

20102044e1

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. 626.221, F.S.;
27 exempting certain individuals from the requirement to
28 pass an examination before being issued a license as
29 an agent, customer representative, or adjuster;

20102044e1

30 amending s. 624.424, F.S.; revising the frequency that
31 an insurer may use the same accountant or partner to
32 prepare an annual audited financial report; creating
33 s. 624.611, F.S.; authorizing an insurer to submit to
34 the Office of Insurance Regulation a plan to use
35 financial contracts other than reinsurance contracts
36 to provide catastrophe loss funding; providing
37 requirements for such a plan; authorizing an insurer
38 to take certain action if the office approves such
39 plan; amending s. 626.7452, F.S.; removing an
40 exception relating to the examination of managing
41 general agents; amending s. 626.854, F.S.; providing
42 statements that may be considered deceptive or
43 misleading if made in any public adjuster's
44 advertisement or solicitation; providing a definition
45 for the term "written advertisement"; requiring that a
46 disclaimer be included in any public adjuster's
47 written advertisement; providing requirements for such
48 disclaimer; providing limitations on the amount of
49 compensation that may be received for a reopened or
50 supplemental claim; requiring certain persons who act
51 on behalf of an insurer to provide notice to the
52 insurer, claimant, public adjuster, or legal
53 representative for an onsite inspection of the insured
54 property; authorizing the insured or claimant to deny
55 access to the property if notice is not provided;
56 requiring the public adjuster to ensure prompt notice
57 of certain property loss claims; providing that an
58 insurer be allowed to interview the insured directly

20102044e1

59 about the loss claim; prohibiting the insurer from
60 obstructing or preventing the public adjuster from
61 communicating with the insured; requiring that the
62 insurer communicate with the public adjuster in an
63 effort to reach agreement as to the scope of the
64 covered loss under the insurance policy; prohibiting a
65 public adjuster from restricting or preventing persons
66 acting on behalf of the insured from having reasonable
67 access to the insured or the insured's property;
68 prohibiting a public adjuster from restricting or
69 preventing the insured's adjuster from having
70 reasonable access to or inspecting the insured's
71 property; authorizing the insured's adjuster to be
72 present for the inspection; prohibiting a licensed
73 contractor or subcontractor from adjusting a claim on
74 behalf of an insured if such contractor or
75 subcontractor is not a licensed public adjuster;
76 providing an exception; amending s. 626.8651, F.S.;
77 requiring that a public adjuster apprentice complete a
78 minimum number of hours of continuing education to
79 qualify for licensure; amending s. 626.8796, F.S.;
80 providing requirements for a public adjuster contract;
81 creating s. 626.70132, F.S.; requiring that notice of
82 a claim, supplemental claim, or reopened claim be
83 given to the insurer within a specified period after a
84 windstorm or hurricane occurs; providing a definition
85 for the terms "supplemental claim" or "reopened
86 claim"; providing applicability; amending s. 626.9744,
87 F.S.; requiring insurers to use retail cost quotations

20102044e1

88 or estimates based on current market prices in
89 determining repair or replacement cost estimates;
90 amending s. 627.0613, F.S.; requiring the office of
91 the consumer advocate to objectively grade insurers
92 annually based on the number of valid consumer
93 complaints and other measurable and objective factors;
94 defining the term "valid consumer complaint"; amending
95 s. 627.062, F.S.; requiring that the office issue an
96 approval rather than a notice of intent to approve
97 following its approval of a file and use filing;
98 prohibiting the Office of Insurance Regulation from,
99 directly or indirectly, prohibiting an insurer from
100 paying acquisition costs based on the full amount of
101 the premium; prohibiting the Office of Insurance
102 Regulation from, directly or indirectly, impeding the
103 right of an insurer to acquire policyholders,
104 advertise or appoint agents, or regulate agent
105 commissions; authorizing an insurer to make a rate
106 filing limited to changes in the cost of reinsurance,
107 the cost of financing products used as a replacement
108 for reinsurance, or changes in an inflation trend
109 factor published annually by the Office of Insurance
110 Regulation; providing that an insurer may use this
111 provision only if the increase from such filing and
112 any other rate filing does not exceed 10 percent for
113 any policyholder in a policy year; deleting provisions
114 relating to a rate filing for financing products
115 relating to the Temporary Increase in Coverage Limits;
116 revising the information that must be included in a

20102044e1

117 rate filing relating to certain reinsurance or
118 financing products; deleting a provision that
119 prohibited an insurer from making certain rate filings
120 within a certain period of time after a rate increase;
121 deleting a provision prohibiting an insurer from
122 filing for a rate increase within 6 months after it
123 makes certain rate filings; specifying the information
124 that an insurer must include in a rate filing based on
125 the change in an inflation trend factor published by
126 the Office of Insurance Regulation; requiring that the
127 office annually publish one or more inflation trend
128 factors; exempting the inflation trend factors from
129 rulemaking; providing that an insurer is not required
130 to adopt an inflation trend factor; requiring the
131 Office of Insurance Regulation to propose a plan for
132 developing a website, contingent upon an
133 appropriation, which provides consumers with
134 information necessary to make an informed decision
135 when purchasing homeowners' insurance; requiring that
136 the Financial Services Commission review the proposed
137 plan to implement the website; specifying matters that
138 the Office of Insurance Regulation must consider in
139 developing the website; deleting obsolete provisions
140 relating to legislation enacted during the 2003
141 Special Session D of the Legislature; amending s.
142 627.0629, F.S.; providing legislative intent that
143 insurers provide consumers with accurate pricing
144 signals for alterations in order to minimize losses,
145 but that mitigation discounts not result in a loss of

20102044e1

146 income for the insurer; requiring rate filings for
147 residential property insurance to include actuarially
148 reasonable debits that provide proper pricing;
149 deleting provisions that require the office to develop
150 certain rate differentials for hurricane mitigation
151 measures; providing for an increase in base rates if
152 mitigation discounts exceed the aggregate reduction in
153 expected losses; requiring the Office of Insurance
154 Regulation to reevaluate discounts, debits, credits,
155 and other rate differentials by a certain date;
156 requiring the Office of Insurance Regulation, in
157 consultation with the Department of Financial Services
158 and the Department of Community Affairs, to develop a
159 method for insurers to establish debits for certain
160 hurricane mitigation measures by a certain date;
161 requiring the Financial Services Commission to adopt
162 rules relating to such debits by a certain date;
163 deleting a provision that prohibits an insurer from
164 including an expense or profit load in the cost of
165 reinsurance to replace the Temporary Increase in
166 Coverage Limits; amending s. 627.351, F.S.; renaming
167 the "high-risk account" as the "coastal account";
168 revising the conditions under which the Citizens
169 policyholder surcharge may be imposed; providing that
170 members of the Citizens Property Insurance Corporation
171 Board of Governors are not prohibited from practicing
172 in a certain profession if not prohibited by law or
173 ordinance; requiring applicants for coverage and
174 policyholders to sign an acknowledgment that a policy

