

By the Committees on General Government Appropriations; and
Banking and Insurance; and Senator Richter

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1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 215.555, F.S.; delaying the repeal of a provision
4 exempting medical malpractice insurance premiums from
5 emergency assessments to the Hurricane Catastrophe
6 Fund; delaying the date on and after which medical
7 malpractice insurance premiums become subject to
8 emergency assessments; amending s. 624.408, F.S.;
9 revising the minimum surplus as to policyholders which
10 must be maintained by certain insurers; authorizing
11 the Office of Insurance Regulation to reduce the
12 surplus requirement under specified circumstances;
13 amending s. 624.4085, F.S.; defining the term "surplus
14 action level"; expanding the list of items that must
15 be included in an insurer's risk-based capital plan;
16 specifying actions constituting a surplus action level
17 event; requiring that an insurer submit to the office
18 a risk-based capital plan upon the occurrence of such
19 event; providing requirements for such plan;
20 preserving the existing authority of the office;
21 amending s. 624.4095, F.S.; excluding certain premiums
22 for federal multiple-peril crop insurance from
23 calculations for an insurer's gross writing ratio;
24 requiring insurers to disclose the gross written
25 premiums for federal multiple-peril crop insurance in
26 a financial statement; amending s. 626.7452, F.S.;
27 removing an exception relating to the examination of
28 managing general agents; amending s. 626.9744, F.S.;
29 requiring insurers to use retail cost quotations or

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30 estimates based on current market prices in
31 determining repair or replacement cost estimates;
32 amending s. 627.0613, F.S.; requiring the office of
33 the consumer advocate to objectively grade insurers
34 annually based on the number of valid consumer
35 complaints and other measurable and objective factors;
36 defining the term "valid consumer complaint"; amending
37 s. 627.062, F.S.; requiring that the office issue an
38 approval rather than a notice of intent to approve
39 following its approval of a file and use filing;
40 prohibiting the Office of Insurance Regulation from,
41 directly or indirectly, prohibiting an insurer from
42 paying acquisition costs based on the full amount of
43 the premium; prohibiting the Office of Insurance
44 Regulation from, directly or indirectly, impeding the
45 right of an insurer to acquire policyholders,
46 advertise or appoint agents, or regulate agent
47 commissions; authorizing an insurer to make a rate
48 filing limited to changes in the cost of reinsurance,
49 the cost of financing products used as a replacement
50 for reinsurance, or changes in an inflation trend
51 factor published annually by the Office of Insurance
52 Regulation; providing that an insurer may use this
53 provision only if the increase from such filing and
54 any other rate filing does not exceed 10 percent for
55 any policyholder in a policy year; deleting provisions
56 relating to a rate filing for financing products
57 relating to the Temporary Increase in Coverage Limits;
58 revising the information that must be included in a

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59 rate filing relating to certain reinsurance or
60 financing products; deleting a provision that
61 prohibited an insurer from making certain rate filings
62 within a certain period of time after a rate increase;
63 deleting a provision prohibiting an insurer from
64 filing for a rate increase within 6 months after it
65 makes certain rate filings; specifying the information
66 that an insurer must include in a rate filing based on
67 the change in an inflation trend factor published by
68 the Office of Insurance Regulation; requiring that the
69 office annually publish one or more inflation trend
70 factors; exempting the inflation trend factors from
71 rulemaking; providing that an insurer is not required
72 to adopt an inflation trend factor; requiring the
73 Office of Insurance Regulation to propose a plan for
74 developing a website, contingent upon an
75 appropriation, which provides consumers with
76 information necessary to make an informed decision
77 when purchasing homeowners' insurance; requiring that
78 the Financial Services Commission review the proposed
79 plan to implement the website; specifying matters that
80 the Office of Insurance Regulation must consider in
81 developing the website; deleting obsolete provisions
82 relating to legislation enacted during the 2003
83 Special Session D of the Legislature; amending s.
84 627.0629, F.S.; providing legislative intent that
85 insurers provide consumers with accurate pricing
86 signals for alterations in order to minimize losses,
87 but that mitigation discounts not result in a loss of

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88 income for the insurer; requiring rate filings for
89 residential property insurance to include actuarially
90 reasonable debits that provide proper pricing;
91 deleting provisions that require the office to develop
92 certain rate differentials for hurricane mitigation
93 measures; providing for an increase in base rates if
94 mitigation discounts exceed the aggregate reduction in
95 expected losses; requiring the Office of Insurance
96 Regulation to reevaluate discounts, debits, credits,
97 and other rate differentials by a certain date;
98 requiring the Office of Insurance Regulation, in
99 consultation with the Department of Financial Services
100 and the Department of Community Affairs, to develop a
101 method for insurers to establish debits for certain
102 hurricane mitigation measures by a certain date;
103 requiring the Financial Services Commission to adopt
104 rules relating to such debits by a certain date;
105 deleting a provision that prohibits an insurer from
106 including an expense or profit load in the cost of
107 reinsurance to replace the Temporary Increase in
108 Coverage Limits; amending s. 627.351, F.S.; renaming
109 the "high-risk account" as the "coastal account";
110 providing that members of the Citizens Property
111 Insurance Corporation Board of Governors are not
112 prohibited from practicing in a certain profession if
113 not prohibited by law or ordinance; prohibiting board
114 members from voting on certain measures; changing the
115 date on which the boundaries of high-risk areas
116 eligible for certain wind-only coverages will be

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117 reduced if certain circumstances exist; providing a
118 directive to the Division of Statutory Revision;
119 amending s. 627.4133, F.S.; authorizing an insurer to
120 cancel policies after 45 days' notice if the Office of
121 Insurance Regulation determines that the cancellation
122 of policies is necessary to protect the interests of
123 the public or policyholders; authorizing the Office of
124 Insurance Regulation to place an insurer under
125 administrative supervision or appoint a receiver upon
126 the consent of the insurer under certain
127 circumstances; creating s. 627.41341, F.S.; providing
128 definitions; requiring the delivery of a "Notice of
129 Change in Policy Terms" under certain circumstances;
130 specifying requirements for such notice; specifying
131 actions constituting proof of notice; authorizing
132 policy renewals to contain a change in policy terms;
133 providing that receipt of payment by an insurer is
134 deemed acceptance of new policy terms by an insured;
135 providing that the original policy remains in effect
136 until the occurrence of specified events if an insurer
137 fails to provide notice; providing intent; amending s.
138 627.7011, F.S.; requiring that an insurer pay the
139 actual cash value of an insured loss, less any
140 applicable deductible, under certain circumstances;
141 requiring that a policyholder enter into a contract
142 for the performance of building and structural
143 repairs; requiring that an insurer pay certain
144 remaining amounts; prohibiting an insurer, contractor,
145 or subcontractor from requiring a policyholder to

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146 advance payment for such repairs or expenses;
147 providing exceptions; authorizing an insurer to waive
148 a certain requirement for a contract; authorizing an
149 insurer to limit its initial payment for certain
150 losses; authorizing an insurer to require an insured
151 to provide the receipts from the purchase of certain
152 property; requiring that an insurer use such receipts
153 for specified purposes; requiring that an insurer pay
154 the replacement cost for contents coverage without
155 reservation or holdback of any depreciation in value
156 under certain circumstances; prohibiting an insurer
157 from requiring that a policyholder advance payment for
158 the replaced property; amending s. 627.7015, F.S.;
159 requiring the Department of Financial Services to
160 prepare a statement or information by rule which must
161 be included in a notice by an insurer informing
162 claimants of the right to participate in a mediation
163 program; specifying documentation that an insurer and
164 insured must provide to a mediator in a dispute over
165 an estimate to repair or replace property; requiring
166 the Department of Financial Services to adopt rules
167 specifying the type of documentation that must be
168 submitted during a mediation; defining the term "claim
169 dispute" as it relates to disputes between an insurer
170 and insured; repealing s. 627.7065, F.S., relating to
171 the department's database of information relating to
172 sinkholes; amending s. 627.707, F.S.; revising
173 standards for investigation of sinkhole claims by
174 insurers; specifying requirements for contracts for

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175 repairs to prevent additional damage to buildings or
176 structures; providing for applicability; amending s.
177 627.7072, F.S.; specifying requirements for tests
178 performed by professional engineers and professional
179 geologists for certain purposes; providing for
180 applicability; amending s. 627.7073, F.S.; revising
181 requirements for sinkhole reports; providing for
182 applicability; amending s. 627.7074, F.S.; revising
183 requirements and procedures for alternative dispute
184 resolution of sinkhole insurance claims; defining the
185 term "substantially related matter"; providing
186 criteria and procedures for disqualification of
187 neutral evaluators; providing requirements and
188 procedures for neutral evaluators to enlist assistance
189 from other professionals under certain circumstances;
190 providing for applicability; amending s. 627.711,
191 F.S.; eliminating the requirement that a uniform
192 mitigation verification form be certified by the
193 Department of Financial Services; eliminating
194 provisions authorizing hurricane mitigation inspectors
195 certified by the My Safe Florida Home Program to sign
196 a valid uniform mitigation verification form;
197 requiring a person to personally perform an inspection
198 in order to sign a mitigation verification form;
199 authorizing an insurer to accept a form from a person
200 possessing qualifications and experience acceptable to
201 the insurer; requiring a person to personally perform
202 an inspection in order to sign a mitigation
203 verification form; defining the term "misconduct" for

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204 purposes of performing an inspection and completing
205 the mitigation verification form; providing for
206 sanctions to be imposed against a person who commits
207 misconduct in performing inspections or completing the
208 mitigation verification form; requiring that evidence
209 of fraud in the completion of the mitigation
210 verification form be reported to the Division of
211 Insurance Fraud; requiring the division, if it finds
212 that probable cause of misconduct exists, to send a
213 copy of its report to the agency responsible for the
214 licensure of the inspector who signed the report;
215 providing that insurers need not accept a mitigation
216 verification form that is signed by a person against
217 whom probable cause of misconduct was found; creating
218 s. 628.252, F.S.; requiring that every domestic
219 property insurer notify the office of its intention to
220 enter into certain agreements, contracts, and
221 arrangements; prohibiting a domestic property insurer
222 from entering into such agreements, contracts, or
223 arrangements unless specified criteria are met;
224 preserving the existing authority of the office;
225 providing an appropriation to the Office of Insurance
226 Regulation and authorizing an additional position;
227 providing effective dates.

228

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

230

231 Section 1. Paragraph (b) of subsection (6) of section
232 215.555, Florida Statutes, is amended to read:

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233 215.555 Florida Hurricane Catastrophe Fund.—

234 (6) REVENUE BONDS.—

235 (b) *Emergency assessments*.—

236 1. If the board determines that the amount of revenue
237 produced under subsection (5) is insufficient to fund the
238 obligations, costs, and expenses of the fund and the
239 corporation, including repayment of revenue bonds and that
240 portion of the debt service coverage not met by reimbursement
241 premiums, the board shall direct the Office of Insurance
242 Regulation to levy, by order, an emergency assessment on direct
243 premiums for all property and casualty lines of business in this
244 state, including property and casualty business of surplus lines
245 insurers regulated under part VIII of chapter 626, but not
246 including any workers' compensation premiums or medical
247 malpractice premiums. As used in this subsection, the term
248 "property and casualty business" includes all lines of business
249 identified on Form 2, Exhibit of Premiums and Losses, in the
250 annual statement required of authorized insurers by s. 624.424
251 and any rule adopted under this section, except for those lines
252 identified as accident and health insurance and except for
253 policies written under the National Flood Insurance Program. The
254 assessment shall be specified as a percentage of direct written
255 premium and is subject to annual adjustments by the board in
256 order to meet debt obligations. The same percentage shall apply
257 to all policies in lines of business subject to the assessment
258 issued or renewed during the 12-month period beginning on the
259 effective date of the assessment.

260 2. A premium is not subject to an annual assessment under
261 this paragraph in excess of 6 percent of premium with respect to

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262 obligations arising out of losses attributable to any one
263 contract year, and a premium is not subject to an aggregate
264 annual assessment under this paragraph in excess of 10 percent
265 of premium. An annual assessment under this paragraph shall
266 continue as long as the revenue bonds issued with respect to
267 which the assessment was imposed are outstanding, including any
268 bonds the proceeds of which were used to refund the revenue
269 bonds, unless adequate provision has been made for the payment
270 of the bonds under the documents authorizing issuance of the
271 bonds.

272 3. Emergency assessments shall be collected from
273 policyholders. Emergency assessments shall be remitted by
274 insurers as a percentage of direct written premium for the
275 preceding calendar quarter as specified in the order from the
276 Office of Insurance Regulation. The office shall verify the
277 accurate and timely collection and remittance of emergency
278 assessments and shall report the information to the board in a
279 form and at a time specified by the board. Each insurer
280 collecting assessments shall provide the information with
281 respect to premiums and collections as may be required by the
282 office to enable the office to monitor and verify compliance
283 with this paragraph.

284 4. With respect to assessments of surplus lines premiums,
285 each surplus lines agent shall collect the assessment at the
286 same time as the agent collects the surplus lines tax required
287 by s. 626.932, and the surplus lines agent shall remit the
288 assessment to the Florida Surplus Lines Service Office created
289 by s. 626.921 at the same time as the agent remits the surplus
290 lines tax to the Florida Surplus Lines Service Office. The

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291 emergency assessment on each insured procuring coverage and
292 filing under s. 626.938 shall be remitted by the insured to the
293 Florida Surplus Lines Service Office at the time the insured
294 pays the surplus lines tax to the Florida Surplus Lines Service
295 Office. The Florida Surplus Lines Service Office shall remit the
296 collected assessments to the fund or corporation as provided in
297 the order levied by the Office of Insurance Regulation. The
298 Florida Surplus Lines Service Office shall verify the proper
299 application of such emergency assessments and shall assist the
300 board in ensuring the accurate and timely collection and
301 remittance of assessments as required by the board. The Florida
302 Surplus Lines Service Office shall annually calculate the
303 aggregate written premium on property and casualty business,
304 other than workers' compensation and medical malpractice,
305 procured through surplus lines agents and insureds procuring
306 coverage and filing under s. 626.938 and shall report the
307 information to the board in a form and at a time specified by
308 the board.

309 5. Any assessment authority not used for a particular
310 contract year may be used for a subsequent contract year. If,
311 for a subsequent contract year, the board determines that the
312 amount of revenue produced under subsection (5) is insufficient
313 to fund the obligations, costs, and expenses of the fund and the
314 corporation, including repayment of revenue bonds and that
315 portion of the debt service coverage not met by reimbursement
316 premiums, the board shall direct the Office of Insurance
317 Regulation to levy an emergency assessment up to an amount not
318 exceeding the amount of unused assessment authority from a
319 previous contract year or years, plus an additional 4 percent

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320 provided that the assessments in the aggregate do not exceed the
321 limits specified in subparagraph 2.

322 6. The assessments otherwise payable to the corporation
323 under this paragraph shall be paid to the fund unless and until
324 the Office of Insurance Regulation and the Florida Surplus Lines
325 Service Office have received from the corporation and the fund a
326 notice, which shall be conclusive and upon which they may rely
327 without further inquiry, that the corporation has issued bonds
328 and the fund has no agreements in effect with local governments
329 under paragraph (c). On or after the date of the notice and
330 until the date the corporation has no bonds outstanding, the
331 fund shall have no right, title, or interest in or to the
332 assessments, except as provided in the fund's agreement with the
333 corporation.

334 7. Emergency assessments are not premium and are not
335 subject to the premium tax, to the surplus lines tax, to any
336 fees, or to any commissions. An insurer is liable for all
337 assessments that it collects and must treat the failure of an
338 insured to pay an assessment as a failure to pay the premium. An
339 insurer is not liable for uncollectible assessments.

340 8. When an insurer is required to return an unearned
341 premium, it shall also return any collected assessment
342 attributable to the unearned premium. A credit adjustment to the
343 collected assessment may be made by the insurer with regard to
344 future remittances that are payable to the fund or corporation,
345 but the insurer is not entitled to a refund.

346 9. When a surplus lines insured or an insured who has
347 procured coverage and filed under s. 626.938 is entitled to the
348 return of an unearned premium, the Florida Surplus Lines Service

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349 Office shall provide a credit or refund to the agent or such
350 insured for the collected assessment attributable to the
351 unearned premium prior to remitting the emergency assessment
352 collected to the fund or corporation.

353 10. The exemption of medical malpractice insurance premiums
354 from emergency assessments under this paragraph is repealed May
355 31, 2013 ~~2010~~, and medical malpractice insurance premiums shall
356 be subject to emergency assessments attributable to loss events
357 occurring in the contract years commencing on June 1, 2013 ~~2010~~.

358 Section 2. Section 624.408, Florida Statutes, is amended to
359 read:

360 624.408 Surplus as to policyholders required; new and
361 existing insurers.—

362 (1) ~~(a)~~ To maintain a certificate of authority to transact
363 any one kind or combinations of kinds of insurance, as defined
364 in part V of this chapter, an insurer in this state shall at all
365 times maintain surplus as to policyholders at least ~~not less~~
366 ~~than~~ the greater of:

367 (a)1. Except as provided in paragraphs (e), (f), and (g)
368 ~~subparagraph 5. and paragraph (b)~~, \$1.5 million;

369 (b)2. For life insurers, 4 percent of the insurer's total
370 liabilities;

371 (c)3. For life and health insurers, 4 percent of the
372 insurer's total liabilities plus 6 percent of the insurer's
373 liabilities relative to health insurance; or

374 (d)4. For all insurers other than mortgage guaranty
375 insurers, life insurers, and life and health insurers, 10
376 percent of the insurer's total liabilities.

377 (e)5. For property and casualty insurers, \$4 million,

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378 except property and casualty insurers authorized to underwrite
379 any line of residential property insurance.

380 ~~(f)(b) For a residential any property and casualty insurer~~
381 ~~not holding a certificate of authority before July 1, 2010 on~~
382 ~~December 1, 1993, \$15 million. the~~

383 (g) For a residential property insurer having a certificate
384 of authority before July 1, 2010, \$5 million until July 1, 2015,
385 and \$15 million after July 1, 2015. The office may reduce this
386 surplus requirement if the insurer is not writing new business,
387 has premiums in force of less than \$1 million per year in
388 residential property insurance, or is a mutual insurance
389 company. following amounts apply instead of the \$4 million
390 required by subparagraph (a)5.:

391 ~~1. On December 31, 2001, and until December 30, 2002, \$3~~
392 ~~million.~~

393 ~~2. On December 31, 2002, and until December 30, 2003, \$3.25~~
394 ~~million.~~

395 ~~3. On December 31, 2003, and until December 30, 2004, \$3.6~~
396 ~~million.~~

397 ~~4. On December 31, 2004, and thereafter, \$4 million.~~

398 (2) For purposes of this section, liabilities do ~~shall~~ not
399 include liabilities required under s. 625.041(4). For purposes
400 of computing minimum surplus as to policyholders pursuant to s.
401 625.305(1), liabilities shall include liabilities required under
402 s. 625.041(4).

403 (3) This section does not require any ~~No~~ insurer ~~shall be~~
404 ~~required under this section~~ to have surplus as to policyholders
405 greater than \$100 million.

406 (4) A mortgage guaranty insurer shall maintain a minimum

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407 surplus as required by s. 635.042.

408 Section 3. Present paragraph (q) of subsection (1) of
409 section 624.4085, Florida Statutes, is redesignated as paragraph
410 (r), and a new paragraph (q) is added to that subsection,
411 paragraph (b) of subsection (3) of that section is amended, and
412 subsections (7) through (13) of that section are redesignated as
413 subsections (9) through (15), respectively, and new subsections
414 (7) and (8) are added to that section, to read:

415 624.4085 Risk-based capital requirements for insurers.—

416 (1) As used in this section, the term:

417 (q) "Surplus action level" means a loss of surplus on any
418 quarterly or annual financial report which exceeds 15 percent,
419 or which cumulatively for the calendar year exceeds 15 percent
420 as of the most recent filed quarterly or annual report.

421 (3)

422 (b) If a company action level event occurs, the insurer
423 shall prepare and submit to the office a risk-based capital
424 plan, which must:

425 1. Identify the conditions that contribute to the company
426 action level event;

427 2. Contain proposals of corrective actions that the insurer
428 intends to take and that are reasonably expected to result in
429 the elimination of the company action level event;

430 3. Provide projections of the insurer's financial results
431 in the current year and at least the 4 succeeding years, both in
432 the absence of proposed corrective actions and giving effect to
433 the proposed corrective actions, including projections of
434 statutory operating income, net income, capital, and surplus.
435 The projections for both new and renewal business may include

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436 separate projections for each major line of business and, if
437 separate projections are provided, must separately identify each
438 significant income, expense, and benefit component;

439 4. Identify the key assumptions affecting the insurer's
440 projections and the sensitivity of the projections to the
441 assumptions; ~~and~~

442 5. Identify the quality of, and problems associated with,
443 the insurer's business, including, but not limited to, its
444 assets, anticipated business growth and associated surplus
445 strain, extraordinary exposure to risk, mix of business, and any
446 use of reinsurance; ~~and~~.

