003 region as defined in the Florida Building Code. This requirement
3004 applies only for one 3-year period after the policy is issued or
3005 first renewed after the dwelling has been built or retrofitted to
3006 meet the wind-borne-debris protection requirements.

3007 Section 16. Effective January 1, 2011, section 689.262,
3008 Florida Statutes, is created to read:

3009 689.262 Sale of residential property; disclosure of
3010 windstorm mitigation rating.--A purchaser of residential property
3011 must be informed of the windstorm mitigation rating of the
3012 structure, based on the uniform home grading scale adopted
3013 pursuant to s. 215.55865. The rating must be included in the
3014 contract for sale or as a separate document attached to the
3015 contract for sale. The Financial Services Commission may adopt
3016 rules, consistent with other state laws, to administer this

20082860e2

3017 section, including the form of the disclosure and the
3018 requirements for the windstorm mitigation inspection or report
3019 that is required for purposes of determining the rating.

3020 Section 17. Effective October 1, 2008, subsection (1) of
3021 section 817.2341, Florida Statutes, is amended to read:

3022 817.2341 False or misleading statements or supporting
3023 documents; penalty.--

3024 (1) Any person who willfully files with the department or
3025 office, or who willfully signs for filing with the department or
3026 office, a materially false or materially misleading financial
3027 statement or document in support of such statement required by
3028 law or rule, or a materially false or materially misleading rate
3029 filing, with intent to deceive and with knowledge that the
3030 statement or document is materially false or materially
3031 misleading, commits a felony of the third degree, punishable as
3032 provided in s. 775.082, s. 775.083, or s. 775.084.

3033 Section 18. (1) By December 15, 2008, Citizens Property
3034 Insurance Corporation shall transfer \$250 million to the General
3035 Revenue Fund by transferring an amount from the Personal Lines
3036 Account and the Commercial Lines Account, as defined in s.
3037 627.351(6), Florida Statutes, in proportion to the surplus of
3038 each account, if the combined losses in the Personal Lines
3039 Account and the Commercial Lines Account from one or more named
3040 hurricanes in 2008 do not exceed \$750 million. The board of
3041 governors of Citizens Property Insurance Corporation must make a
3042 reasonable estimate of such losses on or after December 1, 2008,
3043 and no later than December 14, 2008, using generally accepted
3044 actuarial and accounting practices, recognizing that audited
3045 financial statements will not yet be available and that all

20082860e2

3046 losses will have not been reported or developed.

3047 (2) If Citizens Property Insurance Corporation transfers
3048 \$250 million to General Revenue as provided in subsection (1),
3049 effective December 15, 2008, and for the 2008-2009 fiscal year,
3050 the sum of \$250 million is appropriated from the General Revenue
3051 Fund on a nonrecurring basis to the State Board of Administration
3052 for purposes of the Insurance Capital Build-Up Incentive Program
3053 established pursuant to s. 215.5595, Florida Statutes, as amended
3054 by this act. Costs and fees incurred by the board in
3055 administering this program, including fees for investment
3056 services, shall be paid from funds appropriated by the
3057 Legislature for this program, but are limited to 1 percent of the
3058 amount appropriated. Notwithstanding the provisions of s.
3059 216.301, Florida Statutes, to the contrary, the unexpended
3060 balance of this appropriation shall not revert to the General
3061 Revenue Fund until June 30, 2009.

3062 Section 19. Except as otherwise expressly provided in this
3063 act, this act shall take effect July 1, 2008.