20102044e1

175 may be subject to surcharges under certain
176 circumstances; prohibiting board members from voting
177 on certain measures; changing the date on which the
178 boundaries of high-risk areas eligible for certain
179 wind-only coverages will be reduced if certain
180 circumstances exist; providing a directive to the
181 Division of Statutory Revision; amending s. 627.4133,
182 F.S.; authorizing an insurer to cancel policies after
183 45 days' notice if the Office of Insurance Regulation
184 determines that the cancellation of policies is
185 necessary to protect the interests of the public or
186 policyholders; authorizing the Office of Insurance
187 Regulation to place an insurer under administrative
188 supervision or appoint a receiver upon the consent of
189 the insurer under certain circumstances; creating s.
190 627.41341, F.S.; providing definitions; requiring the
191 delivery of a "Notice of Change in Policy Terms" under
192 certain circumstances; specifying requirements for
193 such notice; specifying actions constituting proof of
194 notice; authorizing policy renewals to contain a
195 change in policy terms; providing that receipt of
196 payment by an insurer is deemed acceptance of new
197 policy terms by an insured; providing that the
198 original policy remains in effect until the occurrence
199 of specified events if an insurer fails to provide
200 notice; providing intent; amending s. 627.7011, F.S.;
201 requiring that an insurer pay the actual cash value of
202 an insured loss, less any applicable deductible, under
203 certain circumstances; requiring that a policyholder

20102044e1

204 enter into a contract for the performance of building
205 and structural repairs; requiring that an insurer pay
206 certain remaining amounts; prohibiting a mortgagor
207 from retaining payments from an insurer for a loss;
208 restricting insurers and contractors from requiring
209 advance payments for certain repairs and expenses;
210 authorizing an insured to make a claim for replacement
211 costs within a certain period after the insurer pays
212 actual cash value to make a claim for replacement
213 costs; requiring an insurer to pay the replacement
214 costs if a total loss occurs; amending s. 627.70131,
215 F.S.; specifying application of certain time periods
216 to initial or supplemental property insurance claim
217 notices and payments; amending s. 627.7015, F.S.;
218 requiring the Department of Financial Services to
219 prepare a statement or information by rule which must
220 be included in a notice by an insurer informing
221 claimants of the right to participate in a mediation
222 program; specifying documentation that an insurer and
223 insured must provide to a mediator in a dispute over
224 an estimate to repair or replace property; requiring
225 the Department of Financial Services to adopt rules
226 specifying the type of documentation that must be
227 submitted during a mediation; defining the term "claim
228 dispute" as it relates to disputes between an insurer
229 and insured; amending s. 627.707, F.S.; revising
230 standards for investigation of sinkhole claims by
231 insurers; specifying requirements for contracts for
232 repairs to prevent additional damage to buildings or

20102044e1

233 structures; providing for applicability; amending s.
234 627.7073, F.S.; revising requirements for sinkhole
235 reports; providing for applicability; amending s.
236 627.7074, F.S.; revising requirements and procedures
237 for alternative dispute resolution of sinkhole
238 insurance claims; defining the term "substantially
239 related matter"; providing criteria and procedures for
240 disqualification of neutral evaluators; providing
241 requirements and procedures for neutral evaluators to
242 enlist assistance from other professionals under
243 certain circumstances; providing for applicability;
244 amending s. 627.711, F.S.; revising the list of
245 persons qualified to sign certain mitigation
246 verification forms for certain purposes; authorizing
247 insurers to accept forms from certain other persons;
248 providing requirements for persons authorized to sign
249 mitigation forms; prohibiting misconduct in performing
250 hurricane mitigation inspection or completing uniform
251 mitigation forms causing certain harm; specifying what
252 constitutes misconduct; authorizing certain licensing
253 boards to commence disciplinary proceedings and impose
254 administrative fines and sanctions; providing for
255 liability of mitigation inspectors; requiring certain
256 entities to file reports of evidence of fraud;
257 providing for immunity from liability for reporting
258 fraud; providing for investigative reports from the
259 Division of Insurance Fraud; providing penalties;
260 authorizing insurers to require independent
261 verification of uniform mitigation verification forms;

20102044e1

262 creating s. 628.252, F.S.; requiring that every
263 domestic property insurer notify the office of its
264 intention to enter into certain agreements, contracts,
265 and arrangements; prohibiting a domestic property
266 insurer from entering into such agreements, contracts,
267 or arrangements unless specified criteria are met;
268 preserving the existing authority of the office;
269 providing an appropriation to the Office of Insurance
270 Regulation and authorizing an additional position;
271 providing effective dates.

272
273 Be It Enacted by the Legislature of the State of Florida:

274
275 Section 1. Paragraph (b) of subsection (6) of section
276 215.555, Florida Statutes, is amended to read:

277 215.555 Florida Hurricane Catastrophe Fund.—

278 (6) REVENUE BONDS.—

279 (b) *Emergency assessments*.—

280 1. If the board determines that the amount of revenue
281 produced under subsection (5) is insufficient to fund the
282 obligations, costs, and expenses of the fund and the
283 corporation, including repayment of revenue bonds and that
284 portion of the debt service coverage not met by reimbursement
285 premiums, the board shall direct the Office of Insurance
286 Regulation to levy, by order, an emergency assessment on direct
287 premiums for all property and casualty lines of business in this
288 state, including property and casualty business of surplus lines
289 insurers regulated under part VIII of chapter 626, but not
290 including any workers' compensation premiums or medical

20102044e1

291 malpractice premiums. As used in this subsection, the term
292 "property and casualty business" includes all lines of business
293 identified on Form 2, Exhibit of Premiums and Losses, in the
294 annual statement required of authorized insurers by s. 624.424
295 and any rule adopted under this section, except for those lines
296 identified as accident and health insurance and except for
297 policies written under the National Flood Insurance Program. The
298 assessment shall be specified as a percentage of direct written
299 premium and is subject to annual adjustments by the board in
300 order to meet debt obligations. The same percentage shall apply
301 to all policies in lines of business subject to the assessment
302 issued or renewed during the 12-month period beginning on the
303 effective date of the assessment.

304 2. A premium is not subject to an annual assessment under
305 this paragraph in excess of 6 percent of premium with respect to
306 obligations arising out of losses attributable to any one
307 contract year, and a premium is not subject to an aggregate
308 annual assessment under this paragraph in excess of 10 percent
309 of premium. An annual assessment under this paragraph shall
310 continue as long as the revenue bonds issued with respect to
311 which the assessment was imposed are outstanding, including any
312 bonds the proceeds of which were used to refund the revenue
313 bonds, unless adequate provision has been made for the payment
314 of the bonds under the documents authorizing issuance of the
315 bonds.