447 6. Include, at the request of the office, for a residential
448 property insurer that conducts any business with affiliates, a
449 columnar worksheet, which shall include all affiliates who have
450 contracted with, done business with, or otherwise received
451 remuneration from the insurer and shall list the following
452 financial information from the immediately preceding calendar
453 year, listed separately for each affiliate:

454 a. Total assets;

455 b. Total liabilities;

456 c. Surplus or shareholders equity;

457 d. Net income after taxes or distributions made solely for
458 satisfying tax liabilities;

459 e. Total amounts received or receivable from parents,
460 subsidiaries, and affiliates;

461 f. Total amounts paid or payable to any parent,
462 subsidiaries, and affiliates;

463 g. Dividends paid or payable to shareholders of common
464 stock;

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465 h. Debt service, including principle and interest, paid on
466 debt incurred to capitalize or recapitalize insurance companies
467 or fund other insurance-related activities; and

468 i. Payments made for other contractual obligations to
469 support insurance-related activities.

470 (7) (a) A surplus action level event includes:

471 1. The filing of a quarterly or annual statutory financial
472 statement by an insurer, which indicates that the insurer's
473 total surplus has declined by more than 15 percent from the
474 previous year's annual statement, or cumulatively for the
475 current year through the most recent quarterly financial
476 statement;

477 2. The notification by the office to the insurer of an
478 adjusted quarterly or annual financial statement that indicates
479 an event in subparagraph 1., unless the insurer challenges the
480 adjusted quarterly or annual financial statement under
481 subsection (9); or

482 3. The notification by the office to the insurer that the
483 office has, after a hearing, rejected the insurer's challenge if
484 an insurer challenges, under subsection (9), an adjusted
485 quarterly or annual financial statement that indicates an event
486 in subparagraph 1.

487 (b) If a surplus action level event occurs, the insurer
488 must prepare and submit to the office a risk-based capital plan,
489 which must:

490 1. Identify the conditions that contribute to the surplus
491 action level event;

492 2. Contain proposals of corrective actions that the insurer
493 intends to take and that are reasonably expected to ultimately

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494 result in the elimination of additional surplus losses;

495 3. Provide projections of the insurer's financial results
496 in the current year and at least the 2 succeeding years, both in
497 the absence of proposed corrective actions and giving effect to
498 the proposed corrective actions, including projections of
499 statutory operating income, net income, capital, and surplus.
500 The projections for both new and renewal business may include
501 separate projections for each major line of business and, if
502 separate projections are provided, must separately identify each
503 significant income, expense, and benefit component;

504 4. Identify the key assumptions affecting the insurer's
505 projections and the sensitivity of the projections to the
506 assumptions;

507 5. Identify the quality of, and problems associated with,
508 the insurer's business, including, but not limited to, its
509 assets, anticipated business growth and associated surplus
510 strain, extraordinary exposure to risk, mix of business, and any
511 use of reinsurance;

512 6. Include, at the request of the office, for a residential
513 property insurer that conducts any business with affiliates, a
514 columnar worksheet, which shall include all affiliates who have
515 received remuneration from the insurer and shall list the
516 following financial information from the immediately preceding
517 calendar year listed separately for each affiliate:

518 a. Total assets;

519 b. Total liabilities;

520 c. Surplus or shareholders equity;

521 d. Net income after taxes or distributions made solely for
522 satisfying tax liabilities;

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523 e. Total amounts received or receivable from parents,
524 subsidiaries, and affiliates;

525 f. Total amounts paid or payable to any parent,
526 subsidiaries, and affiliates;

527 g. Dividends paid or payable to shareholders of common
528 stock;

529 h. Debt service, including principle and interest, paid on
530 debt incurred to capitalize or recapitalize insurance companies
531 or fund other insurance-related activities; and

532 i. Payments made for other contractual obligations to
533 support insurance-related activities.

534 7. Contain, at the request of the office, a recertification
535 of reserves for the insurer prepared by an actuary.

536 (c) The risk-based capital plan must be submitted:

537 1. Within 45 days after the surplus action level event; or

538 2. If the insurer challenges an adjusted quarterly or
539 annual financial statement under subsection (9), within 45 days
540 after notification to the insurer that the office has, after a
541 hearing, rejected the insurer's challenge.

542 (8) This section does not limit any existing authority of
543 the office.

544 Section 4. Subsection (7) is added to section 624.4095,
545 Florida Statutes, to read:

546 624.4095 Premiums written; restrictions.—

547 (7) For purposes of this section and s. 624.407, with
548 regard to capital and surplus requirements, gross written
549 premiums for federal multiple-peril crop insurance which are
550 ceded to the Federal Crop Insurance Corporation or authorized
551 reinsurers may not be included in the calculation of an

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552 insurer's gross writing ratio. The liabilities for ceded
553 reinsurance premiums payable for federal multiple-peril crop
554 insurance ceded to the Federal Crop Insurance Corporation and
555 authorized reinsurers shall be netted against the asset for
556 amounts recoverable from reinsurers. Each insurer that writes
557 other insurance products together with federal multiple-peril
558 crop insurance shall disclose in the notes to its annual and
559 quarterly financial statements, or in a supplement to those
560 statements, the gross written premiums for federal multiple-
561 peril crop insurance.

562 Section 5. Section 626.7452, Florida Statutes, is amended
563 to read:

564 626.7452 Managing general agents; examination authority.—
565 The acts of the managing general agent are considered to be the
566 acts of the insurer on whose behalf it is acting. A managing
567 general agent may be examined as if it were the insurer ~~except~~
568 ~~in the case where the managing general agent solely represents a~~
569 ~~single domestic insurer.~~

570 Section 6. Section 626.9744, Florida Statutes, is amended
571 to read:

572 626.9744 Claim settlement practices relating to property
573 insurance.—Unless otherwise provided by the policy, if when a
574 homeowner's insurance policy provides for the adjustment and
575 settlement of first-party losses based on repair or replacement
576 cost, the following requirements apply:

577 (1) When a loss requires repair or replacement of an item
578 or part, any physical damage incurred in making such repair or
579 replacement which is covered and not otherwise excluded by the
580 policy shall be included in the loss to the extent of any

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581 applicable limits. The insured may not be required to pay for
582 betterment required by ordinance or code except for the
583 applicable deductible, unless specifically excluded or limited
584 by the policy.

585 (2) When a loss requires replacement of items and the
586 replaced items do not match in quality, color, or size, the
587 insurer shall make reasonable repairs or replacement of items in
588 adjoining areas. In determining the extent of the repairs or
589 replacement of items in adjoining areas, the insurer may
590 consider the cost of repairing or replacing the undamaged
591 portions of the property, the degree of uniformity that can be
592 achieved without such cost, the remaining useful life of the
593 undamaged portion, and other relevant factors.

594 (3) In determining repair or replacement cost estimates,
595 the insurer shall use only the following:

596 (a) The retail cost using quotations obtained by the
597 insurer or insured from licensed contractors or retail
598 establishments in the local market area; or

599 (b) Computer software or other databases that produce
600 estimates based on market prices for products, materials, and
601 labor in the local geographic region, if the pertinent portions
602 of the valuation documents generated by a database are provided
603 by the insurer to the first-party insured upon request.

604 (4)~~(3)~~ This section does ~~shall not be construed to~~ make the
605 insurer a warrantor of the repairs made pursuant to this
606 section.

607 (5)~~(4)~~ ~~Nothing in~~ This section does not ~~shall be construed~~
608 ~~to~~ authorize or preclude enforcement of policy provisions
609 relating to settlement disputes.

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610 Section 7. Section 627.0613, Florida Statutes, is amended
611 to read:

612 627.0613 Consumer advocate.—The Chief Financial Officer
613 must appoint a consumer advocate who must represent the general
614 public of the state before the department and the office. The
615 consumer advocate must report directly to the Chief Financial
616 Officer, but is not otherwise under the authority of the
617 department or of any employee of the department. The consumer
618 advocate has such powers as are necessary to carry out the
619 duties of the office of consumer advocate, including, but not
620 limited to, the powers to:

621 (1) Recommend to the department or office, by petition, the
622 commencement of any proceeding or action; appear in any
623 proceeding or action before the department or office; or appear
624 in any proceeding before the Division of Administrative Hearings
625 relating to subject matter under the jurisdiction of the
626 department or office.

627 (2) Have access to and use of all files, records, and data
628 of the department or office.

629 (3) Examine rate and form filings submitted to the office,
630 hire consultants as necessary to aid in the review process, and
631 recommend to the department or office any position deemed by the
632 consumer advocate to be in the public interest.

633 (4) By June 1, 2012, and each June 1 thereafter, prepare an
634 annual report card for each authorized personal residential
635 property insurer, on a form and using a letter-grade scale
636 developed by the commission by rule, which objectively grades
637 each insurer based on the following factors:

638 (a) The number and nature of valid consumer complaints, as

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639 a market share ratio, received by the department against the
640 insurer.

641 (b) The disposition of all valid consumer complaints
642 received by the department.

643 (c) The average length of time for payment of claims by the
644 insurer.

645 (d) Any other measurable and objective factors the
646 commission identifies as capable of assisting policyholders in
647 making informed choices about homeowner's insurance.

648

649 For purposes of this subsection, the term "valid consumer
650 complaint" a means written communication from a consumer which
651 expresses dissatisfaction with a specific personal residential
652 property insurer and whose conduct described in the
653 communication is found to constitute a violation of the
654 insurance laws of this state by the Division of Consumer
655 Services of the Department of Financial Services.

656 (5) Prepare an annual budget for presentation to the
657 Legislature by the department, which budget must be adequate to
658 carry out the duties of the office of consumer advocate.

659 Section 8. Section 627.062, Florida Statutes, is amended to
660 read:

661 627.062 Rate standards.—

662 (1) The rates for all classes of insurance to which the
663 provisions of this part are applicable shall not be excessive,
664 inadequate, or unfairly discriminatory.

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

666 (a) Insurers or rating organizations shall establish and
667 use rates, rating schedules, or rating manuals to allow the

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668 insurer a reasonable rate of return on such classes of insurance
669 written in this state. A copy of rates, rating schedules, rating
670 manuals, premium credits or discount schedules, and surcharge
671 schedules, and changes thereto, shall be filed with the office
672 under one of the following procedures except as provided in
673 subparagraph 3.:

674 1. If the filing is made at least 90 days before the
675 proposed effective date and the filing is not implemented during
676 the office's review of the filing and any proceeding and
677 judicial review, then such filing shall be considered a "file
678 and use" filing. In such case, the office shall finalize its
679 review by issuance of an approval ~~a notice of intent to approve~~
680 or a notice of intent to disapprove within 90 days after receipt
681 of the filing. The approval ~~notice of intent to approve~~ and the
682 notice of intent to disapprove constitute agency action for
683 purposes of the Administrative Procedure Act. Requests for
684 supporting information, requests for mathematical or mechanical
685 corrections, or notification to the insurer by the office of its
686 preliminary findings shall not toll the 90-day period during any
687 such proceedings and subsequent judicial review. The rate shall
688 be deemed approved if the office does not issue an approval ~~a~~
689 ~~notice of intent to approve~~ or a notice of intent to disapprove
690 within 90 days after receipt of the filing.

691 2. If the filing is not made in accordance with the
692 provisions of subparagraph 1., such filing shall be made as soon
693 as practicable, but no later than 30 days after the effective
694 date, and shall be considered a "use and file" filing. An
695 insurer making a "use and file" filing is potentially subject to
696 an order by the office to return to policyholders portions of

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697 rates found to be excessive, as provided in paragraph (h).

698 3. For all property insurance filings made or submitted
699 after January 25, 2007, but before December 31, 2012 ~~2010~~, an
700 insurer seeking a rate that is greater than the rate most
701 recently approved by the office shall make a "file and use"
702 filing. For purposes of this subparagraph, motor vehicle
703 collision and comprehensive coverages are not considered to be
704 property coverages.

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

710 1. Past and prospective loss experience within and without
711 this state.

712 2. Past and prospective expenses.

713 3. The degree of competition among insurers for the risk
714 insured.

715 4. Investment income reasonably expected by the insurer,
716 consistent with the insurer's investment practices, from
717 investable premiums anticipated in the filing, plus any other
718 expected income from currently invested assets representing the
719 amount expected on unearned premium reserves and loss reserves.
720 The commission may adopt rules using reasonable techniques of
721 actuarial science and economics to specify the manner in which
722 insurers shall calculate investment income attributable to such
723 classes of insurance written in this state and the manner in
724 which such investment income shall be used to calculate
725 insurance rates. Such manner shall contemplate allowances for an

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726 underwriting profit factor and full consideration of investment
727 income which produce a reasonable rate of return; however,
728 investment income from invested surplus may not be considered.

729 5. The reasonableness of the judgment reflected in the
730 filing.

731 6. Dividends, savings, or unabsorbed premium deposits
732 allowed or returned to Florida policyholders, members, or
733 subscribers.

734 7. The adequacy of loss reserves.

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

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

741 10. Conflagration and catastrophe hazards, if applicable.

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

746 12. A reasonable margin for underwriting profit and
747 contingencies.

748 13. The cost of medical services, if applicable.

749 14. Other relevant factors which impact upon the frequency
750 or severity of claims or upon expenses.

751 (c) In the case of fire insurance rates, consideration
752 shall be given to the availability of water supplies and the
753 experience of the fire insurance business during a period of not
754 less than the most recent 5-year period for which such

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755 experience is available.

756 (d) If conflagration or catastrophe hazards are given
757 consideration by an insurer in its rates or rating plan,
758 including surcharges and discounts, the insurer shall establish
759 a reserve for that portion of the premium allocated to such
760 hazard and shall maintain the premium in a catastrophe reserve.
761 Any removal of such premiums from the reserve for purposes other
762 than paying claims associated with a catastrophe or purchasing
763 reinsurance for catastrophes shall be subject to approval of the
764 office. Any ceding commission received by an insurer purchasing
765 reinsurance for catastrophes shall be placed in the catastrophe
766 reserve.

767 (e) After consideration of the rate factors provided in
768 paragraphs (b), (c), and (d), a rate may be found by the office
769 to be excessive, inadequate, or unfairly discriminatory based
770 upon the following standards:

771 1. Rates shall be deemed excessive if they are likely to
772 produce a profit from Florida business that is unreasonably high
773 in relation to the risk involved in the class of business or if
774 expenses are unreasonably high in relation to services rendered.

775 2. Rates shall be deemed excessive if, among other things,
776 the rate structure established by a stock insurance company
777 provides for replenishment of surpluses from premiums, when the
778 replenishment is attributable to investment losses.

779 3. Rates shall be deemed inadequate if they are clearly
780 insufficient, together with the investment income attributable
781 to them, to sustain projected losses and expenses in the class
782 of business to which they apply.

783 4. A rating plan, including discounts, credits, or

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784 surcharges, shall be deemed unfairly discriminatory if it fails
785 to clearly and equitably reflect consideration of the
786 policyholder's participation in a risk management program
787 adopted pursuant to s. 627.0625.

788 5. A rate shall be deemed inadequate as to the premium
789 charged to a risk or group of risks if discounts or credits are
790 allowed which exceed a reasonable reflection of expense savings
791 and reasonably expected loss experience from the risk or group
792 of risks.

793 6. A rate shall be deemed unfairly discriminatory as to a
794 risk or group of risks if the application of premium discounts,
795 credits, or surcharges among such risks does not bear a
796 reasonable relationship to the expected loss and expense
797 experience among the various risks.

798 (f) In reviewing a rate filing, the office may require the
799 insurer to provide at the insurer's expense all information
800 necessary to evaluate the condition of the company and the
801 reasonableness of the filing according to the criteria
802 enumerated in this section.

803 (g) The office may at any time review a rate, rating
804 schedule, rating manual, or rate change; the pertinent records
805 of the insurer; and market conditions. If the office finds on a
806 preliminary basis that a rate may be excessive, inadequate, or
807 unfairly discriminatory, the office shall initiate proceedings
808 to disapprove the rate and shall so notify the insurer. However,
809 the office may not disapprove as excessive any rate for which it
810 has given final approval or which has been deemed approved for a
811 period of 1 year after the effective date of the filing unless
812 the office finds that a material misrepresentation or material

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813 error was made by the insurer or was contained in the filing.
814 Upon being so notified, the insurer or rating organization
815 shall, within 60 days, file with the office all information
816 which, in the belief of the insurer or organization, proves the
817 reasonableness, adequacy, and fairness of the rate or rate
818 change. The office shall issue a notice of intent to approve or
819 a notice of intent to disapprove pursuant to the procedures of
820 paragraph (a) within 90 days after receipt of the insurer's
821 initial response. In such instances and in any administrative
822 proceeding relating to the legality of the rate, the insurer or
823 rating organization shall carry the burden of proof by a
824 preponderance of the evidence to show that the rate is not
825 excessive, inadequate, or unfairly discriminatory. After the
826 office notifies an insurer that a rate may be excessive,
827 inadequate, or unfairly discriminatory, unless the office
828 withdraws the notification, the insurer shall not alter the rate
829 except to conform with the office's notice until the earlier of
830 120 days after the date the notification was provided or 180
831 days after the date of the implementation of the rate. The
832 office may, subject to chapter 120, disapprove without the 60-
833 day notification any rate increase filed by an insurer within
834 the prohibited time period or during the time that the legality
835 of the increased rate is being contested.

836 (h) If ~~In the event~~ the office finds that a rate or rate
837 change is excessive, inadequate, or unfairly discriminatory, the
838 office shall issue an order of disapproval specifying that a new
839 rate or rate schedule which responds to the findings of the
840 office be filed by the insurer. The office shall further order,
841 for any "use and file" filing made in accordance with

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842 subparagraph (a)2., that premiums charged each policyholder
843 constituting the portion of the rate above that which was
844 actuarially justified be returned to such policyholder in the
845 form of a credit or refund. If the office finds that an
846 insurer's rate or rate change is inadequate, the new rate or
847 rate schedule filed with the office in response to such a
848 finding shall be applicable only to new or renewal business of
849 the insurer written on or after the effective date of the
850 responsive filing.

851 (i) 1. Except as otherwise specifically provided in this
852 chapter, the office shall not, directly or indirectly, prohibit
853 any insurer, including any residual market plan or joint
854 underwriting association, from paying acquisition costs based on
855 the full amount of premium, as defined in s. 627.403, applicable
856 to any policy, or directly or indirectly prohibit any such
857 insurer from including the full amount of acquisition costs in a
858 rate filing.

859 2. The office shall not, directly or indirectly, impede,
860 abridge, or otherwise compromise an insurer's right to acquire
861 policyholders, advertise, or appoint agents, including the
862 calculation, manner, or amount of such agent commissions, if
863 any.

864 (j) With respect to residential property insurance rate
865 filings, the rate filing must account for mitigation measures
866 undertaken by policyholders to reduce hurricane losses.

867 (k) 1.a. An insurer may make a separate filing limited
868 solely to an adjustment of its rates for reinsurance, the cost
869 of financing products used as a replacement for reinsurance, ~~or~~
870 financing costs incurred in the purchase of reinsurance, and an

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871 inflation trend factor published by the office pursuant to
872 subparagraph 4. If an insurer chooses to make a separate filing
873 under this paragraph, it must implement the rate in such a
874 manner that all rate increases implemented as a result of the
875 separate filing, together with rate increases associated with
876 any other rate filing, do ~~or financing products to replace or~~
877 finance the payment of the amount covered by the Temporary
878 Increase in Coverage Limits (TICL) portion of the Florida
879 Hurricane Catastrophe Fund including replacement reinsurance for
880 the TICL reductions made pursuant to s. 215.555(17)(e); the
881 actual cost paid due to the application of the TICL premium
882 factor pursuant to s. 215.555(17)(f); and the actual cost paid
883 due to the application of the cash build-up factor pursuant to
884 s. 215.555(5)(b) if the insurer:

885 a. Elects to purchase financing products such as a
886 liquidity instrument or line of credit, in which case the cost
887 included in the filing for the liquidity instrument or line of
888 credit may not result in a premium increase exceeding 3 percent
889 for any individual policyholder. All costs contained in the
890 filing may not result in an overall premium increase of more
891 than 10 percent for any individual policyholder, excluding
892 coverage changes and surcharges, within the same policy year.