316 3. Emergency assessments shall be collected from
317 policyholders. Emergency assessments shall be remitted by
318 insurers as a percentage of direct written premium for the
319 preceding calendar quarter as specified in the order from the

20102044e1

320 Office of Insurance Regulation. The office shall verify the
321 accurate and timely collection and remittance of emergency
322 assessments and shall report the information to the board in a
323 form and at a time specified by the board. Each insurer
324 collecting assessments shall provide the information with
325 respect to premiums and collections as may be required by the
326 office to enable the office to monitor and verify compliance
327 with this paragraph.

328 4. With respect to assessments of surplus lines premiums,
329 each surplus lines agent shall collect the assessment at the
330 same time as the agent collects the surplus lines tax required
331 by s. 626.932, and the surplus lines agent shall remit the
332 assessment to the Florida Surplus Lines Service Office created
333 by s. 626.921 at the same time as the agent remits the surplus
334 lines tax to the Florida Surplus Lines Service Office. The
335 emergency assessment on each insured procuring coverage and
336 filing under s. 626.938 shall be remitted by the insured to the
337 Florida Surplus Lines Service Office at the time the insured
338 pays the surplus lines tax to the Florida Surplus Lines Service
339 Office. The Florida Surplus Lines Service Office shall remit the
340 collected assessments to the fund or corporation as provided in
341 the order levied by the Office of Insurance Regulation. The
342 Florida Surplus Lines Service Office shall verify the proper
343 application of such emergency assessments and shall assist the
344 board in ensuring the accurate and timely collection and
345 remittance of assessments as required by the board. The Florida
346 Surplus Lines Service Office shall annually calculate the
347 aggregate written premium on property and casualty business,
348 other than workers' compensation and medical malpractice,

20102044e1

349 procured through surplus lines agents and insureds procuring
350 coverage and filing under s. 626.938 and shall report the
351 information to the board in a form and at a time specified by
352 the board.

353 5. Any assessment authority not used for a particular
354 contract year may be used for a subsequent contract year. If,
355 for a subsequent contract year, the board determines that the
356 amount of revenue produced under subsection (5) is insufficient
357 to fund the obligations, costs, and expenses of the fund and the
358 corporation, including repayment of revenue bonds and that
359 portion of the debt service coverage not met by reimbursement
360 premiums, the board shall direct the Office of Insurance
361 Regulation to levy an emergency assessment up to an amount not
362 exceeding the amount of unused assessment authority from a
363 previous contract year or years, plus an additional 4 percent
364 provided that the assessments in the aggregate do not exceed the
365 limits specified in subparagraph 2.

366 6. The assessments otherwise payable to the corporation
367 under this paragraph shall be paid to the fund unless and until
368 the Office of Insurance Regulation and the Florida Surplus Lines
369 Service Office have received from the corporation and the fund a
370 notice, which shall be conclusive and upon which they may rely
371 without further inquiry, that the corporation has issued bonds
372 and the fund has no agreements in effect with local governments
373 under paragraph (c). On or after the date of the notice and
374 until the date the corporation has no bonds outstanding, the
375 fund shall have no right, title, or interest in or to the
376 assessments, except as provided in the fund's agreement with the
377 corporation.

20102044e1

378 7. Emergency assessments are not premium and are not
379 subject to the premium tax, to the surplus lines tax, to any
380 fees, or to any commissions. An insurer is liable for all
381 assessments that it collects and must treat the failure of an
382 insured to pay an assessment as a failure to pay the premium. An
383 insurer is not liable for uncollectible assessments.

384 8. When an insurer is required to return an unearned
385 premium, it shall also return any collected assessment
386 attributable to the unearned premium. A credit adjustment to the
387 collected assessment may be made by the insurer with regard to
388 future remittances that are payable to the fund or corporation,
389 but the insurer is not entitled to a refund.

390 9. When a surplus lines insured or an insured who has
391 procured coverage and filed under s. 626.938 is entitled to the
392 return of an unearned premium, the Florida Surplus Lines Service
393 Office shall provide a credit or refund to the agent or such
394 insured for the collected assessment attributable to the
395 unearned premium prior to remitting the emergency assessment
396 collected to the fund or corporation.

397 10. The exemption of medical malpractice insurance premiums
398 from emergency assessments under this paragraph is repealed May
399 31, 2013 ~~2010~~, and medical malpractice insurance premiums shall
400 be subject to emergency assessments attributable to loss events
401 occurring in the contract years commencing on June 1, 2013 ~~2010~~.

402 Section 2. Section 624.408, Florida Statutes, is amended to
403 read:

404 624.408 Surplus as to policyholders required; new and
405 existing insurers.—

406 (1) ~~(a)~~ To maintain a certificate of authority to transact

20102044e1

407 any one kind or combinations of kinds of insurance, as defined
 408 in part V of this chapter, an insurer in this state shall at all
 409 times maintain surplus as to policyholders at least ~~not less~~
 410 ~~than~~ the greater of:

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

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

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

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

421 (e)5. For property and casualty insurers, \$4 million,
 422 except property and casualty insurers authorized to underwrite
 423 any line of residential property insurance.

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

427 (g) For a residential property insurer having a certificate
 428 of authority before July 1, 2010, \$5 million until July 1, 2015,
 429 and \$15 million after July 1, 2015. The office may reduce this
 430 surplus requirement if the insurer is not writing new business,
 431 has premiums in force of less than \$1 million per year in
 432 residential property insurance, or is a mutual insurance
 433 company. following amounts apply instead of the \$4 million
 434 required by subparagraph (a)5.:

435 1. On December 31, 2001, and until December 30, 2002, \$3

20102044e1

436 million.

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

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

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

442 (2) For purposes of this section, liabilities do ~~shall~~ not
443 include liabilities required under s. 625.041(4). For purposes
444 of computing minimum surplus as to policyholders pursuant to s.
445 625.305(1), liabilities shall include liabilities required under
446 s. 625.041(4).

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

450 (4) A mortgage guaranty insurer shall maintain a minimum
451 surplus as required by s. 635.042.

452 Section 3. Present paragraph (q) of subsection (1) of
453 section 624.4085, Florida Statutes, is redesignated as paragraph
454 (r), and a new paragraph (q) is added to that subsection,
455 paragraph (b) of subsection (3) of that section is amended, and
456 subsections (7) through (13) of that section are redesignated as
457 subsections (9) through (15), respectively, and new subsections
458 (7) and (8) are added to that section, to read:

459 624.4085 Risk-based capital requirements for insurers.—

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

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

20102044e1

- 465 (3)
- 466 (b) If a company action level event occurs, the insurer
- 467 shall prepare and submit to the office a risk-based capital
- 468 plan, which must:
- 469 1. Identify the conditions that contribute to the company
- 470 action level event;
- 471 2. Contain proposals of corrective actions that the insurer
- 472 intends to take and that are reasonably expected to result in
- 473 the elimination of the company action level event;
- 474 3. Provide projections of the insurer's financial results
- 475 in the current year and at least the 4 succeeding years, both in
- 476 the absence of proposed corrective actions and giving effect to
- 477 the proposed corrective actions, including projections of
- 478 statutory operating income, net income, capital, and surplus.
- 479 The projections for both new and renewal business may include
- 480 separate projections for each major line of business and, if
- 481 separate projections are provided, must separately identify each
- 482 significant income, expense, and benefit component;
- 483 4. Identify the key assumptions affecting the insurer's
- 484 projections and the sensitivity of the projections to the
- 485 assumptions; ~~and~~
- 486 5. Identify the quality of, and problems associated with,
- 487 the insurer's business, including, but not limited to, its
- 488 assets, anticipated business growth and associated surplus
- 489 strain, extraordinary exposure to risk, mix of business, and any
- 490 use of reinsurance; and-
- 491 6. Include, at the request of the office, for a residential
- 492 property insurer that conducts any business with affiliates, a
- 493 columnar worksheet, which shall include all affiliates who have

20102044e1

494 contracted with, done business with, or otherwise received
495 remuneration from the insurer and shall list the following
496 financial information from the immediately preceding calendar
497 year, listed separately for each affiliate:

- 498 a. Total assets;
- 499 b. Total liabilities;
- 500 c. Surplus or shareholders equity;
- 501 d. Net income after taxes or distributions made solely for
502 satisfying tax liabilities;
- 503 e. Total amounts received or receivable from parents,
504 subsidiaries, and affiliates;
- 505 f. Total amounts paid or payable to any parent,
506 subsidiaries, and affiliates;
- 507 g. Dividends paid or payable to shareholders of common
508 stock;
- 509 h. Debt service, including principle and interest, paid on
510 debt incurred to capitalize or recapitalize insurance companies
511 or fund other insurance-related activities; and
- 512 i. Payments made for other contractual obligations to
513 support insurance-related activities.

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

- 515 1. The filing of a quarterly or annual statutory financial
516 statement by an insurer, which indicates that the insurer's
517 total surplus has declined by more than 15 percent from the
518 previous year's annual statement, or cumulatively for the
519 current year through the most recent quarterly financial
520 statement;
- 521 2. The notification by the office to the insurer of an
522 adjusted quarterly or annual financial statement that indicates

20102044e1

523 an event in subparagraph 1., unless the insurer challenges the
524 adjusted quarterly or annual financial statement under
525 subsection (9); or

526 3. The notification by the office to the insurer that the
527 office has, after a hearing, rejected the insurer's challenge if
528 an insurer challenges, under subsection (9), an adjusted
529 quarterly or annual financial statement that indicates an event
530 in subparagraph 1.

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

534 1. Identify the conditions that contribute to the surplus
535 action level event;

536 2. Contain proposals of corrective actions that the insurer
537 intends to take and that are reasonably expected to ultimately
538 result in the elimination of additional surplus losses;

539 3. Provide projections of the insurer's financial results
540 in the current year and at least the 2 succeeding years, both in
541 the absence of proposed corrective actions and giving effect to
542 the proposed corrective actions, including projections of
543 statutory operating income, net income, capital, and surplus.
544 The projections for both new and renewal business may include
545 separate projections for each major line of business and, if
546 separate projections are provided, must separately identify each
547 significant income, expense, and benefit component;

548 4. Identify the key assumptions affecting the insurer's
549 projections and the sensitivity of the projections to the
550 assumptions;

551 5. Identify the quality of, and problems associated with,

20102044e1

552 the insurer's business, including, but not limited to, its
553 assets, anticipated business growth and associated surplus
554 strain, extraordinary exposure to risk, mix of business, and any
555 use of reinsurance;

556 6. Include, at the request of the office, for a residential
557 property insurer that conducts any business with affiliates, a
558 columnar worksheet, which shall include all affiliates who have
559 received remuneration from the insurer and shall list the
560 following financial information from the immediately preceding
561 calendar year listed separately for each affiliate:

562 a. Total assets;

563 b. Total liabilities;

564 c. Surplus or shareholders equity;

565 d. Net income after taxes or distributions made solely for
566 satisfying tax liabilities;

567 e. Total amounts received or receivable from parents,
568 subsidiaries, and affiliates;

569 f. Total amounts paid or payable to any parent,
570 subsidiaries, and affiliates;

571 g. Dividends paid or payable to shareholders of common
572 stock;

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

576 i. Payments made for other contractual obligations to
577 support insurance-related activities.

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

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

20102044e1

581 1. Within 45 days after the surplus action level event; or
582 2. If the insurer challenges an adjusted quarterly or
583 annual financial statement under subsection (9), within 45 days
584 after notification to the insurer that the office has, after a
585 hearing, rejected the insurer's challenge.

586 (8) This section does not limit any existing authority of
587 the office.

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

590 624.4095 Premiums written; restrictions.—

591 (7) For purposes of this section, s. 624.407, and s.
592 624.408, with regard to capital and surplus requirements, gross
593 written premiums for federal multiple-peril crop insurance which
594 are ceded to the Federal Crop Insurance Corporation or
595 authorized reinsurers may not be included in the calculation of
596 an insurer's gross writing ratio. The liabilities for ceded
597 reinsurance premiums payable for federal multiple-peril crop
598 insurance ceded to the Federal Crop Insurance Corporation and
599 authorized reinsurers shall be netted against the asset for
600 amounts recoverable from reinsurers. Each insurer that writes
601 other insurance products together with federal multiple-peril
602 crop insurance shall disclose in the notes to its annual and
603 quarterly financial statements, or in a supplement to those
604 statements, the gross written premiums for federal multiple-
605 peril crop insurance.

606 Section 5. Paragraph (n) is added to subsection (2) of
607 section 626.221, Florida Statutes, to read:

608 626.221 Examination requirement; exemptions.—

609 (2) However, no such examination shall be necessary in any

20102044e1

610 of the following cases:

611 (n) An applicant for license as a customer representative
612 with respect to property insurance who has earned the
613 designation of Certified Insurance Representative (CIR) from the
614 National Association of Christian Catastrophe Insurance
615 Adjusters.

616 Section 6. Subsection (8) of section 624.424, Florida
617 Statutes, is amended to read:

618 624.424 Annual statement and other information.—

619 (8) (a) All authorized insurers must have conducted an
620 annual audit by an independent certified public accountant and
621 must file an audited financial report with the office on or
622 before June 1 for the preceding year ending December 31. The
623 office may require an insurer to file an audited financial
624 report earlier than June 1 upon 90 days' advance notice to the
625 insurer. The office may immediately suspend an insurer's
626 certificate of authority by order if an insurer's failure to
627 file required reports, financial statements, or information
628 required by this subsection or rule adopted pursuant thereto
629 creates a significant uncertainty as to the insurer's continuing
630 eligibility for a certificate of authority.