893 b. An insurer that makes a filing relating to reinsurance
894 or financing products must include the following ~~Includes~~ in the
895 filing: a copy of all of its reinsurance, liquidity instrument,
896 or line of credit contracts; proof of the billing or payment for
897 the contracts; and the calculation upon which the proposed rate
898 change is based demonstrating ~~demonstrates~~ that the costs meet
899 the criteria of this section and are not loaded for expenses or

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900 ~~profit for the insurer making the filing.~~

901 c. Any filing made pursuant this paragraph may include only
902 the ~~Includes no other~~ changes to its rates which are expressly
903 authorized by this paragraph in the filing.

904 ~~d. Has not implemented a rate increase within the 6 months~~
905 ~~immediately preceding the filing.~~

906 ~~e. Does not file for a rate increase under any other~~
907 ~~paragraph within 6 months after making a filing under this~~
908 ~~paragraph.~~

909 d.f. An insurer that purchases reinsurance or financing
910 products from an affiliated company may make a filing pursuant
911 to ~~in compliance with~~ this paragraph ~~does so~~ only if the costs
912 for such reinsurance or financing products are charged at or
913 below charges made for comparable coverage by nonaffiliated
914 reinsurers or financial entities making such coverage or
915 financing products available in this state.

916 e. An insurer that makes a filing as the result of a change
917 in an inflation trend factor published by the office need
918 support that filing only with rates and rating examples and an
919 explanation demonstrating the insurer's eligibility to adopt the
920 inflation trend factor.

921 2. An insurer may ~~only~~ make only one filing in any 12-month
922 period under this paragraph.

923 3. An insurer that elects to implement a rate change under
924 this paragraph must file its rate filing with the office at
925 least 45 days before the effective date of the rate change.
926 After an insurer submits a complete filing that meets all of the
927 requirements of this paragraph, the office has 45 days after the
928 date of the filing to review the rate filing and determine if

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929 the rate is excessive, inadequate, or unfairly discriminatory.

930 4. Beginning January 1, 2011, the office shall publish an
931 annual informational memorandum to establish one or more
932 inflation trend factors that may be stated separately for
933 personal and residential property and for building coverage,
934 contents coverage, additional living expense coverage, and
935 liability coverage, if applicable. These factors shall represent
936 an estimate of cost increases or decreases based upon publicly
937 available relevant data and economic indices that are identified
938 in the memorandum. Such factors are exempt from the rulemaking
939 requirements of chapter 120, and insurers are not required to
940 adopt the factors. The office may publish factors for any line
941 of insurance, but is required to publish a factor only for
942 residential property insurance.

943
944 The provisions of this subsection do ~~shall~~ not apply to workers'
945 compensation and employer's liability insurance and to motor
946 vehicle insurance.

947 (3) (a) For individual risks that are not rated in
948 accordance with the insurer's rates, rating schedules, rating
949 manuals, and underwriting rules filed with the office and which
950 have been submitted to the insurer for individual rating, the
951 insurer must maintain documentation on each risk subject to
952 individual risk rating. The documentation must identify the
953 named insured and specify the characteristics and classification
954 of the risk supporting the reason for the risk being
955 individually risk rated, including any modifications to existing
956 approved forms to be used on the risk. The insurer must maintain
957 these records for a period of at least 5 years after the

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958 effective date of the policy.

959 (b) Individual risk rates and modifications to existing
960 approved forms are not subject to this part or part II, except
961 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
962 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
963 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
964 627.4265, 627.427, and 627.428, but are subject to all other
965 applicable provisions of this code and rules adopted thereunder.

966 (c) This subsection does not apply to private passenger
967 motor vehicle insurance.

968 (4) (a) Contingent on specific appropriations made to
969 implement this subsection, in order to enhance the ability of
970 consumers to compare premiums and to increase the accuracy and
971 usefulness of rate and product comparison information for
972 homeowners' insurance, the office shall develop or contract with
973 a private entity to develop a comprehensive program for
974 providing the consumer with all available information necessary
975 to make an informed purchase of the insurance product that best
976 serves the needs of the individual.

977 (b) In developing the comprehensive program, the office
978 shall rely as much as is practical on information that is
979 currently available and shall consider:

980 1. The most efficient means for developing, hosting, and
981 operating a separate website that consolidates all consumer
982 information for price comparisons, filed complaints, financial
983 strength, underwriting, and receivership information and other
984 data useful to consumers;

985 2. Whether all admitted insurers should be required to
986 submit additional information to populate the composite website

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987 and how often such submissions must be made;

988 3. Whether all admitted insurers should be required to
989 provide links from the website into each individual insurer's
990 website in order to enable consumers to access product rate
991 information and apply for quotations;

992 4. Developing a plan to publicize the existence,
993 availability, and value of the website; and

994 5. Any other provision that would make relevant homeowners'
995 insurance information more readily available so that consumers
996 can make informed product comparisons and purchasing decisions.

997 (c) Before establishing the program or website, the office
998 shall conduct a cost-benefit analysis to determine the most
999 effective approach for establishing and operating the program
1000 and website. Based on the results of the analysis, the office
1001 shall submit a proposed implementation plan for review and
1002 approval by the Financial Services Commission. The
1003 implementation plan shall include an estimated timeline for
1004 establishing the program and website; a description of the data
1005 and functionality to be provided by the site, a strategy for
1006 publicizing the website to consumers; a recommended approach for
1007 developing, hosting, and operating the website; and an estimate
1008 of all major nonrecurring and recurring costs required to
1009 establish and operate the website. Upon approval of the plan,
1010 the office may initiate the establishment of the program.

1011 (5)(4) The establishment of any rate, rating
1012 classification, rating plan or schedule, or variation thereof in
1013 violation of part IX of chapter 626 is also in violation of this
1014 section. In order to enhance the ability of consumers to compare
1015 premiums and to increase the accuracy and usefulness of rate-

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1016 ~~comparison information provided by the office to the public, the~~
1017 ~~office shall develop a proposed standard rating territory plan~~
1018 ~~to be used by all authorized property and casualty insurers for~~
1019 ~~residential property insurance. In adopting the proposed plan,~~
1020 ~~the office may consider geographical characteristics relevant to~~
1021 ~~risk, county lines, major roadways, existing rating territories~~
1022 ~~used by a significant segment of the market, and other relevant~~
1023 ~~factors. Such plan shall be submitted to the President of the~~
1024 ~~Senate and the Speaker of the House of Representatives by~~
1025 ~~January 15, 2006. The plan may not be implemented unless~~
1026 ~~authorized by further act of the Legislature.~~

1027 (6)~~(5)~~ With respect to a rate filing involving coverage of
1028 the type for which the insurer is required to pay a
1029 reimbursement premium to the Florida Hurricane Catastrophe Fund,
1030 the insurer may fully recoup in its property insurance premiums
1031 any reimbursement premiums paid to the Florida Hurricane
1032 Catastrophe Fund, together with reasonable costs of other
1033 reinsurance, but except as otherwise provided in this section,
1034 may not recoup reinsurance costs that duplicate coverage
1035 provided by the Florida Hurricane Catastrophe Fund. An insurer
1036 may not recoup more than 1 year of reimbursement premium at a
1037 time. Any under-recoupment from the prior year may be added to
1038 the following year's reimbursement premium, and any over-
1039 recoupment shall be subtracted from the following year's
1040 reimbursement premium.

1041 (7)~~(6)~~(a) If an insurer requests an administrative hearing
1042 pursuant to s. 120.57 related to a rate filing under this
1043 section, the director of the Division of Administrative Hearings
1044 shall expedite the hearing and assign an administrative law

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1045 judge who shall commence the hearing within 30 days after the
1046 receipt of the formal request and shall enter a recommended
1047 order within 30 days after the hearing or within 30 days after
1048 receipt of the hearing transcript by the administrative law
1049 judge, whichever is later. Each party shall be allowed 10 days
1050 in which to submit written exceptions to the recommended order.
1051 The office shall enter a final order within 30 days after the
1052 entry of the recommended order. The provisions of this paragraph
1053 may be waived upon stipulation of all parties.

1054 (b) Upon entry of a final order, the insurer may request a
1055 expedited appellate review pursuant to the Florida Rules of
1056 Appellate Procedure. It is the intent of the Legislature that
1057 the First District Court of Appeal grant an insurer's request
1058 for an expedited appellate review.

1059 (8)~~(7)~~(a) The provisions of this subsection apply only with
1060 respect to rates for medical malpractice insurance and shall
1061 control to the extent of any conflict with other provisions of
1062 this section.

1063 (b) Any portion of a judgment entered or settlement paid as
1064 a result of a statutory or common-law bad faith action and any
1065 portion of a judgment entered which awards punitive damages
1066 against an insurer may not be included in the insurer's rate
1067 base, and shall not be used to justify a rate or rate change.
1068 Any common-law bad faith action identified as such, any portion
1069 of a settlement entered as a result of a statutory or common-law
1070 action, or any portion of a settlement wherein an insurer agrees
1071 to pay specific punitive damages may not be used to justify a
1072 rate or rate change. The portion of the taxable costs and
1073 attorney's fees which is identified as being related to the bad

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1074 faith and punitive damages in these judgments and settlements
1075 may not be included in the insurer's rate base and may not be
1076 used ~~utilized~~ to justify a rate or rate change.

1077 (c) Upon reviewing a rate filing and determining whether
1078 the rate is excessive, inadequate, or unfairly discriminatory,
1079 the office shall consider, in accordance with generally accepted
1080 and reasonable actuarial techniques, past and present
1081 prospective loss experience, either using loss experience solely
1082 for this state or giving greater credibility to this state's
1083 loss data after applying actuarially sound methods of assigning
1084 credibility to such data.

1085 (d) Rates shall be deemed excessive if, among other
1086 standards established by this section, the rate structure
1087 provides for replenishment of reserves or surpluses from
1088 premiums when the replenishment is attributable to investment
1089 losses.

1090 (e) The insurer must apply a discount or surcharge based on
1091 the health care provider's loss experience or shall establish an
1092 alternative method giving due consideration to the provider's
1093 loss experience. The insurer must include in the filing a copy
1094 of the surcharge or discount schedule or a description of the
1095 alternative method used, and must provide a copy of such
1096 schedule or description, as approved by the office, to
1097 policyholders at the time of renewal and to prospective
1098 policyholders at the time of application for coverage.

1099 (f) Each medical malpractice insurer must make a rate
1100 filing under this section, sworn to by at least two executive
1101 officers of the insurer, at least once each calendar year.

1102 ~~(8)(a)1. No later than 60 days after the effective date of~~

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1103 ~~medical malpractice legislation enacted during the 2003 Special~~
1104 ~~Session D of the Florida Legislature, the office shall calculate~~
1105 ~~a presumed factor that reflects the impact that the changes~~
1106 ~~contained in such legislation will have on rates for medical~~
1107 ~~malpractice insurance and shall issue a notice informing all~~
1108 ~~insurers writing medical malpractice coverage of such presumed~~
1109 ~~factor. In determining the presumed factor, the office shall use~~
1110 ~~generally accepted actuarial techniques and standards provided~~
1111 ~~in this section in determining the expected impact on losses,~~
1112 ~~expenses, and investment income of the insurer. To the extent~~
1113 ~~that the operation of a provision of medical malpractice~~
1114 ~~legislation enacted during the 2003 Special Session D of the~~
1115 ~~Florida Legislature is stayed pending a constitutional~~
1116 ~~challenge, the impact of that provision shall not be included in~~
1117 ~~the calculation of a presumed factor under this subparagraph.~~

1118 ~~2. No later than 60 days after the office issues its notice~~
1119 ~~of the presumed rate change factor under subparagraph 1., each~~
1120 ~~insurer writing medical malpractice coverage in this state shall~~
1121 ~~submit to the office a rate filing for medical malpractice~~
1122 ~~insurance, which will take effect no later than January 1, 2004,~~
1123 ~~and apply retroactively to policies issued or renewed on or~~
1124 ~~after the effective date of medical malpractice legislation~~
1125 ~~enacted during the 2003 Special Session D of the Florida~~
1126 ~~Legislature. Except as authorized under paragraph (b), the~~
1127 ~~filing shall reflect an overall rate reduction at least as great~~
1128 ~~as the presumed factor determined under subparagraph 1. With~~
1129 ~~respect to policies issued on or after the effective date of~~
1130 ~~such legislation and prior to the effective date of the rate~~
1131 ~~filing required by this subsection, the office shall order the~~

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1132 ~~insurer to make a refund of the amount that was charged in~~
1133 ~~excess of the rate that is approved.~~

1134 ~~(b) Any insurer or rating organization that contends that~~
1135 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1136 ~~or unfairly discriminatory shall separately state in its filing~~
1137 ~~the rate it contends is appropriate and shall state with~~
1138 ~~specificity the factors or data that it contends should be~~
1139 ~~considered in order to produce such appropriate rate. The~~
1140 ~~insurer or rating organization shall be permitted to use all of~~
1141 ~~the generally accepted actuarial techniques provided in this~~
1142 ~~section in making any filing pursuant to this subsection. The~~
1143 ~~office shall review each such exception and approve or~~
1144 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1145 ~~actuarially justify any deviations from the rates required to be~~
1146 ~~filed under paragraph (a). The insurer making a filing under~~
1147 ~~this paragraph shall include in the filing the expected impact~~
1148 ~~of medical malpractice legislation enacted during the 2003~~
1149 ~~Special Session D of the Florida Legislature on losses,~~
1150 ~~expenses, and rates.~~

1151 ~~(c) If any provision of medical malpractice legislation~~
1152 ~~enacted during the 2003 Special Session D of the Florida~~
1153 ~~Legislature is held invalid by a court of competent~~
1154 ~~jurisdiction, the office shall permit an adjustment of all~~
1155 ~~medical malpractice rates filed under this section to reflect~~
1156 ~~the impact of such holding on such rates so as to ensure that~~
1157 ~~the rates are not excessive, inadequate, or unfairly~~
1158 ~~discriminatory.~~

1159 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1160 ~~malpractice insurance shall remain in effect until the effective~~

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1161 ~~date of a new rate filing approved under this subsection.~~

1162 ~~(c) The calculation and notice by the office of the~~
1163 ~~presumed factor pursuant to paragraph (a) is not an order or~~
1164 ~~rule that is subject to chapter 120. If the office enters into a~~
1165 ~~contract with an independent consultant to assist the office in~~
1166 ~~calculating the presumed factor, such contract shall not be~~
1167 ~~subject to the competitive solicitation requirements of s.~~
1168 ~~287.057.~~

1169 (9) (a) The chief executive officer or chief financial
1170 officer of a property insurer and the chief actuary of a
1171 property insurer must certify under oath and subject to the
1172 penalty of perjury, on a form approved by the commission, the
1173 following information, which must accompany a rate filing:

1174 1. The signing officer and actuary have reviewed the rate
1175 filing;

1176 2. Based on the signing officer's and actuary's knowledge,
1177 the rate filing does not contain any untrue statement of a
1178 material fact or omit to state a material fact necessary in
1179 order to make the statements made, in light of the circumstances
1180 under which such statements were made, not misleading;

1181 3. Based on the signing officer's and actuary's knowledge,
1182 the information and other factors described in paragraph (2) (b),
1183 including, but not limited to, investment income, fairly present
1184 in all material respects the basis of the rate filing for the
1185 periods presented in the filing; and

1186 4. Based on the signing officer's and actuary's knowledge,
1187 the rate filing reflects all premium savings that are reasonably
1188 expected to result from legislative enactments and are in
1189 accordance with generally accepted and reasonable actuarial

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1190 techniques.

1191 (b) A signing officer or actuary knowingly making a false
1192 certification under this subsection commits a violation of s.
1193 626.9541(1)(e) and is subject to the penalties under s.
1194 626.9521.

1195 (c) Failure to provide such certification by the officer
1196 and actuary shall result in the rate filing being disapproved
1197 without prejudice to be refiled.

1198 (d) A certification made pursuant to paragraph (a) is not
1199 rendered false if, after making the subject rate filing, the
1200 insurer provides the office with additional or supplementary
1201 information pursuant to a formal or informal request from the
1202 office or for any other reason.

1203 (e)~~(d)~~ The commission may adopt rules and forms pursuant to
1204 ss. 120.536(1) and 120.54 to administer this subsection.

1205 (10) The burden is on the office to establish that rates
1206 are excessive for personal lines residential coverage with a
1207 dwelling replacement cost of \$1 million or more or for a single
1208 condominium unit with a combined dwelling and contents
1209 replacement cost of \$1 million or more. Upon request of the
1210 office, the insurer shall provide to the office such loss and
1211 expense information as the office reasonably needs to meet this
1212 burden.

1213 (11) Any interest paid pursuant to s. 627.70131(5) may not
1214 be included in the insurer's rate base and may not be used to
1215 justify a rate or rate change.

1216 Section 9. Section 627.0629, Florida Statutes, is amended
1217 to read:

1218 627.0629 Residential property insurance; rate filings.—

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1219 (1)~~(a)~~ It is the intent of the Legislature that insurers
1220 ~~must~~ provide the most accurate pricing signals available ~~savings~~
1221 to encourage consumers to ~~who~~ install or implement windstorm
1222 damage mitigation techniques, alterations, or solutions to their
1223 properties to prevent windstorm losses. It is also the intent of
1224 the Legislature that implementation of mitigation discounts not
1225 result in a loss of income to the insurers granting the
1226 discounts, so that the aggregate of mitigation discounts should
1227 not exceed the aggregate of the expected reduction in loss that
1228 is attributable to the mitigation efforts for which discounts
1229 are granted. A rate filing for residential property insurance
1230 must include actuarially reasonable discounts, credits, debits,
1231 or other rate differentials, or appropriate reductions in
1232 deductibles, which provide the proper pricing for all
1233 properties. The rate filing must take into account the presence
1234 or absence of ~~on which~~ fixtures or construction techniques
1235 demonstrated to reduce the amount of loss in a windstorm have
1236 been installed or implemented. The fixtures or construction
1237 techniques shall include, but not be limited to, fixtures or
1238 construction techniques that ~~which~~ enhance roof strength, roof
1239 covering performance, roof-to-wall strength, wall-to-floor-to-
1240 foundation strength, opening protection, and window, door, and
1241 skylight strength. Credits, debits, discounts, or other rate
1242 differentials, or appropriate reductions or increases in
1243 deductibles, which recognize the presence or absence of ~~for~~
1244 fixtures and construction techniques that ~~which~~ meet the minimum
1245 requirements of the Florida Building Code must be included in
1246 the rate filing. If an insurer demonstrates that the aggregate
1247 of its mitigation discounts results in a reduction to revenue

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1248 which exceeds the reduction of the aggregate loss that is
1249 expected to result from the mitigation, that insurer may recover
1250 the lost revenue through an increase in its base rates. All
1251 ~~insurance companies must make a rate filing which includes the~~
1252 ~~credits, discounts, or other rate differentials or reductions in~~
1253 ~~deductibles by February 28, 2003.~~ By July 1, 2007, the office
1254 shall reevaluate the discounts, credits, other rate
1255 differentials, and appropriate reductions in deductibles for
1256 fixtures and construction techniques that meet the minimum
1257 requirements of the Florida Building Code, based upon actual
1258 experience or any other loss relativity studies available to the
1259 office. The office shall determine the discounts, credits,
1260 debts, other rate differentials, and appropriate reductions or
1261 increases in deductibles that reflect the full actuarial value
1262 of such revaluation, which may be used by insurers in rate
1263 filings.

1264 ~~(b) By February 1, 2011, the Office of Insurance~~
1265 ~~Regulation, in consultation with the Department of Financial~~
1266 ~~Services and the Department of Community Affairs, shall develop~~
1267 ~~and make publicly available a proposed method for insurers to~~
1268 ~~establish discounts, credits, or other rate differentials for~~
1269 ~~hurricane mitigation measures which directly correlate to the~~
1270 ~~numerical rating assigned to a structure pursuant to the uniform~~
1271 ~~home grading scale adopted by the Financial Services Commission~~
1272 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1273 ~~uniform home grading scale. By October 1, 2011, the commission~~
1274 ~~shall adopt rules requiring insurers to make rate filings for~~
1275 ~~residential property insurance which revise insurers' discounts,~~
1276 ~~credits, or other rate differentials for hurricane mitigation~~

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1277 ~~measures so that such rate differentials correlate directly to~~
1278 ~~the uniform home grading scale. The rules may include such~~
1279 ~~changes to the uniform home grading scale as the commission~~
1280 ~~determines are necessary, and may specify the minimum required~~
1281 ~~discounts, credits, or other rate differentials. Such rate~~
1282 ~~differentials must be consistent with generally accepted~~
1283 ~~actuarial principles and wind loss mitigation studies. The rules~~
1284 ~~shall allow a period of at least 2 years after the effective~~
1285 ~~date of the revised mitigation discounts, credits, or other rate~~
1286 ~~differentials for a property owner to obtain an inspection or~~
1287 ~~otherwise qualify for the revised credit, during which time the~~
1288 ~~insurer shall continue to apply the mitigation credit that was~~
1289 ~~applied immediately prior to the effective date of the revised~~
1290 ~~credit. Discounts, credits, and other rate differentials~~
1291 ~~established for rate filings under this paragraph shall~~
1292 ~~supersede, after adoption, the discounts, credits, and other~~
1293 ~~rate differentials included in rate filings under paragraph (a).~~

1294 (2) (a) A rate filing for residential property insurance
1295 made on or before the implementation of paragraph (b) may
1296 include rate factors that reflect the manner in which building
1297 code enforcement in a particular jurisdiction addresses the risk
1298 of wind damage. ‡ However, such a rate filing must also provide
1299 for variations from such rate factors on an individual basis
1300 based on an inspection of a particular structure by a licensed
1301 home inspector, which inspection may be at the cost of the
1302 insured.