631 (b) Any authorized insurer otherwise subject to this
632 section having direct premiums written in this state of less
633 than \$1 million in any calendar year and fewer than 1,000
634 policyholders or certificateholders of directly written policies
635 nationwide at the end of such calendar year is exempt from this
636 section for such year unless the office makes a specific finding
637 that compliance is necessary in order for the office to carry
638 out its statutory responsibilities. However, any insurer having

20102044e1

639 assumed premiums pursuant to contracts or treaties or
640 reinsurance of \$1 million or more is not exempt. Any insurer
641 subject to an exemption must submit by March 1 following the
642 year to which the exemption applies an affidavit sworn to by a
643 responsible officer of the insurer specifying the amount of
644 direct premiums written in this state and number of
645 policyholders or certificateholders.

646 (c) The board of directors of an insurer shall hire the
647 certified public accountant that prepares the audit required by
648 this subsection and the board shall establish an audit committee
649 of three or more directors of the insurer or an affiliated
650 company. The audit committee shall be responsible for discussing
651 audit findings and interacting with the certified public
652 accountant with regard to her or his findings. The audit
653 committee shall be comprised solely of members who are free from
654 any relationship that, in the opinion of its board of directors,
655 would interfere with the exercise of independent judgment as a
656 committee member. The audit committee shall report to the board
657 any findings of adverse financial conditions or significant
658 deficiencies in internal controls that have been noted by the
659 accountant. The insurer may request the office to waive this
660 requirement of the audit committee membership based upon unusual
661 hardship to the insurer.

662 (d) An insurer may not use the same accountant or partner
663 of an accounting firm responsible for preparing the report
664 required by this subsection for more than 5 ~~7~~ consecutive years.
665 Following this period, the insurer may not use such accountant
666 or partner for a period of 5 ~~2~~ years, but may use another
667 accountant or partner of the same firm. An insurer may request

20102044e1

668 the office to waive this prohibition based upon an unusual
669 hardship to the insurer and a determination that the accountant
670 is exercising independent judgment that is not unduly influenced
671 by the insurer considering such factors as the number of
672 partners, expertise of the partners or the number of insurance
673 clients of the accounting firm; the premium volume of the
674 insurer; and the number of jurisdictions in which the insurer
675 transacts business.

676 (e) The commission shall adopt rules to implement this
677 subsection, which rules must be in substantial conformity with
678 the 1998 Model Rule Requiring Annual Audited Financial Reports
679 adopted by the National Association of Insurance Commissioners
680 or subsequent amendments, except where inconsistent with the
681 requirements of this subsection. Any exception to, waiver of, or
682 interpretation of accounting requirements of the commission must
683 be in writing and signed by an authorized representative of the
684 office. No insurer may raise as a defense in any action, any
685 exception to, waiver of, or interpretation of accounting
686 requirements, unless previously issued in writing by an
687 authorized representative of the office.

688 Section 7. Section 624.611, Florida Statutes, is created to
689 read:

690 624.611 Catastrophe contracts.—An insurer may submit to the
691 Office of Insurance Regulation, in advance of the hurricane
692 season, a plan to use financial contracts other than reinsurance
693 contracts to provide catastrophe loss funding. In such a plan,
694 the insurer must demonstrate that the coverage, together with
695 its reinsurance program, will provide adequate protection for
696 policyholders in the event of a natural catastrophe. If the

20102044e1

697 contract does not provide for coverage that is highly correlated
698 with the actual losses of the insurer, the insurer must
699 demonstrate its ability to cover the risk created by such lack
700 of correlation. If the office approves the plan, the insurer may
701 purchase the contracts and take credit for reinsurance for
702 amounts expected or due from other parties to the contracts in
703 accordance with any terms, conditions, or limitations
704 established by the office.

705 Section 8. Section 626.7452, Florida Statutes, is amended
706 to read:

707 626.7452 Managing general agents; examination authority.—
708 The acts of the managing general agent are considered to be the
709 acts of the insurer on whose behalf it is acting. A managing
710 general agent may be examined as if it were the insurer ~~except~~
711 ~~in the case where the managing general agent solely represents a~~
712 ~~single domestic insurer.~~

713 Section 9. Effective June 1, 2010, subsection (11) of
714 section 626.854, Florida Statutes, is amended to read:

715 626.854 "Public adjuster" defined; prohibitions.—The
716 Legislature finds that it is necessary for the protection of the
717 public to regulate public insurance adjusters and to prevent the
718 unauthorized practice of law.

719 (11) (a) If a public adjuster enters into a contract with an
720 insured or claimant to reopen a claim or to file a supplemental
721 claim that seeks additional payments for a claim that has been
722 previously paid in part or in full or settled by the insurer,
723 the public adjuster may not charge, agree to, or accept any
724 compensation, payment, commission, fee, or other thing of value
725 based on a previous settlement or previous claim payments by the

20102044e1

726 insurer for the same cause of loss. The charge, compensation,
727 payment, commission, fee, or other thing of value may be based
728 only on the claim payments or settlement obtained through the
729 work of the public adjuster after entering into the contract
730 with the insured or claimant. Compensation for a reopened or
731 supplemental claim may not exceed 20 percent of the reopened or
732 supplemental claim payment. The contracts described in this
733 paragraph are not subject to the limitations in paragraph (b).

734 (b) A public adjuster may not charge, agree to, or accept
735 any compensation, payment, commission, fee, or other thing of
736 value in excess of:

737 1. Ten percent of the amount of insurance claim payments by
738 the insurer for claims based on events that are the subject of a
739 declaration of a state of emergency by the Governor. This
740 provision applies to claims made during the period of 1 year
741 after the declaration of emergency. After the period of 1 year,
742 the limitations in subparagraph 2. apply.

743 2. Twenty percent of the amount of ~~all other~~ insurance
744 claim payments by the insurer for claims that are not based on
745 events that are the subject of a declaration of a state of
746 emergency by the Governor.

747
748 The provisions of subsections (5)-(13) apply only to residential
749 property insurance policies and condominium association policies
750 as defined in s. 718.111(11).

751 Section 10. Effective January 1, 2011, section 626.854,
752 Florida Statutes, as amended by this act, is amended to read:

753 626.854 "Public adjuster" defined; prohibitions.—The
754 Legislature finds that it is necessary for the protection of the

20102044e1

755 public to regulate public insurance adjusters and to prevent the
756 unauthorized practice of law.

757 (1) A "public adjuster" is any person, except a duly
758 licensed attorney at law as hereinafter in s. 626.860 provided,
759 who, for money, commission, or any other thing of value,
760 prepares, completes, or files an insurance claim form for an
761 insured or third-party claimant or who, for money, commission,
762 or any other thing of value, acts or aids in any manner on
763 behalf of an insured or third-party claimant in negotiating for
764 or effecting the settlement of a claim or claims for loss or
765 damage covered by an insurance contract or who advertises for
766 employment as an adjuster of such claims, and also includes any
767 person who, for money, commission, or any other thing of value,
768 solicits, investigates, or adjusts such claims on behalf of any
769 such public adjuster.