1303 (b) A rate filing for residential property insurance made
1304 more than 150 days after approval by the office of a building
1305 code rating factor plan submitted by a statewide rating

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1306 organization shall include positive and negative rate factors
1307 that reflect the manner in which building code enforcement in a
1308 particular jurisdiction addresses risk of wind damage. The rate
1309 filing shall include variations from standard rate factors on an
1310 individual basis based on inspection of a particular structure
1311 by a licensed home inspector. If an inspection is requested by
1312 the insured, the insurer may require the insured to pay the
1313 reasonable cost of the inspection. This paragraph applies to
1314 structures constructed or renovated after the implementation of
1315 this paragraph.

1316 (c) The premium notice shall specify the amount by which
1317 the rate has been adjusted as a result of this subsection and
1318 shall also specify the maximum possible positive and negative
1319 adjustments that are approved for use by the insurer under this
1320 subsection.

1321 (3) A rate filing ~~made on or after July 1, 1995,~~ for mobile
1322 home owner's insurance must include appropriate discounts,
1323 credits, or other rate differentials for mobile homes
1324 constructed to comply with American Society of Civil Engineers
1325 Standard ANSI/ASCE 7-88, adopted by the United States Department
1326 of Housing and Urban Development on July 13, 1994, and that also
1327 comply with all applicable tie-down requirements provided by
1328 state law.

1329 (4) The Legislature finds that separate consideration and
1330 notice of hurricane insurance premiums will assist consumers by
1331 providing greater assurance that hurricane premiums are lawful
1332 and by providing more complete information regarding the
1333 components of property insurance premiums. ~~Effective January 1,~~
1334 ~~1997,~~ A rate filing for residential property insurance shall be

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1335 separated into two components, rates for hurricane coverage and
1336 rates for all other coverages. A premium notice reflecting a
1337 rate implemented on the basis of such a filing shall separately
1338 indicate the premium for hurricane coverage and the premium for
1339 all other coverages.

1340 (5) In order to provide an appropriate transition period,
1341 an insurer may, in its sole discretion, implement an approved
1342 rate filing for residential property insurance over a period of
1343 years. An insurer electing to phase in its rate filing must
1344 provide an informational notice to the office setting out its
1345 schedule for implementation of the phased-in rate filing. An
1346 insurer may include in its rate the actual cost of private
1347 market reinsurance that corresponds to available coverage of the
1348 Temporary Increase in Coverage Limits, TICL, from the Florida
1349 Hurricane Catastrophe Fund. The insurer may also include the
1350 cost of reinsurance to replace the TICL reduction implemented
1351 pursuant to s. 215.555(17)(d)9. However, this cost for
1352 reinsurance may not ~~include any expense or profit load or result~~
1353 in a total annual base rate increase in excess of 10 percent.

1354 (6) Any rate filing that is based in whole or part on data
1355 from a computer model may not exceed 15 percent unless there is
1356 a public hearing.

1357 (7) An insurer may implement appropriate discounts or other
1358 rate differentials of up to 10 percent of the annual premium to
1359 mobile home owners who provide to the insurer evidence of a
1360 current inspection of tie-downs for the mobile home, certifying
1361 that the tie-downs have been properly installed and are in good
1362 condition.

1363 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL

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1364 SOUNDNESS.—

1365 (a) It is the intent of the Legislature to provide a
1366 program whereby homeowners may obtain an evaluation of the wind
1367 resistance of their homes with respect to preventing damage from
1368 hurricanes, together with a recommendation of reasonable steps
1369 that may be taken to upgrade their homes to better withstand
1370 hurricane force winds.

1371 (b) To the extent that funds are provided for this purpose
1372 in the General Appropriations Act, the Legislature hereby
1373 authorizes the establishment of a program to be administered by
1374 the Citizens Property Insurance Corporation for homeowners
1375 insured in the high-risk account.

1376 (c) The program shall provide grants to homeowners, for the
1377 purpose of providing homeowner applicants with funds to conduct
1378 an evaluation of the integrity of their homes with respect to
1379 withstanding hurricane force winds, recommendations to retrofit
1380 the homes to better withstand damage from such winds, and the
1381 estimated cost to make the recommended retrofits.

1382 (d) The Department of Community Affairs shall establish by
1383 rule standards to govern the quality of the evaluation, the
1384 quality of the recommendations for retrofitting, the eligibility
1385 of the persons conducting the evaluation, and the selection of
1386 applicants under the program. In establishing the rule, the
1387 Department of Community Affairs shall consult with the advisory
1388 committee to minimize the possibility of fraud or abuse in the
1389 evaluation and retrofitting process, and to ensure that funds
1390 spent by homeowners acting on the recommendations achieve
1391 positive results.

1392 (e) The Citizens Property Insurance Corporation shall

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1393 identify areas of this state with the greatest wind risk to
1394 residential properties and recommend annually to the Department
1395 of Community Affairs priority target areas for such evaluations
1396 and inclusion with the associated residential construction
1397 mitigation program.

1398 (9) A property insurance rate filing that includes any
1399 adjustments related to premiums paid to the Florida Hurricane
1400 Catastrophe Fund must include a complete calculation of the
1401 insurer's catastrophe load, and the information in the filing
1402 may not be limited solely to recovery of moneys paid to the
1403 fund.

1404 Section 10. Paragraphs (b), (c), (d), and (y) of subsection
1405 (6) of section 627.351, Florida Statutes, are amended to read:

1406 627.351 Insurance risk apportionment plans.—

1407 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1408 (b)1. All insurers authorized to write one or more subject
1409 lines of business in this state are subject to assessment by the
1410 corporation and, for the purposes of this subsection, are
1411 referred to collectively as "assessable insurers." Insurers
1412 writing one or more subject lines of business in this state
1413 pursuant to part VIII of chapter 626 are not assessable
1414 insurers, but insureds who procure one or more subject lines of
1415 business in this state pursuant to part VIII of chapter 626 are
1416 subject to assessment by the corporation and are referred to
1417 collectively as "assessable insureds." An authorized insurer's
1418 assessment liability begins ~~shall begin~~ on the first day of the
1419 calendar year following the year in which the insurer was issued
1420 a certificate of authority to transact insurance for subject
1421 lines of business in this state and terminates ~~shall terminate~~ 1

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1422 year after the end of the first calendar year during which the
1423 insurer no longer holds a certificate of authority to transact
1424 insurance for subject lines of business in this state.

1425 2.a. All revenues, assets, liabilities, losses, and
1426 expenses of the corporation are ~~shall be~~ divided into three
1427 separate accounts as follows:

1428 (I) A personal lines account for personal residential
1429 policies issued by the corporation or issued by the Residential
1430 Property and Casualty Joint Underwriting Association and renewed
1431 by the corporation which provides ~~that provide~~ comprehensive,
1432 multiperil coverage on risks that are not located in areas
1433 eligible for coverage in the Florida Windstorm Underwriting
1434 Association as those areas were defined on January 1, 2002, and
1435 for ~~such~~ policies that do not provide coverage for the peril of
1436 wind on risks that are located in such areas;

1437 (II) A commercial lines account for commercial residential
1438 and commercial nonresidential policies issued by the corporation
1439 or issued by the Residential Property and Casualty Joint
1440 Underwriting Association and renewed by the corporation which
1441 ~~that~~ provide coverage for basic property perils on risks which
1442 ~~that~~ are not located in areas eligible for coverage in the
1443 Florida Windstorm Underwriting Association as those areas were
1444 defined on January 1, 2002, and for ~~such~~ policies that do not
1445 provide coverage for the peril of wind on risks that are located
1446 in such areas; and

1447 (III) A coastal high-risk ~~high-risk~~ account for personal residential
1448 policies and commercial residential and commercial
1449 nonresidential property policies issued by the corporation or
1450 transferred to the corporation which provides ~~that provide~~

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1451 coverage for the peril of wind on risks that are located in
1452 areas eligible for coverage in the Florida Windstorm
1453 Underwriting Association as those areas were defined on January
1454 1, 2002. The corporation may offer policies that provide
1455 multiperil coverage and the corporation shall continue to offer
1456 policies that provide coverage only for the peril of wind for
1457 risks located in areas eligible for coverage in the coastal
1458 ~~high-risk~~ account. In issuing multiperil coverage, the
1459 corporation may use its approved policy forms and rates for the
1460 personal lines account. An applicant or insured who is eligible
1461 to purchase a multiperil policy from the corporation may
1462 purchase a multiperil policy from an authorized insurer without
1463 prejudice to the applicant's or insured's eligibility to
1464 prospectively purchase a policy that provides coverage only for
1465 the peril of wind from the corporation. An applicant or insured
1466 who is eligible for a corporation policy that provides coverage
1467 only for the peril of wind may elect to purchase or retain such
1468 policy and also purchase or retain coverage excluding wind from
1469 an authorized insurer without prejudice to the applicant's or
1470 insured's eligibility to prospectively purchase a policy that
1471 provides multiperil coverage from the corporation. It is the
1472 goal of the Legislature that there ~~would~~ be an overall average
1473 savings of 10 percent or more for a policyholder who currently
1474 has a wind-only policy with the corporation, and an ex-wind
1475 policy with a voluntary insurer or the corporation, and who ~~then~~
1476 obtains a multiperil policy from the corporation. It is the
1477 intent of the Legislature that the offer of multiperil coverage
1478 in the coastal ~~high-risk~~ account be made and implemented in a
1479 manner that does not adversely affect the tax-exempt status of

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1480 the corporation or creditworthiness of or security for currently
1481 outstanding financing obligations or credit facilities of the
1482 coastal ~~high-risk~~ account, the personal lines account, or the
1483 commercial lines account. The coastal ~~high-risk~~ account must
1484 also include quota share primary insurance under subparagraph
1485 (c)2. The area eligible for coverage under the coastal ~~high-risk~~
1486 account also includes the area within Port Canaveral, which is
1487 bordered on the south by the City of Cape Canaveral, bordered on
1488 the west by the Banana River, and bordered on the north by
1489 Federal Government property.

1490 b. The three separate accounts must be maintained as long
1491 as financing obligations entered into by the Florida Windstorm
1492 Underwriting Association or Residential Property and Casualty
1493 Joint Underwriting Association are outstanding, in accordance
1494 with the terms of the corresponding financing documents. If ~~When~~
1495 the financing obligations are no longer outstanding, in
1496 accordance with the terms of the corresponding financing
1497 documents, the corporation may use a single account for all
1498 revenues, assets, liabilities, losses, and expenses of the
1499 corporation. Consistent with ~~the requirement of~~ this
1500 subparagraph and prudent investment policies that minimize the
1501 cost of carrying debt, the board shall exercise its best efforts
1502 to retire existing debt or to obtain approval of necessary
1503 parties to amend the terms of existing debt, so as to structure
1504 the most efficient plan to consolidate the three separate
1505 accounts into a single account. ~~By February 1, 2007, the board~~
1506 ~~shall submit a report to the Financial Services Commission, the~~
1507 ~~President of the Senate, and the Speaker of the House of~~
1508 ~~Representatives which includes an analysis of consolidating the~~

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1509 ~~accounts, the actions the board has taken to minimize the cost~~
1510 ~~of carrying debt, and its recommendations for executing the most~~
1511 ~~efficient plan.~~

1512 c. Creditors of the Residential Property and Casualty Joint
1513 Underwriting Association and ~~of~~ the accounts specified in sub-
1514 sub-subparagraphs a.(I) and (II) may have a claim against, and
1515 recourse to, the accounts referred to in sub-sub-subparagraphs
1516 a.(I) and (II) and ~~shall~~ have no claim against, or recourse to,
1517 the account referred to in sub-sub-subparagraph a.(III).

1518 Creditors of the Florida Windstorm Underwriting Association
1519 ~~shall~~ have a claim against, and recourse to, the account
1520 referred to in sub-sub-subparagraph a.(III) and ~~shall~~ have no
1521 claim against, or recourse to, the accounts referred to in sub-
1522 sub-subparagraphs a.(I) and (II).

1523 d. Revenues, assets, liabilities, losses, and expenses not
1524 attributable to particular accounts shall be prorated among the
1525 accounts.

1526 e. The Legislature finds that the revenues of the
1527 corporation are revenues that are necessary to meet the
1528 requirements set forth in documents authorizing the issuance of
1529 bonds under this subsection.

1530 f. No part of the income of the corporation may inure to
1531 the benefit of any private person.

1532 3. With respect to a deficit in an account:

1533 a. After accounting for the Citizens policyholder surcharge
1534 imposed under sub-subparagraph i., if ~~when~~ the remaining
1535 projected deficit incurred in a particular calendar year is not
1536 greater than 6 percent of the aggregate statewide direct written
1537 premium for the subject lines of business for the prior calendar

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1538 year, the entire deficit shall be recovered through regular
1539 assessments of assessable insurers under paragraph (p) and
1540 assessable insureds.

1541 b. After accounting for the Citizens policyholder surcharge
1542 imposed under sub-subparagraph i., when the remaining projected
1543 deficit incurred in a particular calendar year exceeds 6 percent
1544 of the aggregate statewide direct written premium for the
1545 subject lines of business for the prior calendar year, the
1546 corporation shall levy regular assessments on assessable
1547 insurers under paragraph (q) ~~(p)~~ and on assessable insureds in
1548 an amount equal to the greater of 6 percent of the deficit or 6
1549 percent of the aggregate statewide direct written premium for
1550 the subject lines of business for the prior calendar year. Any
1551 remaining deficit shall be recovered through emergency
1552 assessments under sub-subparagraph d.

1553 c. Each assessable insurer's share of the amount being
1554 assessed under sub-subparagraph a. or sub-subparagraph b. must
1555 ~~shall~~ be in the proportion that the assessable insurer's direct
1556 written premium for the subject lines of business for the year
1557 preceding the assessment bears to the aggregate statewide direct
1558 written premium for the subject lines of business for that year.
1559 The assessment percentage applicable to each assessable insured
1560 is the ratio of the amount being assessed under sub-subparagraph
1561 a. or sub-subparagraph b. to the aggregate statewide direct
1562 written premium for the subject lines of business for the prior
1563 year. Assessments levied by the corporation on assessable
1564 insurers under sub-subparagraphs a. and b. shall be paid as
1565 required by the corporation's plan of operation and paragraph
1566 (q) ~~(p)~~. Assessments levied by the corporation on assessable

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1567 insureds under sub-subparagraphs a. and b. shall be collected by
1568 the surplus lines agent at the time the surplus lines agent
1569 collects the surplus lines tax required by s. 626.932 and ~~shall~~
1570 ~~be~~ paid to the Florida Surplus Lines Service Office at the time
1571 the surplus lines agent pays the surplus lines tax to the
1572 Florida Surplus Lines Service Office. Upon receipt of regular
1573 assessments from surplus lines agents, the Florida Surplus Lines
1574 Service Office shall transfer the assessments directly to the
1575 corporation as determined by the corporation.

1576 d. Upon a determination by the board of governors that a
1577 deficit in an account exceeds the amount that will be recovered
1578 through regular assessments under sub-subparagraph a. or sub-
1579 subparagraph b., plus the amount that is expected to be
1580 recovered through surcharges under sub-subparagraph i., ~~as to~~
1581 ~~the remaining projected deficit~~ the board shall levy, after
1582 verification by the office, emergency assessments, for as many
1583 years as necessary to cover the deficits, to be collected by
1584 assessable insurers and the corporation and collected from
1585 assessable insureds upon issuance or renewal of policies for
1586 subject lines of business, excluding National Flood Insurance
1587 policies. The amount of the emergency assessment collected in a
1588 particular year shall be a uniform percentage of that year's
1589 direct written premium for subject lines of business and all
1590 accounts of the corporation, excluding National Flood Insurance
1591 Program policy premiums, as annually determined by the board and
1592 verified by the office. The office shall verify the arithmetic
1593 calculations involved in the board's determination within 30
1594 days after receipt of the information on which the determination
1595 was based. Notwithstanding any other provision of law, the

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1596 corporation and each assessable insurer that writes subject
1597 lines of business shall collect emergency assessments from its
1598 policyholders without such obligation being affected by any
1599 credit, limitation, exemption, or deferment. Emergency
1600 assessments levied by the corporation on assessable insureds
1601 shall be collected by the surplus lines agent at the time the
1602 surplus lines agent collects the surplus lines tax required by
1603 s. 626.932 and shall be paid to the Florida Surplus Lines
1604 Service Office at the time the surplus lines agent pays the
1605 surplus lines tax to the Florida Surplus Lines Service Office.
1606 The emergency assessments ~~so~~ collected shall be transferred
1607 directly to the corporation on a periodic basis as determined by
1608 the corporation and ~~shall be~~ held by the corporation solely in
1609 the applicable account. The aggregate amount of emergency
1610 assessments levied for an account under this sub-subparagraph in
1611 any calendar year may, at the discretion of the board of
1612 governors, be less than but may not exceed the greater of 10
1613 percent of the amount needed to cover the deficit, plus
1614 interest, fees, commissions, required reserves, and other costs
1615 associated with financing of the original deficit, or 10 percent
1616 of the aggregate statewide direct written premium for subject
1617 lines of business and for all accounts of the corporation for
1618 the prior year, plus interest, fees, commissions, required
1619 reserves, and other costs associated with financing the deficit.

1620 e. The corporation may pledge the proceeds of assessments,
1621 projected recoveries from the Florida Hurricane Catastrophe
1622 Fund, other insurance and reinsurance recoverables, policyholder
1623 surcharges and other surcharges, and other funds available to
1624 the corporation as the source of revenue for and to secure bonds

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1625 issued under paragraph (p), bonds or other indebtedness issued
1626 under subparagraph (c)3., or lines of credit or other financing
1627 mechanisms issued or created under this subsection, or to retire
1628 any other debt incurred as a result of deficits or events giving
1629 rise to deficits, or in any other way that the board determines
1630 will efficiently recover such deficits. The purpose of the lines
1631 of credit or other financing mechanisms is to provide additional
1632 resources to assist the corporation in covering claims and
1633 expenses attributable to a catastrophe. As used in this
1634 subsection, the term "assessments" includes regular assessments
1635 under sub-subparagraph a., sub-subparagraph b., or subparagraph
1636 (p)1. and emergency assessments under sub-subparagraph d.
1637 Emergency assessments collected under sub-subparagraph d. are
1638 not part of an insurer's rates, are not premium, and are not
1639 subject to premium tax, fees, or commissions; however, failure
1640 to pay the emergency assessment shall be treated as failure to
1641 pay premium. The emergency assessments under sub-subparagraph d.
1642 shall continue as long as any bonds issued or other indebtedness
1643 incurred with respect to a deficit for which the assessment was
1644 imposed remain outstanding, unless adequate provision has been
1645 made for the payment of such bonds or other indebtedness
1646 pursuant to the documents governing such bonds or other
1647 indebtedness.

1648 f. As used in this subsection for purposes of any deficit
1649 incurred on or after January 25, 2007, the term "subject lines
1650 of business" means insurance written by assessable insurers or
1651 procured by assessable insureds for all property and casualty
1652 lines of business in this state, but not including workers'
1653 compensation or medical malpractice. As used in the sub-

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1654 subparagraph, the term "property and casualty lines of business"
1655 includes all lines of business identified on Form 2, Exhibit of
1656 Premiums and Losses, in the annual statement required of
1657 authorized insurers by s. 624.424 and any rule adopted under
1658 this section, except for those lines identified as accident and
1659 health insurance and except for policies written under the
1660 National Flood Insurance Program or the Federal Crop Insurance
1661 Program. For purposes of this sub-subparagraph, the term
1662 "workers' compensation" includes both workers' compensation
1663 insurance and excess workers' compensation insurance.

1664 g. The Florida Surplus Lines Service Office shall determine
1665 annually the aggregate statewide written premium in subject
1666 lines of business procured by assessable insureds and shall
1667 report that information to the corporation in a form and at a
1668 time the corporation specifies to ensure that the corporation
1669 can meet the requirements of this subsection and the
1670 corporation's financing obligations.