770 (2) This definition does not apply to:

771 (a) A licensed health care provider or employee thereof who
772 prepares or files a health insurance claim form on behalf of a
773 patient.

774 (b) A person who files a health claim on behalf of another
775 and does so without compensation.

776 (3) A public adjuster may not give legal advice. A public
777 adjuster may not act on behalf of or aid any person in
778 negotiating or settling a claim relating to bodily injury,
779 death, or noneconomic damages.

780 (4) For purposes of this section, the term "insured"
781 includes only the policyholder and any beneficiaries named or
782 similarly identified in the policy.

783 (5) A public adjuster may not directly or indirectly

20102044e1

784 through any other person or entity solicit an insured or
785 claimant by any means except on Monday through Saturday of each
786 week and only between the hours of 8 a.m. and 8 p.m. on those
787 days.

788 (6) A public adjuster may not directly or indirectly
789 through any other person or entity initiate contact or engage in
790 face-to-face or telephonic solicitation or enter into a contract
791 with any insured or claimant under an insurance policy until at
792 least 48 hours after the occurrence of an event that may be the
793 subject of a claim under the insurance policy unless contact is
794 initiated by the insured or claimant.

795 (7) An insured or claimant may cancel a public adjuster's
796 contract to adjust a claim without penalty or obligation within
797 3 business days after the date on which the contract is executed
798 or within 3 business days after the date on which the insured or
799 claimant has notified the insurer of the claim, by phone or in
800 writing, whichever is later. The public adjuster's contract
801 shall disclose to the insured or claimant his or her right to
802 cancel the contract and advise the insured or claimant that
803 notice of cancellation must be submitted in writing and sent by
804 certified mail, return receipt requested, or other form of
805 mailing which provides proof thereof, to the public adjuster at
806 the address specified in the contract; provided, during any
807 state of emergency as declared by the Governor and for a period
808 of 1 year after the date of loss, the insured or claimant shall
809 have 5 business days after the date on which the contract is
810 executed to cancel a public adjuster's contract.

811 (8) It is an unfair and deceptive insurance trade practice
812 pursuant to s. 626.9541 for a public adjuster or any other

20102044e1

813 person to circulate or disseminate any advertisement,
814 announcement, or statement containing any assertion,
815 representation, or statement with respect to the business of
816 insurance which is untrue, deceptive, or misleading.

817 (a) For purposes of this section, the following statements,
818 if made in any public adjuster's advertisement or solicitation,
819 shall be considered deceptive or misleading:

820 1. A statement or representation that invites an insured
821 policyholder to submit a claim when the policyholder does not
822 have covered damage to insured property.

823 2. Any statement or representation that invites an insured
824 policyholder to submit a claim by offering monetary or other
825 valuable inducement.

826 3. A statement or representation that invites an insured
827 policyholder to submit a claim by stating that there is "no
828 risk" to the policyholder by submitting such claim.

829 4. Any statement or representation, or use of a logo or
830 shield, that would imply or could be mistakenly construed that
831 the solicitation was issued or distributed by a governmental
832 agency or is sanctioned or endorsed by a governmental agency.

833 (b) For purposes of this paragraph, the term "written
834 advertisement" includes only newspapers, magazines, flyers, and
835 bulk mailers. The following disclaimer, which is not required to
836 be printed on standard size business cards, shall be added in
837 bold print and capital letters in typeface no smaller than the
838 typeface of the body of the text to all written advertisements
839 by any public adjuster:

840 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
841 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU

20102044e1

842 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
843 MAY DISREGARD THIS ADVERTISEMENT."

844 (9) A public adjuster, a public adjuster apprentice, or any
845 person or entity acting on behalf of a public adjuster or public
846 adjuster apprentice may not give or offer to give a monetary
847 loan or advance to a client or prospective client.

848 (10) A public adjuster, public adjuster apprentice, or any
849 individual or entity acting on behalf of a public adjuster or
850 public adjuster apprentice may not give or offer to give,
851 directly or indirectly, any article of merchandise having a
852 value in excess of \$25 to any individual for the purpose of
853 advertising or as an inducement to entering into a contract with
854 a public adjuster.

855 (11) (a) If a public adjuster enters into a contract with an
856 insured or claimant to reopen a claim or to file a supplemental
857 claim that seeks additional payments for a claim that has been
858 previously paid in part or in full or settled by the insurer,
859 the public adjuster may not charge, agree to, or accept any
860 compensation, payment, commission, fee, or other thing of value
861 based on a previous settlement or previous claim payments by the
862 insurer for the same cause of loss. The charge, compensation,
863 payment, commission, fee, or other thing of value may be based
864 only on the claim payments or settlement obtained through the
865 work of the public adjuster after entering into the contract
866 with the insured or claimant. Compensation for a reopened or
867 supplemental claim may not exceed 20 percent of the reopened or
868 supplemental claim payment. The contracts described in this
869 paragraph are not subject to the limitations in paragraph (b).

870 (b) A public adjuster may not charge, agree to, or accept

20102044e1

871 any compensation, payment, commission, fee, or other thing of
872 value in excess of:

873 1. Ten percent of the amount of insurance claim payments by
874 the insurer for claims based on events that are the subject of a
875 declaration of a state of emergency by the Governor. This
876 provision applies to claims made during the period of 1 year
877 after the declaration of emergency. After the period of 1 year,
878 the limitations in subparagraph 2. apply.

879 2. Twenty percent of the amount of insurance claim payments
880 by the insurer for claims that are not based on events that are
881 the subject of a declaration of a state of emergency by the
882 Governor.

883 (12) Each public adjuster shall provide to the claimant or
884 insured a written estimate of the loss to assist in the
885 submission of a proof of loss or any other claim for payment of
886 insurance proceeds. The public adjuster shall retain such
887 written estimate for at least 5 years and shall make such
888 estimate available to the claimant or insured and the department
889 upon request.

890 (13) A public adjuster, public adjuster apprentice, or any
891 person acting on behalf of a public adjuster or apprentice may
892 not accept referrals of business from any person with whom the
893 public adjuster conducts business if there is any form or manner
894 of agreement to compensate the person, whether directly or
895 indirectly, for referring business to the public adjuster. A
896 public adjuster may not compensate any person, except for
897 another public adjuster, whether directly or indirectly, for the
898 principal purpose of referring business to the public adjuster.

899 (14) A company employee adjuster, independent adjuster,

20102044e1

900 attorney, investigator, or other persons acting on behalf of an
901 insurer that needs access to an insured or claimant or to the
902 insured property that is the subject of a claim shall provide at
903 least 48 hours' notice to the insured or claimant, public
904 adjuster, or legal representative before scheduling a meeting
905 with the claimant or an onsite inspection of the insured
906 property. The insured or claimant may deny access to the
907 property if this notice has not been provided. The insured or
908 claimant may waive this 48-hour notice.