1671 h. The Florida Surplus Lines Service Office shall verify
1672 the proper application by surplus lines agents of assessment
1673 percentages for regular assessments and emergency assessments
1674 levied under this subparagraph on assessable insureds and shall
1675 assist the corporation in ensuring the accurate, timely
1676 collection and payment of assessments by surplus lines agents as
1677 required by the corporation.

1678 i. If a deficit is incurred in any account in 2008 or
1679 thereafter, the board of governors shall levy a Citizens
1680 policyholder surcharge against all policyholders of the
1681 corporation for a 12-month period, which shall be collected at
1682 the time of issuance or renewal of a policy, as a uniform

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1683 percentage of the premium for the policy of up to 15 percent of
1684 such premium, which funds shall be used to offset the deficit.
1685 Citizens policyholder surcharges under this sub-subparagraph are
1686 not considered premium and are not subject to commissions, fees,
1687 or premium taxes. However, failure to pay such surcharges shall
1688 be treated as failure to pay premium.

1689 j. If the amount of any assessments or surcharges collected
1690 from corporation policyholders, assessable insurers or their
1691 policyholders, or assessable insureds exceeds the amount of the
1692 deficits, such excess amounts shall be remitted to and retained
1693 by the corporation in a reserve to be used by the corporation,
1694 as determined by the board of governors and approved by the
1695 office, to pay claims or reduce any past, present, or future
1696 plan-year deficits or to reduce outstanding debt.

1697 (c) The plan of operation of the corporation:

1698 1. Must provide for adoption of residential property and
1699 casualty insurance policy forms and commercial residential and
1700 nonresidential property insurance forms, which forms must be
1701 approved by the office prior to use. The corporation shall adopt
1702 the following policy forms:

1703 a. Standard personal lines policy forms that are
1704 comprehensive multiperil policies providing full coverage of a
1705 residential property equivalent to the coverage provided in the
1706 private insurance market under an HO-3, HO-4, or HO-6 policy.

1707 b. Basic personal lines policy forms that are policies
1708 similar to an HO-8 policy or a dwelling fire policy that provide
1709 coverage meeting the requirements of the secondary mortgage
1710 market, but which coverage is more limited than the coverage
1711 under a standard policy.

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1712 c. Commercial lines residential and nonresidential policy
1713 forms that are generally similar to the basic perils of full
1714 coverage obtainable for commercial residential structures and
1715 commercial nonresidential structures in the admitted voluntary
1716 market.

1717 d. Personal lines and commercial lines residential property
1718 insurance forms that cover the peril of wind only. The forms are
1719 applicable only to residential properties located in areas
1720 eligible for coverage under the coastal ~~high-risk~~ account
1721 referred to in sub-subparagraph (b)2.a.

1722 e. Commercial lines nonresidential property insurance forms
1723 that cover the peril of wind only. The forms are applicable only
1724 to nonresidential properties located in areas eligible for
1725 coverage under the coastal ~~high-risk~~ account referred to in sub-
1726 subparagraph (b)2.a.

1727 f. The corporation may adopt variations of the policy forms
1728 listed in sub-subparagraphs a.-e. that contain more restrictive
1729 coverage.

1730 2.a. Must provide that the corporation adopt a program in
1731 which the corporation and authorized insurers enter into quota
1732 share primary insurance agreements for hurricane coverage, as
1733 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1734 property insurance forms for eligible risks which cover the
1735 peril of wind only. As used in this subsection, the term:

1736 (I) "Quota share primary insurance" means an arrangement in
1737 which the primary hurricane coverage of an eligible risk is
1738 provided in specified percentages by the corporation and an
1739 authorized insurer. The corporation and authorized insurer are
1740 each solely responsible for a specified percentage of hurricane

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1741 coverage of an eligible risk as set forth in a quota share
1742 primary insurance agreement between the corporation and an
1743 authorized insurer and the insurance contract. The
1744 responsibility of the corporation or authorized insurer to pay
1745 its specified percentage of hurricane losses of an eligible
1746 risk, as set forth in the quota share primary insurance
1747 agreement, may not be altered by the inability of the other
1748 party to the agreement to pay its specified percentage of
1749 hurricane losses. Eligible risks that are provided hurricane
1750 coverage through a quota share primary insurance arrangement
1751 must be provided policy forms that set forth the obligations of
1752 the corporation and authorized insurer under the arrangement,
1753 clearly specify the percentages of quota share primary insurance
1754 provided by the corporation and authorized insurer, and
1755 conspicuously and clearly state that neither the authorized
1756 insurer nor the corporation may be held responsible beyond its
1757 specified percentage of coverage of hurricane losses.

1758 (II) "Eligible risks" means personal lines residential and
1759 commercial lines residential risks that meet the underwriting
1760 criteria of the corporation and are located in areas that were
1761 eligible for coverage by the Florida Windstorm Underwriting
1762 Association on January 1, 2002.

1763 b. The corporation may enter into quota share primary
1764 insurance agreements with authorized insurers at corporation
1765 coverage levels of 90 percent and 50 percent.

1766 c. If the corporation determines that additional coverage
1767 levels are necessary to maximize participation in quota share
1768 primary insurance agreements by authorized insurers, the
1769 corporation may establish additional coverage levels. However,

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1770 the corporation's quota share primary insurance coverage level
1771 may not exceed 90 percent.

1772 d. Any quota share primary insurance agreement entered into
1773 between an authorized insurer and the corporation must provide
1774 for a uniform specified percentage of coverage of hurricane
1775 losses, by county or territory as set forth by the corporation
1776 board, for all eligible risks of the authorized insurer covered
1777 under the quota share primary insurance agreement.

1778 e. Any quota share primary insurance agreement entered into
1779 between an authorized insurer and the corporation is subject to
1780 review and approval by the office. However, such agreement shall
1781 be authorized only as to insurance contracts entered into
1782 between an authorized insurer and an insured who is already
1783 insured by the corporation for wind coverage.

1784 f. For all eligible risks covered under quota share primary
1785 insurance agreements, the exposure and coverage levels for both
1786 the corporation and authorized insurers shall be reported by the
1787 corporation to the Florida Hurricane Catastrophe Fund. For all
1788 policies of eligible risks covered under quota share primary
1789 insurance agreements, the corporation and the authorized insurer
1790 shall maintain complete and accurate records for the purpose of
1791 exposure and loss reimbursement audits as required by Florida
1792 Hurricane Catastrophe Fund rules. The corporation and the
1793 authorized insurer shall each maintain duplicate copies of
1794 policy declaration pages and supporting claims documents.

1795 g. The corporation board shall establish in its plan of
1796 operation standards for quota share agreements which ensure that
1797 there is no discriminatory application among insurers as to the
1798 terms of quota share agreements, pricing of quota share

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1799 agreements, incentive provisions if any, and consideration paid
1800 for servicing policies or adjusting claims.

1801 h. The quota share primary insurance agreement between the
1802 corporation and an authorized insurer must set forth the
1803 specific terms under which coverage is provided, including, but
1804 not limited to, the sale and servicing of policies issued under
1805 the agreement by the insurance agent of the authorized insurer
1806 producing the business, the reporting of information concerning
1807 eligible risks, the payment of premium to the corporation, and
1808 arrangements for the adjustment and payment of hurricane claims
1809 incurred on eligible risks by the claims adjuster and personnel
1810 of the authorized insurer. Entering into a quota sharing
1811 insurance agreement between the corporation and an authorized
1812 insurer shall be voluntary and at the discretion of the
1813 authorized insurer.

1814 3. May provide that the corporation may employ or otherwise
1815 contract with individuals or other entities to provide
1816 administrative or professional services that may be appropriate
1817 to effectuate the plan. The corporation shall have the power to
1818 borrow funds, by issuing bonds or by incurring other
1819 indebtedness, and shall have other powers reasonably necessary
1820 to effectuate the requirements of this subsection, including,
1821 without limitation, the power to issue bonds and incur other
1822 indebtedness in order to refinance outstanding bonds or other
1823 indebtedness. The corporation may, but is not required to, seek
1824 judicial validation of its bonds or other indebtedness under
1825 chapter 75. The corporation may issue bonds or incur other
1826 indebtedness, or have bonds issued on its behalf by a unit of
1827 local government pursuant to subparagraph (p)2., in the absence

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1828 of a hurricane or other weather-related event, upon a
1829 determination by the corporation, subject to approval by the
1830 office, that such action would enable it to efficiently meet the
1831 financial obligations of the corporation and that such
1832 financings are reasonably necessary to effectuate the
1833 requirements of this subsection. The corporation is authorized
1834 to take all actions needed to facilitate tax-free status for any
1835 such bonds or indebtedness, including formation of trusts or
1836 other affiliated entities. The corporation shall have the
1837 authority to pledge assessments, projected recoveries from the
1838 Florida Hurricane Catastrophe Fund, other reinsurance
1839 recoverables, market equalization and other surcharges, and
1840 other funds available to the corporation as security for bonds
1841 or other indebtedness. In recognition of s. 10, Art. I of the
1842 State Constitution, prohibiting the impairment of obligations of
1843 contracts, it is the intent of the Legislature that no action be
1844 taken whose purpose is to impair any bond indenture or financing
1845 agreement or any revenue source committed by contract to such
1846 bond or other indebtedness.

1847 4.a. Must require that the corporation operate subject to
1848 the supervision and approval of a board of governors consisting
1849 of eight individuals who are residents of this state, from
1850 different geographical areas of this state. The Governor, the
1851 Chief Financial Officer, the President of the Senate, and the
1852 Speaker of the House of Representatives shall each appoint two
1853 members of the board. At least one of the two members appointed
1854 by each appointing officer must have demonstrated expertise in
1855 insurance, and is deemed to be within the scope of the exemption
1856 provided in s. 112.313(7)(b). The Chief Financial Officer shall

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1857 designate one of the appointees as chair. All board members
1858 serve at the pleasure of the appointing officer. All members of
1859 the board of governors are subject to removal at will by the
1860 officers who appointed them. All board members, including the
1861 chair, must be appointed to serve for 3-year terms beginning
1862 annually on a date designated by the plan. However, for the
1863 first term beginning on or after July 1, 2009, each appointing
1864 officer shall appoint one member of the board for a 2-year term
1865 and one member for a 3-year term. Any board vacancy shall be
1866 filled for the unexpired term by the appointing officer. The
1867 Chief Financial Officer shall appoint a technical advisory group
1868 to provide information and advice to the board of governors in
1869 connection with the board's duties under this subsection. The
1870 executive director and senior managers of the corporation shall
1871 be engaged by the board and serve at the pleasure of the board.
1872 Any executive director appointed on or after July 1, 2006, is
1873 subject to confirmation by the Senate. The executive director is
1874 responsible for employing other staff as the corporation may
1875 require, subject to review and concurrence by the board.

1876 b. The board shall create a Market Accountability Advisory
1877 Committee to assist the corporation in developing awareness of
1878 its rates and its customer and agent service levels in
1879 relationship to the voluntary market insurers writing similar
1880 coverage. The members of the advisory committee shall consist of
1881 the following 11 persons, one of whom must be elected chair by
1882 the members of the committee: four representatives, one
1883 appointed by the Florida Association of Insurance Agents, one by
1884 the Florida Association of Insurance and Financial Advisors, one
1885 by the Professional Insurance Agents of Florida, and one by the

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1886 Latin American Association of Insurance Agencies; three
1887 representatives appointed by the insurers with the three highest
1888 voluntary market share of residential property insurance
1889 business in the state; one representative from the Office of
1890 Insurance Regulation; one consumer appointed by the board who is
1891 insured by the corporation at the time of appointment to the
1892 committee; one representative appointed by the Florida
1893 Association of Realtors; and one representative appointed by the
1894 Florida Bankers Association. All members must serve for 3-year
1895 terms and may serve for consecutive terms. The committee shall
1896 report to the corporation at each board meeting on insurance
1897 market issues which may include rates and rate competition with
1898 the voluntary market; service, including policy issuance, claims
1899 processing, and general responsiveness to policyholders,
1900 applicants, and agents; and matters relating to depopulation.

1901 5. Must provide a procedure for determining the eligibility
1902 of a risk for coverage, as follows:

1903 a. Subject to the provisions of s. 627.3517, with respect
1904 to personal lines residential risks, if the risk is offered
1905 coverage from an authorized insurer at the insurer's approved
1906 rate under either a standard policy including wind coverage or,
1907 if consistent with the insurer's underwriting rules as filed
1908 with the office, a basic policy including wind coverage, for a
1909 new application to the corporation for coverage, the risk is not
1910 eligible for any policy issued by the corporation unless the
1911 premium for coverage from the authorized insurer is more than 15
1912 percent greater than the premium for comparable coverage from
1913 the corporation. If the risk is not able to obtain any such
1914 offer, the risk is eligible for either a standard policy

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1915 including wind coverage or a basic policy including wind
1916 coverage issued by the corporation; however, if the risk could
1917 not be insured under a standard policy including wind coverage
1918 regardless of market conditions, the risk shall be eligible for
1919 a basic policy including wind coverage unless rejected under
1920 subparagraph 8. However, with regard to a policyholder of the
1921 corporation or a policyholder removed from the corporation
1922 through an assumption agreement until the end of the assumption
1923 period, the policyholder remains eligible for coverage from the
1924 corporation regardless of any offer of coverage from an
1925 authorized insurer or surplus lines insurer. The corporation
1926 shall determine the type of policy to be provided on the basis
1927 of objective standards specified in the underwriting manual and
1928 based on generally accepted underwriting practices.

1929 (I) If the risk accepts an offer of coverage through the
1930 market assistance plan or an offer of coverage through a
1931 mechanism established by the corporation before a policy is
1932 issued to the risk by the corporation or during the first 30
1933 days of coverage by the corporation, and the producing agent who
1934 submitted the application to the plan or to the corporation is
1935 not currently appointed by the insurer, the insurer shall:

1936 (A) Pay to the producing agent of record of the policy, for
1937 the first year, an amount that is the greater of the insurer's
1938 usual and customary commission for the type of policy written or
1939 a fee equal to the usual and customary commission of the
1940 corporation; or

1941 (B) Offer to allow the producing agent of record of the
1942 policy to continue servicing the policy for a period of not less
1943 than 1 year and offer to pay the agent the greater of the

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1944 insurer's or the corporation's usual and customary commission
1945 for the type of policy written.

1946
1947 If the producing agent is unwilling or unable to accept
1948 appointment, the new insurer shall pay the agent in accordance
1949 with sub-sub-sub-subparagraph (A).

1950 (II) When the corporation enters into a contractual
1951 agreement for a take-out plan, the producing agent of record of
1952 the corporation policy is entitled to retain any unearned
1953 commission on the policy, and the insurer shall:

1954 (A) Pay to the producing agent of record of the corporation
1955 policy, for the first year, an amount that is the greater of the
1956 insurer's usual and customary commission for the type of policy
1957 written or a fee equal to the usual and customary commission of
1958 the corporation; or

1959 (B) Offer to allow the producing agent of record of the
1960 corporation policy to continue servicing the policy for a period
1961 of not less than 1 year and offer to pay the agent the greater
1962 of the insurer's or the corporation's usual and customary
1963 commission for the type of policy written.

1964
1965 If the producing agent is unwilling or unable to accept
1966 appointment, the new insurer shall pay the agent in accordance
1967 with sub-sub-sub-subparagraph (A).

1968 b. With respect to commercial lines residential risks, for
1969 a new application to the corporation for coverage, if the risk
1970 is offered coverage under a policy including wind coverage from
1971 an authorized insurer at its approved rate, the risk is not
1972 eligible for any policy issued by the corporation unless the

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1973 premium for coverage from the authorized insurer is more than 15
1974 percent greater than the premium for comparable coverage from
1975 the corporation. If the risk is not able to obtain any such
1976 offer, the risk is eligible for a policy including wind coverage
1977 issued by the corporation. However, with regard to a
1978 policyholder of the corporation or a policyholder removed from
1979 the corporation through an assumption agreement until the end of
1980 the assumption period, the policyholder remains eligible for
1981 coverage from the corporation regardless of any offer of
1982 coverage from an authorized insurer or surplus lines insurer.

1983 (I) If the risk accepts an offer of coverage through the
1984 market assistance plan or an offer of coverage through a
1985 mechanism established by the corporation before a policy is
1986 issued to the risk by the corporation or during the first 30
1987 days of coverage by the corporation, and the producing agent who
1988 submitted the application to the plan or the corporation is not
1989 currently appointed by the insurer, the insurer shall:

1990 (A) Pay to the producing agent of record of the policy, for
1991 the first year, an amount that is the greater of the insurer's
1992 usual and customary commission for the type of policy written or
1993 a fee equal to the usual and customary commission of the
1994 corporation; or

1995 (B) Offer to allow the producing agent of record of the
1996 policy to continue servicing the policy for a period of not less
1997 than 1 year and offer to pay the agent the greater of the
1998 insurer's or the corporation's usual and customary commission
1999 for the type of policy written.

2000

2001 If the producing agent is unwilling or unable to accept

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2002 appointment, the new insurer shall pay the agent in accordance
2003 with sub-sub-sub-subparagraph (A).

2004 (II) When the corporation enters into a contractual
2005 agreement for a take-out plan, the producing agent of record of
2006 the corporation policy is entitled to retain any unearned
2007 commission on the policy, and the insurer shall:

2008 (A) Pay to the producing agent of record of the corporation
2009 policy, for the first year, an amount that is the greater of the
2010 insurer's usual and customary commission for the type of policy
2011 written or a fee equal to the usual and customary commission of
2012 the corporation; or

2013 (B) Offer to allow the producing agent of record of the
2014 corporation policy to continue servicing the policy for a period
2015 of not less than 1 year and offer to pay the agent the greater
2016 of the insurer's or the corporation's usual and customary
2017 commission for the type of policy written.

2018
2019 If the producing agent is unwilling or unable to accept
2020 appointment, the new insurer shall pay the agent in accordance
2021 with sub-sub-sub-subparagraph (A).

2022 c. For purposes of determining comparable coverage under
2023 sub-subparagraphs a. and b., the comparison shall be based on
2024 those forms and coverages that are reasonably comparable. The
2025 corporation may rely on a determination of comparable coverage
2026 and premium made by the producing agent who submits the
2027 application to the corporation, made in the agent's capacity as
2028 the corporation's agent. A comparison may be made solely of the
2029 premium with respect to the main building or structure only on
2030 the following basis: the same coverage A or other building

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2031 limits; the same percentage hurricane deductible that applies on
2032 an annual basis or that applies to each hurricane for commercial
2033 residential property; the same percentage of ordinance and law
2034 coverage, if the same limit is offered by both the corporation
2035 and the authorized insurer; the same mitigation credits, to the
2036 extent the same types of credits are offered both by the
2037 corporation and the authorized insurer; the same method for loss
2038 payment, such as replacement cost or actual cash value, if the
2039 same method is offered both by the corporation and the
2040 authorized insurer in accordance with underwriting rules; and
2041 any other form or coverage that is reasonably comparable as
2042 determined by the board. If an application is submitted to the
2043 corporation for wind-only coverage in the coastal ~~high-risk~~
2044 account, the premium for the corporation's wind-only policy plus
2045 the premium for the ex-wind policy that is offered by an
2046 authorized insurer to the applicant shall be compared to the
2047 premium for multiperil coverage offered by an authorized
2048 insurer, subject to the standards for comparison specified in
2049 this subparagraph. If the corporation or the applicant requests
2050 from the authorized insurer a breakdown of the premium of the
2051 offer by types of coverage so that a comparison may be made by
2052 the corporation or its agent and the authorized insurer refuses
2053 or is unable to provide such information, the corporation may
2054 treat the offer as not being an offer of coverage from an
2055 authorized insurer at the insurer's approved rate.

2056 6. Must include rules for classifications of risks and
2057 rates therefor.

2058 7. Must provide that if premium and investment income for
2059 an account attributable to a particular calendar year are in

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2060 excess of projected losses and expenses for the account
2061 attributable to that year, such excess shall be held in surplus
2062 in the account. Such surplus shall be available to defray
2063 deficits in that account as to future years and shall be used
2064 for that purpose prior to assessing assessable insurers and
2065 assessable insureds as to any calendar year.

2066 8. Must provide objective criteria and procedures to be
2067 uniformly applied for all applicants in determining whether an
2068 individual risk is so hazardous as to be uninsurable. In making
2069 this determination and in establishing the criteria and
2070 procedures, the following shall be considered:

2071 a. Whether the likelihood of a loss for the individual risk
2072 is substantially higher than for other risks of the same class;
2073 and

2074 b. Whether the uncertainty associated with the individual
2075 risk is such that an appropriate premium cannot be determined.

2076
2077 The acceptance or rejection of a risk by the corporation shall
2078 be construed as the private placement of insurance, and the
2079 provisions of chapter 120 shall not apply.

2080 9. Must provide that the corporation shall make its best
2081 efforts to procure catastrophe reinsurance at reasonable rates,
2082 to cover its projected 100-year probable maximum loss as
2083 determined by the board of governors.

2084 10. The policies issued by the corporation must provide
2085 that, if the corporation or the market assistance plan obtains
2086 an offer from an authorized insurer to cover the risk at its
2087 approved rates, the risk is no longer eligible for renewal
2088 through the corporation, except as otherwise provided in this

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2089 subsection.

2090 11. Corporation policies and applications must include a
2091 notice that the corporation policy could, under this section, be
2092 replaced with a policy issued by an authorized insurer that does
2093 not provide coverage identical to the coverage provided by the
2094 corporation. The notice shall also specify that acceptance of
2095 corporation coverage creates a conclusive presumption that the
2096 applicant or policyholder is aware of this potential.

2097 12. May establish, subject to approval by the office,
2098 different eligibility requirements and operational procedures
2099 for any line or type of coverage for any specified county or
2100 area if the board determines that such changes to the
2101 eligibility requirements and operational procedures are
2102 justified due to the voluntary market being sufficiently stable
2103 and competitive in such area or for such line or type of
2104 coverage and that consumers who, in good faith, are unable to
2105 obtain insurance through the voluntary market through ordinary
2106 methods would continue to have access to coverage from the
2107 corporation. When coverage is sought in connection with a real
2108 property transfer, such requirements and procedures shall not
2109 provide for an effective date of coverage later than the date of
2110 the closing of the transfer as established by the transferor,
2111 the transferee, and, if applicable, the lender.

2112 13. Must provide that, with respect to the coastal high-
2113 ~~risk~~ account, any assessable insurer with a surplus as to
2114 policyholders of \$25 million or less writing 25 percent or more
2115 of its total countrywide property insurance premiums in this
2116 state may petition the office, within the first 90 days of each
2117 calendar year, to qualify as a limited apportionment company. A

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2118 regular assessment levied by the corporation on a limited
2119 apportionment company for a deficit incurred by the corporation
2120 for the coastal ~~high-risk~~ account in 2006 or thereafter may be
2121 paid to the corporation on a monthly basis as the assessments
2122 are collected by the limited apportionment company from its
2123 insureds pursuant to s. 627.3512, but the regular assessment
2124 must be paid in full within 12 months after being levied by the
2125 corporation. A limited apportionment company shall collect from
2126 its policyholders any emergency assessment imposed under sub-
2127 subparagraph (b)3.d. The plan shall provide that, if the office
2128 determines that any regular assessment will result in an
2129 impairment of the surplus of a limited apportionment company,
2130 the office may direct that all or part of such assessment be
2131 deferred as provided in subparagraph (p)4. However, there shall
2132 be no limitation or deferment of an emergency assessment to be
2133 collected from policyholders under sub-subparagraph (b)3.d.

2134 14. Must provide that the corporation appoint as its
2135 licensed agents only those agents who also hold an appointment
2136 as defined in s. 626.015(3) with an insurer who at the time of
2137 the agent's initial appointment by the corporation is authorized
2138 to write and is actually writing personal lines residential
2139 property coverage, commercial residential property coverage, or
2140 commercial nonresidential property coverage within the state.

2141 15. Must provide, by July 1, 2007, a premium payment plan
2142 option to its policyholders which allows at a minimum for
2143 quarterly and semiannual payment of premiums. A monthly payment
2144 plan may, but is not required to, be offered.

2145 16. Must limit coverage on mobile homes or manufactured
2146 homes built prior to 1994 to actual cash value of the dwelling

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2147 rather than replacement costs of the dwelling.

2148 17. May provide such limits of coverage as the board
2149 determines, consistent with the requirements of this subsection.

2150 18. May require commercial property to meet specified
2151 hurricane mitigation construction features as a condition of
2152 eligibility for coverage.

2153 (d)1. All prospective employees for senior management
2154 positions, as defined by the plan of operation, are subject to
2155 background checks as a prerequisite for employment. The office
2156 shall conduct background checks on such prospective employees
2157 pursuant to ss. 624.34, 624.404(3), and 628.261.

2158 2. On or before July 1 of each year, employees of the
2159 corporation are required to sign and submit a statement
2160 attesting that they do not have a conflict of interest, as
2161 defined in part III of chapter 112. As a condition of
2162 employment, all prospective employees are required to sign and
2163 submit to the corporation a conflict-of-interest statement.

2164 3. Senior managers and members of the board of governors
2165 are subject to ~~the provisions of~~ part III of chapter 112,
2166 including, but not limited to, the code of ethics and public
2167 disclosure and reporting of financial interests, pursuant to s.
2168 112.3145. Notwithstanding s. 112.3143(2), a board member may not
2169 vote on any measure that would inure to his or her special
2170 private gain or loss; that he or she knows would inure to the
2171 special private gain or loss of any principal by whom he or she
2172 is retained or to the parent organization or subsidiary of a
2173 corporate principal by which he or she is retained, other than
2174 an agency as defined in s. 112.312; or that he or she knows
2175 would inure to the special private gain or loss of a relative or

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2176 business associate of the public officer. Before the vote is
2177 taken, such member shall publicly state to the assembly the
2178 nature of the his or her interest in the matter from which he or
2179 she is abstaining from voting and, within 15 days after the vote
2180 occurs, disclose the nature of his or her interest as a public
2181 record in a memorandum filed with the person responsible for
2182 recording the minutes of the meeting, who shall incorporate the
2183 memorandum in the minutes. Senior managers and board members are
2184 also required to file such disclosures with the Commission on
2185 Ethics and the Office of Insurance Regulation. The executive
2186 director of the corporation or ~~his or her~~ designee shall notify
2187 each existing and newly appointed and ~~existing appointed~~ member
2188 of the board of governors and senior managers of their duty to
2189 comply with the reporting requirements of part III of chapter
2190 112. At least quarterly, the executive director or ~~his or her~~
2191 designee shall submit to the Commission on Ethics a list of
2192 names of the senior managers and members of the board of
2193 governors who are subject to the public disclosure requirements
2194 under s. 112.3145.

2195 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other
2196 provision of law, an employee or board member may not knowingly
2197 accept, directly or indirectly, any gift or expenditure from a
2198 person or entity, or an employee or representative of such
2199 person or entity, that has a contractual relationship with the
2200 corporation or who is under consideration for a contract. An
2201 employee or board member who fails to comply with subparagraph
2202 3. or this subparagraph is subject to penalties provided under
2203 ss. 112.317 and 112.3173.

2204 5. Any senior manager of the corporation who is employed on

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2205 or after January 1, 2007, regardless of the date of hire, who
2206 subsequently retires or terminates employment is prohibited from
2207 representing another person or entity before the corporation for
2208 2 years after retirement or termination of employment from the
2209 corporation.

2210 6. Any senior manager of the corporation who is employed on
2211 or after January 1, 2007, regardless of the date of hire, who
2212 subsequently retires or terminates employment is prohibited from
2213 having any employment or contractual relationship for 2 years
2214 with an insurer that has entered into a take-out bonus agreement
2215 with the corporation.

2216 (y) It is the intent of the Legislature that the amendments
2217 to this subsection enacted in 2002 should, over time, reduce the
2218 probable maximum windstorm losses in the residual markets and
2219 should reduce the potential assessments to be levied on property
2220 insurers and policyholders statewide. In furtherance of this
2221 intent:

2222 1. The board shall, on or before February 1 of each year,
2223 provide a report to the President of the Senate and the Speaker
2224 of the House of Representatives showing the reduction or
2225 increase in the 100-year probable maximum loss attributable to
2226 wind-only coverages and the quota share program under this
2227 subsection combined, as compared to the benchmark 100-year
2228 probable maximum loss of the Florida Windstorm Underwriting
2229 Association. For purposes of this paragraph, the benchmark 100-
2230 year probable maximum loss of the Florida Windstorm Underwriting
2231 Association shall be the calculation dated February 2001 and
2232 based on November 30, 2000, exposures. In order to ensure
2233 comparability of data, the board shall use the same methods for

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2234 calculating its probable maximum loss as were used to calculate
2235 the benchmark probable maximum loss.

2236 2. Beginning December 1, 2012 ~~2010~~, if the report under
2237 subparagraph 1. for any year indicates that the 100-year
2238 probable maximum loss attributable to wind-only coverages and
2239 the quota share program combined does not reflect a reduction of
2240 at least 25 percent from the benchmark, the board shall reduce
2241 the boundaries of the high-risk area eligible for wind-only
2242 coverages under this subsection in a manner calculated to reduce
2243 such probable maximum loss to an amount at least 25 percent
2244 below the benchmark.

2245 3. Beginning February 1, 2015, if the report under
2246 subparagraph 1. for any year indicates that the 100-year
2247 probable maximum loss attributable to wind-only coverages and
2248 the quota share program combined does not reflect a reduction of
2249 at least 50 percent from the benchmark, the boundaries of the
2250 high-risk area eligible for wind-only coverages under this
2251 subsection shall be reduced by the elimination of any area that
2252 is not seaward of a line 1,000 feet inland from the Intracoastal
2253 Waterway.

2254 Section 11. The Division of Statutory Revision is directed
2255 to prepare a reviser's bill for introduction at the next regular
2256 session of the Legislature to change the term "high-risk
2257 account" to "coastal account" to conform the Florida Statutes to
2258 the amendment to s. 627.351(6)(b)2.a.(III), Florida Statutes,
2259 made by the this act.

2260 Section 12. Subsection (2) of section 627.4133, Florida
2261 Statutes, is amended to read:

2262 627.4133 Notice of cancellation, nonrenewal, or renewal

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2263 premium.—

2264 (2) With respect to any personal lines or commercial
2265 residential property insurance policy, including, but not
2266 limited to, any homeowner's, mobile home owner's, farmowner's,
2267 condominium association, condominium unit owner's, apartment
2268 building, or other policy covering a residential structure or
2269 its contents:

2270 (a) The insurer shall give the named insured at least 45
2271 days' advance written notice of the renewal premium.

2272 (b) The insurer shall give the named insured written notice
2273 of nonrenewal, cancellation, or termination at least 100 days
2274 before ~~prior to~~ the effective date of the nonrenewal,
2275 cancellation, or termination. However, the insurer shall give at
2276 least 100 days' written notice, or written notice by June 1,
2277 whichever is earlier, for any nonrenewal, cancellation, or
2278 termination that would be effective between June 1 and November
2279 30. The notice must include the reason or reasons for the
2280 nonrenewal, cancellation, or termination, except that:

2281 1. The insurer must ~~shall~~ give the named insured written
2282 notice of nonrenewal, cancellation, or termination at least 180
2283 days before ~~prior to~~ the effective date of the nonrenewal,
2284 cancellation, or termination for a named insured whose
2285 residential structure has been insured by that insurer or an
2286 affiliated insurer for at least a 5-year period immediately
2287 prior to the date of the written notice.

2288 2. When cancellation is for nonpayment of premium, at least
2289 10 days' written notice of cancellation accompanied by the
2290 reason therefor must ~~shall~~ be given. As used in this
2291 subparagraph, the term "nonpayment of premium" means failure of

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2292 the named insured to discharge when due any of her or his
2293 obligations in connection with the payment of premiums on a
2294 policy or any installment of such premium, whether the premium
2295 is payable directly to the insurer or its agent or indirectly
2296 under any premium finance plan or extension of credit, or
2297 failure to maintain membership in an organization if such
2298 membership is a condition precedent to insurance coverage.
2299 "Nonpayment of premium" also means the failure of a financial
2300 institution to honor an insurance applicant's check after
2301 delivery to a licensed agent for payment of a premium, even if
2302 the agent has previously delivered or transferred the premium to
2303 the insurer. If a dishonored check represents the initial
2304 premium payment, the contract and all contractual obligations
2305 are ~~shall be~~ void ab initio unless the nonpayment is cured
2306 within the earlier of 5 days after actual notice by certified
2307 mail is received by the applicant or 15 days after notice is
2308 sent to the applicant by certified mail or registered mail, and
2309 if the contract is void, any premium received by the insurer
2310 from a third party must ~~shall~~ be refunded to that party in full.

2311 3. When such cancellation or termination occurs during the
2312 first 90 days during which the insurance is in force and the
2313 insurance is canceled or terminated for reasons other than
2314 nonpayment of premium, at least 20 days' written notice of
2315 cancellation or termination accompanied by the reason therefor
2316 must ~~shall~~ be given except if ~~where~~ there has been a material
2317 misstatement or misrepresentation or failure to comply with the
2318 underwriting requirements established by the insurer.

2319 4. The requirement for providing written notice of
2320 nonrenewal by June 1 of any nonrenewal that would be effective

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2321 between June 1 and November 30 does not apply to the following
2322 situations, but the insurer remains subject to the requirement
2323 to provide such notice at least 100 days before ~~prior to~~ the
2324 effective date of nonrenewal:

2325 a. A policy that is nonrenewed due to a revision in the
2326 coverage for sinkhole losses and catastrophic ground cover
2327 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
2328 ~~2007-1, Laws of Florida.~~

2329 b. A policy that is nonrenewed by Citizens Property
2330 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2331 that has been assumed by an authorized insurer offering
2332 replacement ~~or renewal~~ coverage to the policyholder is exempt
2333 from the notice requirements of paragraph (a) and this
2334 paragraph. In such cases, Citizens Property Insurance
2335 Corporation shall give the named insured written notice of
2336 nonrenewal at least 45 days before the effective date of the
2337 nonrenewal.

2338
2339 After the policy has been in effect for 90 days, the policy may
2340 ~~shall~~ not be canceled by the insurer except if ~~when~~ there has
2341 been a material misstatement, a nonpayment of premium, a failure
2342 to comply with underwriting requirements established by the
2343 insurer within 90 days of the date of effectuation of coverage,
2344 or a substantial change in the risk covered by the policy or if
2345 ~~when~~ the cancellation is for all insureds under such policies
2346 for a given class of insureds. This paragraph does not apply to
2347 individually rated risks having a policy term of less than 90
2348 days.

2349 5. Notwithstanding any other provision of law, an insurer

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2350 may cancel or nonrenew a property insurance policy upon a
2351 minimum of 45 days' notice if the office finds that the early
2352 cancellation of some or all of the insurer's policies is
2353 necessary to protect the best interests of the public or
2354 policyholders and the office approves the insurer's plan for
2355 early cancellation or nonrenewal of some or all of its policies.
2356 The office may base such a finding upon the financial condition
2357 of the insurer, lack of adequate reinsurance coverage for
2358 hurricane risk, or other relevant factors. The office may
2359 condition its finding on the consent of the insurer to be placed
2360 in administrative supervision pursuant to s. 624.81 or consent
2361 to the appointment of a receiver under chapter 631.

2362 (c) If the insurer fails to provide the notice required by
2363 this subsection, other than the 10-day notice, the coverage
2364 provided to the named insured shall remain in effect until the
2365 effective date of replacement coverage or until the expiration
2366 of a period of days after the notice is given equal to the
2367 required notice period, whichever occurs first. The premium for
2368 the coverage shall remain the same during any such extension
2369 period except that, in the event of failure to provide notice of
2370 nonrenewal, if the rate filing then in effect would have
2371 resulted in a premium reduction, the premium during such
2372 extension must ~~shall~~ be calculated based on the later rate
2373 filing.

2374 (d)1. Upon a declaration of an emergency pursuant to s.
2375 252.36 and the filing of an order by the Commissioner of
2376 Insurance Regulation, an insurer may not cancel or nonrenew a
2377 personal residential or commercial residential property
2378 insurance policy covering a dwelling or residential property

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2379 located in this state which has been damaged as a result of a
2380 hurricane or wind loss that is the subject of the declaration of
2381 emergency for a period of 90 days after the dwelling or
2382 residential property has been repaired. A structure is deemed to
2383 be repaired when substantially completed and restored to the
2384 extent that it is insurable by another authorized insurer that
2385 is writing policies in this state.

2386 2. However, an insurer or agent may cancel or nonrenew such
2387 a policy before ~~prior to~~ the repair of the dwelling or
2388 residential property:

2389 a. Upon 10 days' notice for nonpayment of premium; or

2390 b. Upon 45 days' notice:

2391 (I) For a material misstatement or fraud related to the
2392 claim;

2393 (II) If the insurer determines that the insured has
2394 unreasonably caused a delay in the repair of the dwelling; or

2395 (III) If the insurer has paid policy limits.

2396 3. If the insurer elects to nonrenew a policy covering a
2397 property that has been damaged, the insurer shall provide at
2398 least 90 days' notice to the insured that the insurer intends to
2399 nonrenew the policy 90 days after the dwelling or residential
2400 property has been repaired. Nothing in this paragraph shall
2401 prevent the insurer from canceling or nonrenewing the policy 90
2402 days after the repairs are complete for the same reasons the
2403 insurer would otherwise have canceled or nonrenewed the policy
2404 but for the limitations of subparagraph 1. The Financial
2405 Services Commission may adopt rules, and the Commissioner of
2406 Insurance Regulation may issue orders, necessary to implement
2407 this paragraph.

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2408 4. This paragraph ~~shall~~ also applies ~~apply~~ to personal
2409 residential and commercial residential policies covering
2410 property that was damaged as the result of Tropical Storm
2411 Bonnie, Hurricane Charley, Hurricane Frances, Hurricane Ivan, or
2412 Hurricane Jeanne.

2413 (e) If any cancellation or nonrenewal of a policy subject
2414 to this subsection is to take effect during the duration of a
2415 hurricane as defined in s. 627.4025(2)(c), the effective date of
2416 such cancellation or nonrenewal is extended until the end of the
2417 duration of such hurricane. The insurer may collect premium at
2418 the prior rates or the rates then in effect for the period of
2419 time for which coverage is extended. This paragraph does not
2420 apply to any property with respect to which replacement coverage
2421 has been obtained and which is in effect for a claim occurring
2422 during the duration of the hurricane.

2423 Section 13. Section 627.43141, Florida Statutes, is created
2424 to read:

2425 627.43141 Notice of change in policy terms.-

2426 (1) As used in this section, the term:

2427 (a) "Change in policy terms" means the modification,
2428 addition, or deletion of any term, coverage, duty, or condition
2429 from the previous policy. The correction of typographical or
2430 scrivener's errors or the application of mandated legislative
2431 changes is not a change in policy terms.

2432 (b) "Policy" means a written contract of personal lines
2433 property insurance or a written agreement for insurance, or the
2434 certificate of such insurance, by whatever name called, and
2435 includes all clauses, riders, endorsements, and papers that are
2436 a part of such policy. The term does not include a binder as

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2437 defined in s. 627.420 unless the duration of the binder period
2438 exceeds 60 days.

2439 (c) "Renewal" means the issuance and delivery by an insurer
2440 of a policy superseding at the end of the policy period a policy
2441 previously issued and delivered by the same insurer or the
2442 issuance and delivery of a certificate or notice extending the
2443 term of a policy beyond its policy period or term. Any policy
2444 that has a policy period or term of less than 6 months or any
2445 policy that does not have a fixed expiration date shall, for
2446 purposes of this section, be considered as written for
2447 successive policy periods or terms of 6 months.

2448 (2) A renewal policy may contain a change in policy terms.
2449 If a renewal policy contains a change in policy terms, the
2450 insurer shall give the named insured a written notice of the
2451 change in policy terms, which must be enclosed along with the
2452 written notice of renewal premium required by ss. 627.4133 and
2453 627.728. Such notice should be entitled "Notice of Change in
2454 Policy Terms."

2455 (3) Although not required, proof of mailing or registered
2456 mailing through the United States Postal Service of the Notice
2457 of Change in Policy Terms to the named insured at the address
2458 shown in the policy is sufficient proof of notice.

2459 (4) Receipt of payment of the premium for the renewal
2460 policy by the insurer is deemed to be acceptance of the new
2461 policy terms by the named insured.

2462 (5) If an insurer fails to provide the notice required in
2463 subsection (2), the original policy terms shall remain in effect
2464 until the next renewal and the proper service of the notice or
2465 until the effective date of replacement coverage obtained by the

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2466 named insured, whichever occurs first.

2467 (6) The intent of this section is to:

2468 (a) Allow an insurer to make a change in policy terms
2469 without nonrenewing policyholders that the insurer wishes to
2470 continue insuring.

2471 (b) Alleviate concern and confusion to the policyholder
2472 caused by the required policy nonrenewal for the limited issue
2473 when an insurer intends to renew the insurance policy but the
2474 new policy contains a change in policy terms.

2475 (c) Encourage policyholders to discuss their coverages with
2476 their insurance agents.