909 (15) (a) A public adjuster shall ensure prompt notice of any
910 property loss claim submitted to an insurer by or through a
911 public adjuster or on which a public adjuster represents the
912 insured at the time the claim or notice of loss is submitted to
913 the insurer. The public adjuster shall ensure that notice is
914 given to the insurer, the public adjuster's contract is provided
915 to the insurer, the property is made available for inspection of
916 the loss or damage by the insurer, and the insurer is given an
917 opportunity to interview the insured directly about the loss and
918 claim. The insurer shall be allowed to obtain necessary
919 information to investigate and respond to the claim. The insurer
920 may not exclude the public adjuster from its in-person meetings
921 with the insured. The insurer shall meet or communicate with the
922 public adjuster in an effort to reach agreement as to the scope
923 of the covered loss under the insurance policy. This section
924 does not impair the terms and conditions of the insurance policy
925 in effect at the time the claim is filed.

926 (b) A public adjuster may not restrict or prevent an
927 insurer, company employee adjuster, independent adjuster,
928 attorney, investigator, or other person acting on behalf of the

20102044e1

929 insurer from having reasonable access at reasonable times to any
930 insured or claimant or to the insured property that is the
931 subject of a claim.

932 (c) A public adjuster may not act or fail to reasonably act
933 in any manner that would obstruct or prevent an insurer or
934 insurer's adjuster from timely gaining access to conduct an
935 inspection of any part of the insured property for which there
936 is a claim for loss or damage to the property. The public
937 adjuster that represents the insured may be present for the
938 insurer's inspection of the property loss or damage but, if the
939 lack of availability of the public adjuster would otherwise
940 delay the access to or the inspection of the insured property by
941 the insurer, the public adjuster or the insured must allow the
942 insurer to gain access to the insured property to facilitate the
943 insurer's prompt inspection of the loss or damage without the
944 participation or presence of the public adjuster or insured.

945 (16) A licensed contractor under part I of chapter 489, or
946 a subcontractor, may not adjust a claim on behalf of an insured
947 without being licensed and compliant as a public adjuster under
948 this chapter. However, if asked by the residential property
949 owner who has suffered loss or damage covered by a property
950 insurance policy, or the insurer of such property, a licensed
951 contractor may discuss or explain a bid for construction or
952 repair of covered property if the contractor is doing so for
953 usual and customary fees applicable to the work to be performed
954 as stated in the contract between the contractor and the
955 insured.

956
957 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to

20102044e1

958 residential property insurance policies and condominium unit
959 owner association policies as defined in s. 718.111(11).

960 Section 11. Effective January 1, 2011, present subsections
961 (7) through (11) of section 626.8651, Florida Statutes, are
962 redesignated as subsections (8) through (12), respectively, and
963 a new subsection (7) is added to that section, to read:

964 626.8651 Public adjuster apprentice license;
965 qualifications.—

966 (7) A public adjuster apprentice shall complete a minimum
967 of 8 hours of continuing education specific to the practice of a
968 public adjuster, 2 hours of which must relate to ethics, in
969 order to qualify for licensure as a public adjuster. The
970 continuing education must be in subjects designed to inform the
971 licensee regarding the current insurance laws of this state for
972 the purpose of enabling him or her to engage in business as an
973 insurance adjuster fairly and without injury to the public and
974 to adjust all claims in accordance with the insurance contract
975 and the laws of this state.

976 Section 12. Effective January 1, 2011, section 626.8796,
977 Florida Statutes, is amended to read:

978 626.8796 Public adjuster contracts; fraud statement.—

979 (1) All contracts for public adjuster services must be in
980 writing and must prominently display the following statement on
981 the contract: "Pursuant to s. 817.234, Florida Statutes, any
982 person who, with the intent to injure, defraud, or deceive any
983 insurer or insured, prepares, presents, or causes to be
984 presented a proof of loss or estimate of cost or repair of
985 damaged property in support of a claim under an insurance policy
986 knowing that the proof of loss or estimate of claim or repairs

20102044e1

987 contains any false, incomplete, or misleading information
988 concerning any fact or thing material to the claim commits a
989 felony of the third degree, punishable as provided in s.
990 775.082, s. 775.083, or s. 775.084, Florida Statutes."

991 (2) A public adjuster contract must contain the following
992 information: full name, permanent business address, and license
993 number of the public adjuster, the full name of the public
994 adjusting firm, and the insured's full name and street address,
995 together with a brief description of the loss. The contract must
996 state the percentage of compensation for the public adjuster's
997 services, the type of claim, including an emergency claim,
998 nonemergency claim, or supplemental claim, the signatures of the
999 public adjuster and all named insureds, and the signature date.
1000 If all named insureds signatures are not available, the public
1001 adjuster shall submit an affidavit signed by the available named
1002 insureds attesting that they have authority to enter into the
1003 contract and to settle all claim issues on behalf of all named
1004 insureds. An unaltered copy of the executed contract must be
1005 remitted to the insurer within 30 days after execution.

1006 Section 13. Effective June 1, 2010, section 626.70132,
1007 Florida Statutes, is created to read:

1008 626.70132 Duty to file windstorm or hurricane claim.—A
1009 claim, supplemental claim, or reopened claim under an insurance
1010 policy that provides personal lines residential coverage, as
1011 defined in s. 627.4025, for loss or damage caused by the peril
1012 of windstorm or hurricane is barred unless notice of the claim,
1013 supplemental claim, or reopened claim was given to the insurer
1014 in accordance with the terms of the policy within 3 years after
1015 the hurricane first made landfall or the windstorm caused the

20102044e1

1016 covered damage. For purposes of this section, the term
1017 "supplemental claim" or "reopened claim" means any additional
1018 claim for recovery from the insurer for losses from the same
1019 hurricane or windstorm for which the insurer has previously
1020 adjusted pursuant to the initial claim. This section may not be
1021 interpreted to affect any applicable limitation on civil actions
1022 provided in s. 95.11 for claims, supplemental claims, or
1023 reopened claims timely filed under this section.

1024 Section 14. Section 626.9744, Florida Statutes, is amended
1025 to read:

1026 626.9744 Claim settlement practices relating to property
1027 insurance.—Unless otherwise provided by the policy, if ~~when~~ a
1028 homeowner's insurance policy provides for the adjustment and
1029 settlement of first-party losses based on repair or replacement
1030 cost, the following requirements apply:

1031 (1) When a loss requires repair or replacement of an item
1032 or part, any physical damage incurred in making such repair or
1033 replacement which is covered and not otherwise excluded by the
1034 policy shall be included in the loss to the extent of any
1035 applicable limits. The insured may not be required to pay for
1036 betterment required by ordinance or code except for the
1037 applicable deductible, unless specifically excluded or limited
1038 by the policy.