2477 Section 14. Section 627.7011, Florida Statutes, is amended
2478 to read:

2479 627.7011 Homeowners' policies; offer of replacement cost
2480 coverage and law and ordinance coverage.-

2481 (1) ~~Before~~ Prior to issuing or renewing a homeowner's
2482 insurance policy ~~on or after October 1, 2005, or prior to the~~
2483 ~~first renewal of a homeowner's insurance policy on or after~~
2484 ~~October 1, 2005,~~ the insurer must offer each of the following:

2485 (a) A policy or endorsement providing that any loss which
2486 is repaired or replaced will be adjusted on the basis of
2487 replacement costs not exceeding policy limits as to the
2488 dwelling, rather than actual cash value, but not including costs
2489 necessary to meet applicable laws and ordinances regulating the
2490 construction, use, or repair of any property or requiring the
2491 tearing down of any property, including the costs of removing
2492 debris.

2493 (b) A policy or endorsement providing that, subject to
2494 other policy provisions, any loss which is repaired or replaced

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2495 at any location will be adjusted on the basis of replacement
2496 costs not exceeding policy limits as to the dwelling, rather
2497 than actual cash value, and also including costs necessary to
2498 meet applicable laws and ordinances regulating the construction,
2499 use, or repair of any property or requiring the tearing down of
2500 any property, including the costs of removing debris. + However,
2501 such additional costs necessary to meet applicable laws and
2502 ordinances may be limited to either 25 percent or 50 percent of
2503 the dwelling limit, as selected by the policyholder, and such
2504 coverage shall apply only to repairs of the damaged portion of
2505 the structure unless the total damage to the structure exceeds
2506 50 percent of the replacement cost of the structure.

2507
2508 An insurer is not required to make the offers required by this
2509 subsection with respect to the issuance or renewal of a
2510 homeowner's policy that contains the provisions specified in
2511 paragraph (b) for law and ordinance coverage limited to 25
2512 percent of the dwelling limit, except that the insurer must
2513 offer the law and ordinance coverage limited to 50 percent of
2514 the dwelling limit. This subsection does not prohibit the offer
2515 of a guaranteed replacement cost policy.

2516 (2) Unless the insurer obtains the policyholder's written
2517 refusal of the policies or endorsements specified in subsection
2518 (1), any policy covering the dwelling is deemed to include the
2519 law and ordinance coverage limited to 25 percent of the dwelling
2520 limit. The rejection or selection of alternative coverage shall
2521 be made on a form approved by the office. The form shall fully
2522 advise the applicant of the nature of the coverage being
2523 rejected. If this form is signed by a named insured, it will be

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2524 conclusively presumed that there was an informed, knowing
2525 rejection of the coverage or election of the alternative
2526 coverage on behalf of all insureds. Unless the policyholder
2527 requests in writing the coverage specified in this section, it
2528 need not be provided in or supplemental to any other policy that
2529 renews, insures, extends, changes, supersedes, or replaces an
2530 existing policy when the policyholder has rejected the coverage
2531 specified in this section or has selected alternative coverage.
2532 The insurer must provide such policyholder with notice of the
2533 availability of such coverage in a form approved by the office
2534 at least once every 3 years. The failure to provide such notice
2535 constitutes a violation of this code, but does not affect the
2536 coverage provided under the policy.

2537 (3) (a) If ~~In the event of~~ a loss occurs for which a dwelling ~~or~~
2538 ~~personal property~~ is insured on the basis of replacement costs,
2539 the insurer initially must ~~shall~~ pay at least the actual cash
2540 value of the insured loss, less any applicable deductible. A
2541 policyholder shall subsequently enter into a contract for the
2542 performance of building and structural repairs. The insurer
2543 shall pay any remaining amounts necessary to perform such
2544 repairs as the work is performed and expenses are incurred
2545 ~~replacement cost without reservation or holdback of any~~
2546 ~~depreciation in value, whether or not the insured replaces or~~
2547 ~~repairs the dwelling or property. With the exception of~~
2548 incidental expenses to mitigate further damage, the insurer or
2549 any contractor or subcontractor may not require the policyholder
2550 to advance payment for such repairs or expenses. The insurer may
2551 waive the requirement for a contract as provided in this
2552 paragraph.

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2553 (b) If a loss occurs for which personal property is insured
2554 on the basis of replacement costs, the insurer may limit an
2555 initial payment to 50 percent of the replacement cost value of
2556 the personal property to be replaced, less any applicable
2557 deductible. An insurer may require that an insured provide the
2558 receipts from the purchase of property financed by the initial
2559 50 percent payment mandated under this paragraph, and the
2560 insurer shall use such receipts to make any remaining payments
2561 requested by the insured for the replacement of remaining
2562 insured personal property. If a total loss occurs, the insurer
2563 shall pay the replacement cost for contents coverage without
2564 reservation or holdback of any depreciation in value. The
2565 insurer may not require the policyholder to advance payment for
2566 the replaced property.

2567 (4) ~~A Any~~ homeowner's insurance policy ~~issued or renewed on~~
2568 ~~or after October 1, 2005,~~ must include in bold type no smaller
2569 than 18 points the following statement:

2570

2571 "LA**W** AND ORDINANCE CO**VE**RAGE IS AN I**MP**ORTANT CO**VE**RAGE
2572 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
2573 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
2574 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
2575 CO**VE**RAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
2576 DISCUSS THESE CO**VE**RAGES WITH YOUR INSURANCE AGENT."

2577 The intent of this subsection is to encourage policyholders to
2578 purchase sufficient coverage to protect them in case events
2579 excluded from the standard homeowners policy, such as law and
2580 ordinance enforcement and flood, combine with covered events to
2581 produce damage or loss to the insured property. The intent is

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2582 also to encourage policyholders to discuss these issues with
2583 their insurance agent.

2584 (5) ~~Nothing in~~ This section does not shall be construed to
2585 apply to policies not considered to be "homeowners' policies,"
2586 as that term is commonly understood in the insurance industry.
2587 This section specifically does not apply to mobile home
2588 policies. ~~Nothing in~~ This section does not limit shall be
2589 ~~construed as limiting~~ the ability of any insurer to reject or
2590 nonrenew any insured or applicant on the grounds that the
2591 structure does not meet underwriting criteria applicable to
2592 replacement cost or law and ordinance policies or for other
2593 lawful reasons.

2594 (6) This section does not prohibit an insurer from limiting
2595 its liability under a policy or endorsement providing that loss
2596 will be adjusted on the basis of replacement costs to the lesser
2597 of:

2598 (a) The limit of liability shown on the policy declarations
2599 page;

2600 (b) The reasonable and necessary cost to repair the
2601 damaged, destroyed, or stolen covered property; or

2602 (c) The reasonable and necessary cost to replace the
2603 damaged, destroyed, or stolen covered property.

2604 (7) This section does not prohibit an insurer from
2605 exercising its right to repair damaged property in compliance
2606 with its policy and s. 627.702(7).

2607 Section 15. Section 627.7015, Florida Statutes, is amended
2608 to read:

2609 627.7015 Alternative procedure for resolution of disputed
2610 property insurance claims.—

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2611 (1) ~~PURPOSE AND SCOPE.~~ This section sets forth a
2612 nonadversarial alternative dispute resolution procedure for a
2613 mediated claim resolution conference prompted by the need for
2614 effective, fair, and timely handling of property insurance
2615 claims. There is a particular need for an informal,
2616 nonthreatening forum for helping parties who elect this
2617 procedure to resolve their claims disputes because most
2618 homeowner's and commercial residential insurance policies
2619 obligate insureds to participate in a potentially expensive and
2620 time-consuming adversarial appraisal process before ~~prior to~~
2621 litigation. The procedure set forth in this section is designed
2622 to bring the parties together for a mediated claims settlement
2623 conference without any of the trappings or drawbacks of an
2624 adversarial process. Before resorting to these procedures,
2625 insureds and insurers are encouraged to resolve claims as
2626 quickly and fairly as possible. This section is available with
2627 respect to claims under personal lines and commercial
2628 residential policies for all claimants and insurers prior to
2629 commencing the appraisal process, or commencing litigation. If
2630 requested by the insured, participation by legal counsel shall
2631 be permitted. Mediation under this section is also available to
2632 litigants referred to the department by a county court or
2633 circuit court. This section does not apply to commercial
2634 coverages, to private passenger motor vehicle insurance
2635 coverages, or to disputes relating to liability coverages in
2636 policies of property insurance.

2637 (2) At the time a first-party claim dispute within the
2638 scope of this section is filed, the insurer shall notify all
2639 first-party claimants of their right to participate in the

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2640 mediation program under this section. The department shall
2641 prepare a statement or information relating to the mediation
2642 program which an insurer must include in the notice. The content
2643 of the statement or information must be adopted by rule of the
2644 department ~~consumer information pamphlet for distribution to~~
2645 ~~persons participating in mediation under this section.~~

2646 (3) The costs of mediation shall be reasonable, and the
2647 insurer shall bear all of the cost of conducting mediation
2648 conferences, except as otherwise provided in this section. If an
2649 insured fails to appear at the conference, the conference shall
2650 be rescheduled upon the insured's payment of the costs of a
2651 rescheduled conference. If the insurer fails to appear at the
2652 conference, the insurer shall pay the insured's actual cash
2653 expenses incurred in attending the conference if the insurer's
2654 failure to attend was not due to a good cause acceptable to the
2655 department. An insurer will be deemed to have failed to appear
2656 if the insurer's representative lacks authority to settle the
2657 full value of the claim. The insurer shall incur an additional
2658 fee for a rescheduled conference necessitated by the insurer's
2659 failure to appear at a scheduled conference. The fees assessed
2660 by the administrator shall include a charge necessary to defray
2661 the expenses of the department related to its duties under this
2662 section and shall be deposited in the Insurance Regulatory Trust
2663 Fund.

2664 (4) In a dispute over the cost to replace or repair insured
2665 property, the insurer and insured shall each provide
2666 documentation to the mediator which supports his or her estimate
2667 to repair or replace the property. The documentation must be
2668 provided before the beginning of the mediation conference. The

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2669 insurer's documentation must include its reports or other
2670 evidence relating to the loss and show that the insurer's
2671 estimates were created in compliance with s. 626.9744(3). The
2672 insured must submit quotes obtained from licensed contractors in
2673 the local market area, retail price quotes for products and
2674 materials, or other documentation specific to the loss which
2675 clearly documents the actual cost to repair or replace the
2676 property.

2677 (5)~~(4)~~ The department shall adopt by rule a property
2678 insurance mediation program to be administered by the department
2679 or its designee. The department may also adopt special rules
2680 that ~~which~~ are applicable in cases of an emergency within the
2681 state. The rules shall be modeled after practices and procedures
2682 set forth in mediation rules of procedure adopted by the Supreme
2683 Court. The rules shall provide for:

2684 (a) Reasonable requirement for processing and scheduling of
2685 requests for mediation.

2686 (b) Qualifications of mediators as provided in s. 627.745
2687 and in the Florida Rules of Certified and Court Appointed
2688 Mediators, and for such other individuals as are qualified by
2689 education, training, or experience as the department determines
2690 to be appropriate.

2691 (c) Provisions governing who may attend mediation
2692 conferences.

2693 (d) Selection of mediators.

2694 (e) Criteria for the conduct of mediation conferences.

2695 (f) Right to legal counsel.

2696 (g) The types of documentation required to be submitted
2697 during the mediation process.

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2698 (6)~~(5)~~ All statements made and documents produced at a
2699 mediation conference shall be deemed to be settlement
2700 negotiations in anticipation of litigation within the scope of
2701 s. 90.408. All parties to the mediation must negotiate in good
2702 faith and must have the authority to immediately settle the
2703 claim. Mediators are deemed to be agents of the department and
2704 shall have the immunity from suit provided in s. 44.107.

2705 (7)~~(6)~~ Mediation is nonbinding.~~†~~ However, if a written
2706 settlement is reached, the insured has 3 business days within
2707 which the insured may rescind the settlement unless the insured
2708 has cashed or deposited any check or draft disbursed to the
2709 insured for the disputed matters as a result of the conference.
2710 If a settlement agreement is reached and is not rescinded, it
2711 shall be binding and act as a release of all specific claims
2712 that were presented in that mediation conference.

2713 (8)~~(7)~~ If the insurer fails to comply with subsection (2)
2714 by failing to notify a first-party claimant of its right to
2715 participate in the mediation program under this section or if
2716 the insurer requests the mediation, and the mediation results
2717 are rejected by either party, the insured may ~~shall~~ not be
2718 required to submit to or participate in any contractual loss
2719 appraisal process of the property loss damage as a precondition
2720 to legal action for breach of contract against the insurer for
2721 its failure to pay the policyholder's claims covered by the
2722 policy.

2723 (9)~~(8)~~ The department may designate an entity or person to
2724 serve as administrator to carry out any of the provisions of
2725 this section and may take this action by means of a written
2726 contract or agreement.

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2727 ~~(10)-(9)~~ As used in ~~For purposes of~~ this section, the term
2728 "claim dispute" refers to any dispute between an insurer and an
2729 insured relating to a material issue of fact other than a
2730 dispute:

2731 (a) With respect to which the insurer has a reasonable
2732 basis to suspect fraud;

2733 (b) Where, based on agreed-upon facts as to the cause of
2734 loss, there is no coverage under the policy;

2735 (c) With respect to which the insurer has a reasonable
2736 basis to believe that the claimant has intentionally made a
2737 material misrepresentation of fact which is relevant to the
2738 claim, and the entire request for payment of a loss has been
2739 denied on the basis of the material misrepresentation; ~~or~~

2740 (d) With respect to which the amount in controversy is less
2741 than \$500, unless the parties agree to mediate a dispute
2742 involving a lesser amount; or.

2743 (e) With respect to which the date of loss occurred more
2744 than 5 years before the request for mediation, unless the
2745 parties agree to mediate a dispute involving a longer period.

2746 Section 16. Section 627.7065, Florida Statutes, is
2747 repealed.

2748 Section 17. Effective June 1, 2010, and applying only to
2749 insurance claims made on or after that date, subsection (1),
2750 paragraph (b) of subsection (2), and subsections (5), (7), and
2751 (8) of section 627.707, Florida Statutes, are amended to read:

2752 627.707 Standards for investigation of sinkhole claims by
2753 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
2754 loss, an insurer must meet the following standards in
2755 investigating a claim:

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2756 (1) The insurer must make an inspection of the insured's
2757 premises to determine if there has been physical damage to the
2758 structure which is consistent with ~~may be the result of~~ sinkhole
2759 loss activity.

2760 (2) Following the insurer's initial inspection, the insurer
2761 shall engage a professional engineer or a professional geologist
2762 to conduct testing as provided in s. 627.7072 to determine the
2763 cause of the loss within a reasonable professional probability
2764 and issue a report as provided in s. 627.7073, if:

2765 (b) The policyholder demands testing in accordance with
2766 this section or s. 627.7072 and coverage under the policy is
2767 available if sinkhole loss is verified.

2768 (5) (a) Subject to paragraph (b), if a sinkhole loss is
2769 verified, the insurer shall pay to stabilize the land and
2770 building and repair the foundation in accordance with the
2771 recommendations of the professional engineer as provided under
2772 s. 627.7073, with notice to ~~and in consultation with~~ the
2773 policyholder, subject to the coverage and terms of the policy.
2774 The insurer shall pay for other repairs to the structure and
2775 contents in accordance with the terms of the policy.

2776 (b) 1. After a ~~The insurer may limit its payment to the~~
2777 ~~actual cash value of the sinkhole loss, not including~~
2778 ~~underpinning or grouting or any other repair technique performed~~
2779 ~~below the existing foundation of the building, until the~~
2780 policyholder enters into a contract for the performance of
2781 building stabilization or foundation repairs, the claim shall be
2782 paid up to the full cost of the stabilization or foundation
2783 repairs and up to full replacement cost for above-ground repairs
2784 as set forth in this paragraph, less the insured's deductible.

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2785 After the policyholder enters into a contract for the
2786 performance of building stabilization or foundation repairs, the
2787 insurer may:

2788 a. Limit its initial payment to 10 percent of the estimated
2789 costs to implement the building stabilization and foundation
2790 repairs.

2791 b. Limit its initial payment to the actual cash value of
2792 the sinkhole loss for above-ground repairs to the structure.

2793 2. However, after the policyholder enters into the contract
2794 for the performance of building stabilization or foundation
2795 repairs, the insurer shall pay the amounts necessary to begin
2796 and perform such stabilization and repairs as the work is
2797 performed and the expenses are incurred. Final payments for the
2798 structural or building stabilization and foundation repair work
2799 shall be remitted within 30 days after such work is completed in
2800 accordance with the terms of the policy and the report's
2801 recommendations and after final bills or receipts have been
2802 submitted to the insurer. The insurer may not require the
2803 policyholder to advance payment for such repairs. If repair
2804 covered by a personal lines residential property insurance
2805 policy has begun and the professional engineer selected or
2806 approved by the insurer determines that the repair cannot be
2807 completed within the policy limits, the insurer must either
2808 complete the professional engineer's recommended repair or
2809 tender the policy limits to the policyholder without a reduction
2810 for the repair expenses incurred.

2811 (c) The policyholder shall enter into such contract for
2812 repairs within 90 days after the insurance company approves
2813 coverage for a sinkhole loss to prevent additional damage to the

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2814 building or structure. The 90-day period may be extended for an
2815 additional reasonable time period if the policyholder is unable
2816 to find a qualified person or entity to contract for such
2817 repairs within the 90-day period based upon factors beyond the
2818 policyholder's control or if the policyholder is actively
2819 seeking to retain a professional engineer or geologist as
2820 provided in s. 627.7073(1)(c). This period shall be tolled if
2821 either party invokes neutral evaluation.

2822 (d) The stabilization and all other repairs to the
2823 structure and contents must be completed within 12 months after
2824 entering into the contract for repairs as described in paragraph
2825 (c) unless:

2826 1. There is a mutual agreement between the insurer and the
2827 insured;

2828 2. The stabilization and all other repairs cannot be
2829 completed due to factors beyond the control of the insured which
2830 reasonably prevent completion;

2831 3. The claim is involved with the neutral evaluation
2832 process under s. 627.7074;

2833 4. The claim is in litigation; or

2834 5. The claim is under appraisal.

2835 (e)-(e) Upon the insurer's obtaining the written approval of
2836 the policyholder and any lienholder, the insurer may make
2837 payment directly to the persons selected by the policyholder to
2838 perform the land and building stabilization and foundation
2839 repairs. The decision by the insurer to make payment to such
2840 persons does not hold the insurer liable for the work performed.

2841 (7) If the insurer obtains, pursuant to s. 627.7073,
2842 written certification that there is no sinkhole loss ~~or that the~~

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2843 ~~cause of the damage was not sinkhole activity,~~ and if the
2844 policyholder has submitted the sinkhole claim without good faith
2845 grounds for submitting such claim, the policyholder shall
2846 reimburse the insurer for 50 percent of the actual costs of the
2847 analyses and services provided under ss. 627.7072 and 627.7073;
2848 however, a policyholder is not required to reimburse an insurer
2849 more than \$2,500 with respect to any claim. A policyholder is
2850 required to pay reimbursement under this subsection only if the
2851 insurer, prior to ordering the analysis under s. 627.7072,
2852 informs the policyholder in writing of the policyholder's
2853 potential liability for reimbursement and gives the policyholder
2854 the opportunity to withdraw the claim.

2855 (8) No insurer shall nonrenew any policy of property
2856 insurance on the basis of filing of claims for partial loss
2857 caused by sinkhole damage or clay shrinkage as long as the total
2858 of such payments does not exceed the ~~current~~ policy limits of
2859 coverage for property damage for the policy in effect on the
2860 date of the loss, and provided the insured has repaired the
2861 structure in accordance with the engineering recommendations
2862 upon which any payment or policy proceeds were based.

2863 Section 18. Effective June 1, 2010, and applying only to
2864 insurance claims made on or after that date, section 627.7072,
2865 Florida Statutes, is amended to read:

2866 627.7072 Testing standards for sinkholes.—

2867 (1) The professional engineer and professional geologist
2868 shall perform such tests as sufficient, in their professional
2869 opinion, to determine the presence or absence of sinkhole loss
2870 or other cause of damage within reasonable professional
2871 probability and for the professional engineer to make

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2872 recommendations regarding necessary building stabilization and
2873 foundation repair.

2874 (2) The professional engineer and professional geologist
2875 shall perform tests under this section in accordance with
2876 Florida Geological Survey Special Publication 57 to determine
2877 the presence or absence of sinkhole loss or other cause of
2878 damage within a reasonable professional probability.

2879 Section 19. Effective June 1, 2010, and applying only to
2880 insurance claims made on or after that date, section 627.7073,
2881 Florida Statutes, is amended to read:

2882 627.7073 Sinkhole reports.—

2883 (1) Upon completion of testing as provided in s. 627.7072,
2884 the professional engineer or professional geologist shall issue
2885 a report and certification to the insurer, with an additional
2886 copy and certification for the insurer to forward to ~~and~~ the
2887 policyholder as provided in this section.

2888 (a) Sinkhole loss is verified if, based upon tests
2889 performed in accordance with s. 627.7072, a professional
2890 engineer or a professional geologist issues a written report and
2891 certification stating:

2892 1. That the cause of the actual physical and structural
2893 damage is sinkhole activity within a reasonable professional
2894 probability.

2895 2. That the analyses conducted were of sufficient scope to
2896 identify sinkhole activity as the cause of damage within a
2897 reasonable professional probability.

2898 3. A description of the tests performed.

2899 4. A recommendation by the professional engineer of methods
2900 for stabilizing the land and building and for making repairs to

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2901 the foundation.

2902 (b) If sinkhole activity is eliminated as the cause of
2903 damage to the structure, the professional engineer or
2904 professional geologist shall issue a written report and
2905 certification to the policyholder and the insurer stating:

2906 1. That the cause of the damage is not sinkhole activity
2907 within a reasonable professional probability.

2908 2. That the analyses and tests conducted were of sufficient
2909 scope to eliminate sinkhole activity as the cause of damage
2910 within a reasonable professional probability.

2911 3. A statement of the cause of the damage within a
2912 reasonable professional probability.

2913 4. A description of the tests performed.

2914 (c) If the policyholder disagrees with the findings,
2915 opinions, or recommendations of the professional engineer or
2916 professional geologist engaged by the insurer, the policyholder
2917 may engage a professional engineer or professional geologist, at
2918 the policyholder's expense, to conduct testing under s.
2919 627.7072; to render findings, opinions, and recommendations as
2920 to the cause of distress to the property and the appropriate
2921 method of land and building stabilization and foundation repair;
2922 certify such findings, opinions, and recommendations in a report
2923 that meets the requirements of this section; and forward a copy
2924 of the report to the insurer. Unless the policyholder engages a
2925 professional engineer or professional geologist as described in
2926 this paragraph who disputes the findings of the insurer's
2927 engineer or geologist, the respective findings, opinions, and
2928 recommendations of the professional engineer or professional
2929 geologist as to the cause of distress to the property and the

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2930 findings, opinions, and recommendations of the insurer's
2931 professional engineer as to land and building stabilization and
2932 foundation repair as required by s. 627.707(2), shall be
2933 presumed correct, and such presumption shall shift the burden of
2934 proof under s. 90.304.

2935 (2) (a) Any insurer that has paid a claim for a sinkhole
2936 loss shall file a copy of the report and certification, prepared
2937 pursuant to subsection (1), including the legal description of
2938 the real property, ~~and~~ the name of the property owner, and the
2939 amount paid by the insurer, with the county clerk of court, who
2940 shall record the report and certification. The insurer shall
2941 also file a copy of any report prepared on behalf of the insured
2942 or the insured's representative which has been provided to the
2943 insurer which indicates that sinkhole loss caused the damage
2944 claimed. The insurer shall bear the cost of filing and recording
2945 of one or more reports ~~the report~~ and certifications
2946 ~~certification~~. There shall be no cause of action or liability
2947 against an insurer for compliance with this section. The
2948 recording of the report and certification does not:

2949 1. Constitute a lien, encumbrance, or restriction on the
2950 title to the real property or constitute a defect in the title
2951 to the real property;

2952 2. Create any cause of action or liability against any
2953 grantor of the real property for breach of any warranty of good
2954 title or warranty against encumbrances; or

2955 3. Create any cause of action or liability against any
2956 title insurer that insures the title to the real property.

2957 (b) The seller of real property upon which a sinkhole claim
2958 has been made by the seller and paid by the insurer shall

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2959 disclose to the buyer of such property that a claim has been
2960 paid, the amount of the payment, and whether or not the full
2961 amount of the proceeds were used to repair the sinkhole damage.
2962 The seller shall also provide to the buyer a copy of the report
2963 prepared pursuant to subsection (1) and any report prepared on
2964 behalf of the insured.

2965 Section 20. Effective June 1, 2010, and applying only to
2966 insurance claims made on or after that date, section 627.7074,
2967 Florida Statutes, is amended to read:

2968 627.7074 Alternative procedure for resolution of disputed
2969 sinkhole insurance claims.—

2970 (1) As used in this section, the term:

2971 (a) "Neutral evaluation" means the alternative dispute
2972 resolution provided for in this section.

2973 (b) "Neutral evaluator" means a professional engineer or a
2974 professional geologist who has completed a course of study in
2975 alternative dispute resolution designed or approved by the
2976 department for use in the neutral evaluation process, who is
2977 determined to be fair and impartial.

2978 (2) (a) The department shall certify and maintain a list of
2979 persons who are neutral evaluators.

2980 (b) The department shall prepare a consumer information
2981 pamphlet for distribution by insurers to policyholders which
2982 clearly describes the neutral evaluation process and includes
2983 information and forms necessary for the policyholder to request
2984 a neutral evaluation.

2985 (3) Neutral evaluation is available to either party if a
2986 sinkhole report has been issued pursuant to s. 627.7073. Neutral
2987 evaluation shall, at a minimum, determine causation, all methods

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2988 of stabilization and repair both above and below ground, and
2989 information necessary to carry out subsection (13). Following
2990 the receipt of the report provided under s. 627.7073 or the
2991 denial of a claim for a sinkhole loss, the insurer shall notify
2992 the policyholder of his or her right to participate in the
2993 neutral evaluation program under this section. Neutral
2994 evaluation supersedes the alternative dispute resolution process
2995 under s. 627.7015 but does not invalidate the appraisal clause
2996 if an appraisal clause is provided by the insurance policy. The
2997 appraisal process must be performed in accordance with the terms
2998 of the applicable policy and the requirements of this section.
2999 The insurer shall provide to the policyholder the consumer
3000 information pamphlet prepared by the department pursuant to
3001 paragraph (2) (b).

3002 (4) Neutral evaluation is nonbinding, but mandatory if
3003 requested by either party. A request for neutral evaluation may
3004 be filed with the department by the policyholder or the insurer
3005 on a form approved by the department. The insurance carrier must
3006 request neutral evaluation within 1 year after the
3007 policyholder's written notice to the insurer's claims adjuster
3008 who is primarily responsible for adjusting the loss of a
3009 disputed issue relating to the sinkhole claim. The request for
3010 neutral evaluation must state the reason for the request and
3011 must include an explanation of all the issues in dispute at the
3012 time of the request. Filing a request for neutral evaluation
3013 tolls the applicable time requirements for filing suit for a
3014 period of 60 days following the conclusion of the neutral
3015 evaluation process or the time prescribed in s. 95.11, whichever
3016 is later.

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3017 (5) Neutral evaluation shall be conducted as an informal
3018 process in which formal rules of evidence and procedure need not
3019 be observed. A party to neutral evaluation is not required to
3020 attend neutral evaluation if a representative of the party
3021 attends and has the authority to make a binding decision on
3022 behalf of the party. All parties shall participate in the
3023 evaluation in good faith. If an appraisal clause is present in
3024 the policy, a remaining dispute as to the amount of the loss may
3025 be resolved in the applicable policy's appraisal process in
3026 compliance with the terms of such policy, by other proceedings
3027 agreed to by the parties, or by trial.

3028 (6) The insurer shall pay the costs associated with the
3029 neutral evaluation.

3030 (7) (a) Upon receipt of a request for neutral evaluation,
3031 the department shall ~~provide the parties a list of certified~~
3032 ~~neutral evaluators. the parties shall mutually select a neutral~~
3033 ~~evaluator from the list and promptly inform the department. If~~
3034 ~~the parties cannot agree to a neutral evaluator within 10~~
3035 ~~business days, the department~~ allow the parties to submit
3036 requests to disqualify neutral evaluators on the list for cause.
3037 For purposes of this subsection, a ground for cause is required
3038 to be found by the department only if:

3039 1. A familial relationship exists between the neutral
3040 evaluator and either party or a representative of either party
3041 within the third degree;

3042 2. The proposed neutral evaluator has, in a professional
3043 capacity, previously represented either party or a
3044 representative of either party in the same or a substantially
3045 related matter;

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3046 3. The proposed neutral evaluator has, in a professional
3047 capacity, represented another person in the same or a
3048 substantially related matter and that person's interests are
3049 materially adverse to the interests of the parties;

3050 4. The proposed neutral evaluator works in the same firm or
3051 corporation as a person who has, in a professional capacity,
3052 previously represented either party or a representative of
3053 either party in the same or a substantially related matter; or

3054 5. The proposed neutral evaluator has, within the preceding
3055 5 years, worked as an employee of any party to the case.

3056 (b) The parties shall mutually appoint a neutral evaluator
3057 from the ~~department~~ list and promptly inform the department. If
3058 the parties cannot agree to a neutral evaluator within 10
3059 business days, the department shall appoint a neutral evaluator
3060 from the department's list of certified neutral evaluators. The
3061 department shall allow each party to disqualify one neutral
3062 evaluator without cause. Upon selection or appointment, the
3063 department shall promptly refer the request to the neutral
3064 evaluator.

3065 (c) Within 5 business days after the referral, the neutral
3066 evaluator shall notify the policyholder and the insurer of the
3067 date, time, and place of the neutral evaluation conference. The
3068 conference may be held by telephone, if feasible and desirable.
3069 The neutral evaluation conference shall be held within 90 45
3070 days after the receipt of the request by the department. If the
3071 neutral evaluator fails to hold a neutral evaluation conference
3072 in accordance with this paragraph, the neutral evaluator's fee
3073 will be reduced by 10 percent unless the delay was due to
3074 factors beyond the control of the neutral evaluator.

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3075 (d) As used in this subsection, the term "substantially
3076 related matter" means participation by the neutral evaluator on
3077 the same claim, property, or any adjacent property.

3078 (8) The department shall adopt rules of procedure for the
3079 neutral evaluation process.

3080 (9) For policyholders not represented by an attorney, a
3081 consumer affairs specialist of the department or an employee
3082 designated as the primary contact for consumers on issues
3083 relating to sinkholes under s. 20.121 shall be available for
3084 consultation to the extent that he or she may lawfully do so.

3085 (10) Evidence of an offer to settle a claim during the
3086 neutral evaluation process, as well as any relevant conduct or
3087 statements made in negotiations concerning the offer to settle a
3088 claim, is inadmissible to prove liability or absence of
3089 liability for the claim or its value, except as provided in
3090 subsection (14) ~~(13)~~.

3091 (11) Regardless of when invoked, any court proceeding
3092 related to the subject matter of the neutral evaluation shall be
3093 stayed pending completion of the neutral evaluation and for 5
3094 days after the filing of the neutral evaluator's report with the
3095 court.

3096 (12) If the neutral evaluator, based upon his or her
3097 professional training and credentials, is qualified only to
3098 determine the causation issue or the method of repair issue, the
3099 department shall allow the neutral evaluator to enlist the
3100 assistance of another professional from the qualified neutral
3101 evaluators list, not previously stricken by parties with respect
3102 to the subject evaluation, who, based upon his or her
3103 professional training and credentials, is able to provide an

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3104 opinion as to the other disputed issue. Any professional who, if
3105 appointed as the neutral evaluator, would be disqualified for
3106 any reason listed in subsection (7) must be disqualified. In
3107 addition, the neutral evaluator may use the service of other
3108 experts or professionals as necessary to ensure that all items
3109 in dispute are addressed in order to complete the neutral
3110 evaluation. Any professional retained by the neutral evaluator
3111 to provide an opinion may be disqualified for any of the reasons
3112 listed in subsection (7). The neutral evaluator may request that
3113 the entity that performed testing pursuant to s. 627.7072
3114 perform such additional reasonable testing deemed necessary in
3115 the professional opinion of the neutral evaluator to complete
3116 the neutral evaluation.

3117 (13)-(12) For all matters that are not resolved by the
3118 parties at the conclusion of the neutral evaluation, the neutral
3119 evaluator shall prepare a report stating that in his or her
3120 opinion the sinkhole loss has been verified or eliminated within
3121 a reasonable degree of professional probability and, if
3122 verified, whether the sinkhole loss has caused structural or
3123 cosmetic damage to the building and, if so, the need for and
3124 estimated costs of stabilizing the land and any covered
3125 structures or buildings and other appropriate remediation or
3126 structural repairs that are necessary due to the sinkhole loss.
3127 The evaluator's report shall be sent to all parties in
3128 attendance at the neutral evaluation and to the department.

3129 (14)-(13) The recommendation of the neutral evaluator is not
3130 binding on any party, and the parties retain access to court.
3131 The neutral evaluator's written recommendation is admissible in
3132 any ~~subsequent~~ action or proceeding relating to the claim or to

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3133 the cause of action giving rise to the claim.

3134 (15)~~(14)~~ If the neutral evaluator first verifies the
3135 existence of a sinkhole and, second, recommends the need for and
3136 estimates costs of stabilizing the land and any covered
3137 structures or buildings and other appropriate remediation or
3138 structural repairs, which costs exceed the amount that the
3139 insurer has offered to pay the policyholder, the insurer is
3140 liable to the policyholder for up to \$2,500 in attorney's fees
3141 for the attorney's participation in the neutral evaluation
3142 process. For purposes of this subsection, the term "offer to
3143 pay" means a written offer signed by the insurer or its legal
3144 representative and delivered to the policyholder within 10 days
3145 after the insurer receives notice that a request for neutral
3146 evaluation has been made under this section.

3147 (16)~~(15)~~ If the insurer timely agrees in writing to comply
3148 and timely complies with the recommendation of the neutral
3149 evaluator, but the policyholder declines to resolve the matter
3150 in accordance with the recommendation of the neutral evaluator
3151 pursuant to this section:

3152 (a) The insurer is not liable for extracontractual damages
3153 related to a claim for a sinkhole loss but only as related to
3154 the issues determined by the neutral evaluation process. This
3155 section does not affect or impair claims for extracontractual
3156 damages unrelated to the issues determined by the neutral
3157 evaluation process contained in this section; and

3158 (b) The insurer is not liable for attorney's fees under s.
3159 627.428 or other provisions of the insurance code unless the
3160 policyholder obtains a judgment that is more favorable than the
3161 recommendation of the neutral evaluator.

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3162 (17) If the insurer agrees to comply with the neutral
3163 evaluator's report, payment for stabilizing the land and
3164 building and repairing the foundation shall be made in
3165 accordance with the terms and conditions of the applicable
3166 insurance policy.

3167 Section 21. Section 627.711, Florida Statutes, is amended
3168 to read:

3169 627.711 Notice of premium discounts for hurricane loss
3170 mitigation; uniform mitigation verification inspection form.—

3171 (1) Using a form prescribed by the Office of Insurance
3172 Regulation, the insurer shall clearly notify the applicant or
3173 policyholder of any personal lines residential property
3174 insurance policy, at the time of the issuance of the policy and
3175 at each renewal, of the availability and the range of each
3176 premium discount, credit, other rate differential, or reduction
3177 in deductibles, and combinations of discounts, credits, rate
3178 differentials, or reductions in deductibles, for properties on
3179 which fixtures or construction techniques demonstrated to reduce
3180 the amount of loss in a windstorm can be or have been installed
3181 or implemented. The prescribed form shall describe generally
3182 what actions the policyholders may be able to take to reduce
3183 their windstorm premium. The prescribed form and a list of such
3184 ranges approved by the office for each insurer licensed in the
3185 state and providing such discounts, credits, other rate
3186 differentials, or reductions in deductibles for properties
3187 described in this subsection shall be available for electronic
3188 viewing and download from the Department of Financial Services'
3189 or the Office of Insurance Regulation's Internet website. The
3190 Financial Services Commission may adopt rules to implement this

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3191 subsection.

3192 (2) ~~By July 1, 2007,~~ The Financial Services Commission
3193 shall develop by rule a uniform mitigation verification
3194 inspection form that shall be used by all insurers when
3195 submitted by policyholders for the purpose of factoring
3196 discounts for wind insurance. In developing the form, the
3197 commission shall seek input from insurance, construction, and
3198 building code representatives. Further, the commission shall
3199 provide guidance as to the length of time the inspection results
3200 are valid. An insurer shall accept as valid a uniform mitigation
3201 verification form ~~certified by the Department of Financial~~
3202 ~~Services or signed by:~~

3203 ~~(a) A hurricane mitigation inspector certified by the My~~
3204 ~~Safe Florida Home program;~~

3205 (b) ~~(e)~~ A general, building, or residential contractor
3206 licensed under s. 489.111;

3207 (c) ~~(d)~~ A professional engineer licensed under s. 471.015
3208 who has passed the appropriate equivalency test of the building
3209 code training program as required by s. 553.841; or

3210 (d) ~~(e)~~ A professional architect licensed under s. 481.213. ~~+~~
3211 ~~or~~

3212 ~~(f) Any other individual or entity recognized by the~~
3213 ~~insurer as possessing the necessary qualifications to properly~~
3214 ~~complete a uniform mitigation verification form.~~

3215

3216 An insurer may, but is not required to, accept a form from any
3217 other person possessing qualifications and experience acceptable
3218 to the insurer.

3219 (3) A person who is authorized to sign a mitigation

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3220 verification form must inspect the structures referenced by the
3221 form personally, not through employees or other persons, and
3222 must certify or attest to personal inspection of the structures
3223 referenced by the form.

3224 (4) An individual or entity that signs a uniform mitigation
3225 form may not commit misconduct in performing hurricane
3226 mitigation inspections or in completing a uniform mitigation
3227 form which causes financial harm to an insured or the insurer or
3228 jeopardizes an insured's health and safety. Misconduct occurs
3229 when an authorized mitigation inspector signs a uniform
3230 mitigation verification form that:

3231 (a) Falsely indicates that he or she personally inspected
3232 the structures referenced by the form;

3233 (b) Falsely indicates the existence of a feature that
3234 entitles an insured to a mitigation discount that the inspector
3235 knows does not exist or did not personally inspect;

3236 (c) Contains erroneous information due to the gross
3237 negligence of the inspector; or

3238 (d) Contains demonstrably false information regarding the
3239 existence of mitigation features that could give an insured a
3240 false evaluation of the ability of the structure to withstand
3241 major damage from a hurricane endangering the safety of the
3242 insured's life and property.

3243 (5) The licensing board of an authorized mitigation
3244 inspector that violates subsection (4) may commence disciplinary
3245 proceedings and impose administrative fines and other sanctions
3246 authorized under the inspector's licensing act.

3247 (6) An insurer, person, or other entity that obtains
3248 evidence of fraud or evidence that an inspector has made false

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3249 statements in the completion of a mitigation inspection form
3250 shall file a report with the Division of Insurance Fraud, along
3251 with all of the evidence in its possession which supports the
3252 allegation of fraud or falsity. An insurer, person, or other
3253 entity making the report is immune from liability, pursuant to
3254 s. 626.989(4), for any statements made in the report, during the
3255 investigation, or in connection with the report. The Division of
3256 Insurance Fraud shall issue an investigative report if it finds
3257 that probable cause exists to believe that the inspector made
3258 intentionally false or fraudulent statements in the inspection
3259 form. Upon conclusion of the investigation and a finding of
3260 probable cause that a violation has occurred, the Division of
3261 Insurance Fraud shall send a copy of the investigative report to
3262 the office and a copy to the agency responsible for the
3263 professional licensure of the inspector, whether or not a
3264 prosecutor takes action based upon the report.

3265 (7)(3) An individual or entity who knowingly provides or
3266 utters a false or fraudulent mitigation verification form with
3267 the intent to obtain or receive a discount on an insurance
3268 premium to which the individual or entity is not entitled
3269 commits a misdemeanor of the first degree, punishable as
3270 provided in s. 775.082 or s. 775.083.

3271 Section 22. Section 628.252, Florida Statutes, is created
3272 to read:

3273 628.252 Servicing affiliates of domestic property
3274 insurers.—Every domestic property insurer shall notify the
3275 office of its intention to enter into with affiliates all
3276 management agreements, service contracts, and cost-sharing
3277 arrangements. A domestic property insurer may not enter into

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3278 such an agreement, contract, or arrangement unless the insurer
3279 has it has provided the office with at least 30 days' written
3280 notice of its intention to enter into such agreement, contract,
3281 or arrangement, or such shorter period as the office, in its
3282 discretion, may permit and the office has not disapproved such
3283 agreement, contract, or arrangement within such period. This
3284 section does not limit any existing authority of the office.

3285 Section 23. The sums of \$263,200 in nonrecurring funds and
3286 \$47,500 in recurring funds from the Insurance Regulatory Trust
3287 Fund are appropriated and one full-time equivalent position and
3288 associated salary rate is authorized to the Office of Insurance
3289 Regulation to implement the provisions of the act relating to
3290 the design, development, and operation of a comprehensive
3291 website for consumers which provides comparisons of homeowners'
3292 insurance rates and products.

3293 Section 24. Except as otherwise expressly provided in this
3294 act and except for this section, which shall take effect June 1,
3295 2010, this act shall take effect July 1, 2010.