1039 (2) When a loss requires replacement of items and the
1040 replaced items do not match in quality, color, or size, the
1041 insurer shall make reasonable repairs or replacement of items in
1042 adjoining areas. In determining the extent of the repairs or
1043 replacement of items in adjoining areas, the insurer may
1044 consider the cost of repairing or replacing the undamaged

20102044e1

1045 portions of the property, the degree of uniformity that can be
1046 achieved without such cost, the remaining useful life of the
1047 undamaged portion, and other relevant factors.

1048 (3) In determining repair or replacement cost estimates,
1049 the insurer shall use only the following:

1050 (a) The retail cost using quotations obtained by the
1051 insurer or insured from licensed contractors or retail
1052 establishments in the local market area; or

1053 (b) Computer software or other databases that produce
1054 estimates based on market prices for products, materials, and
1055 labor in the local geographic region, if the pertinent portions
1056 of the valuation documents generated by a database are provided
1057 by the insurer to the first-party insured upon request.

1058 (4)~~(3)~~ This section does ~~shall not be construed to~~ make the
1059 insurer a warrantor of the repairs made pursuant to this
1060 section.

1061 (5)~~(4)~~ ~~Nothing in~~ This section does not ~~shall be construed~~
1062 ~~to~~ authorize or preclude enforcement of policy provisions
1063 relating to settlement disputes.

1064 Section 15. Section 627.0613, Florida Statutes, is amended
1065 to read:

1066 627.0613 Consumer advocate.—The Chief Financial Officer
1067 must appoint a consumer advocate who must represent the general
1068 public of the state before the department and the office. The
1069 consumer advocate must report directly to the Chief Financial
1070 Officer, but is not otherwise under the authority of the
1071 department or of any employee of the department. The consumer
1072 advocate has such powers as are necessary to carry out the
1073 duties of the office of consumer advocate, including, but not

20102044e1

1074 limited to, the powers to:

1075 (1) Recommend to the department or office, by petition, the
1076 commencement of any proceeding or action; appear in any
1077 proceeding or action before the department or office; or appear
1078 in any proceeding before the Division of Administrative Hearings
1079 relating to subject matter under the jurisdiction of the
1080 department or office.

1081 (2) Have access to and use of all files, records, and data
1082 of the department or office.

1083 (3) Examine rate and form filings submitted to the office,
1084 hire consultants as necessary to aid in the review process, and
1085 recommend to the department or office any position deemed by the
1086 consumer advocate to be in the public interest.

1087 (4) By June 1, 2012, and each June 1 thereafter, prepare an
1088 annual report card for each authorized personal residential
1089 property insurer, on a form and using a letter-grade scale
1090 developed by the commission by rule, which objectively grades
1091 each insurer based on the following factors:

1092 (a) The number and nature of valid consumer complaints, as
1093 a market share ratio, received by the department against the
1094 insurer.

1095 (b) The disposition of all valid consumer complaints
1096 received by the department.

1097 (c) The average length of time for payment of claims by the
1098 insurer.

1099 (d) Any other measurable and objective factors the
1100 commission identifies as capable of assisting policyholders in
1101 making informed choices about homeowner's insurance.

1102

20102044e1

1103 For purposes of this subsection, the term "valid consumer
1104 complaint" means a written communication, or oral communication
1105 that is subsequently converted to a written form, from a
1106 consumer that expresses dissatisfaction involving a personal
1107 residential insurance policy with a specific personal
1108 residential property insurer. However, a valid complaint does
1109 not arise if in the disposition thereof by the department the
1110 insurer or agent position is upheld, the policy provision is
1111 upheld, the coverage is explained, additional information is
1112 provided, the complaint is withdrawn, the complaint is referred
1113 outside the department, or if an inquiry has missing or
1114 insufficient information, is not within the jurisdiction of the
1115 department or requests mediation of a claim that is not eligible
1116 for mediation.

1117 (5) Prepare an annual budget for presentation to the
1118 Legislature by the department, which budget must be adequate to
1119 carry out the duties of the office of consumer advocate.

1120 Section 16. Section 627.062, Florida Statutes, is amended
1121 to read:

1122 627.062 Rate standards.—

1123 (1) The rates for all classes of insurance to which the
1124 provisions of this part are applicable shall not be excessive,
1125 inadequate, or unfairly discriminatory.

1126 (2) As to all such classes of insurance:

1127 (a) Insurers or rating organizations shall establish and
1128 use rates, rating schedules, or rating manuals to allow the
1129 insurer a reasonable rate of return on such classes of insurance
1130 written in this state. A copy of rates, rating schedules, rating
1131 manuals, premium credits or discount schedules, and surcharge

20102044e1

1132 schedules, and changes thereto, shall be filed with the office
1133 under one of the following procedures except as provided in
1134 subparagraph 3.:

1135 1. If the filing is made at least 90 days before the
1136 proposed effective date and the filing is not implemented during
1137 the office's review of the filing and any proceeding and
1138 judicial review, then such filing shall be considered a "file
1139 and use" filing. In such case, the office shall finalize its
1140 review by issuance of an approval ~~a notice of intent to approve~~
1141 or a notice of intent to disapprove within 90 days after receipt
1142 of the filing. The approval ~~notice of intent to approve~~ and the
1143 notice of intent to disapprove constitute agency action for
1144 purposes of the Administrative Procedure Act. Requests for
1145 supporting information, requests for mathematical or mechanical
1146 corrections, or notification to the insurer by the office of its
1147 preliminary findings shall not toll the 90-day period during any
1148 such proceedings and subsequent judicial review. The rate shall
1149 be deemed approved if the office does not issue an approval ~~a~~
1150 ~~notice of intent to approve~~ or a notice of intent to disapprove
1151 within 90 days after receipt of the filing.

1152 2. If the filing is not made in accordance with the
1153 provisions of subparagraph 1., such filing shall be made as soon
1154 as practicable, but no later than 30 days after the effective
1155 date, and shall be considered a "use and file" filing. An
1156 insurer making a "use and file" filing is potentially subject to
1157 an order by the office to return to policyholders portions of
1158 rates found to be excessive, as provided in paragraph (h).

1159 3. For all property insurance filings made or submitted
1160 after January 25, 2007, but before December 31, 2012 ~~2010~~, an

20102044e1

1161 insurer seeking a rate that is greater than the rate most
1162 recently approved by the office shall make a "file and use"
1163 filing. For purposes of this subparagraph, motor vehicle
1164 collision and comprehensive coverages are not considered to be
1165 property coverages.

1166 (b) Upon receiving a rate filing, the office shall review
1167 the rate filing to determine if a rate is excessive, inadequate,
1168 or unfairly discriminatory. In making that determination, the
1169 office shall, in accordance with generally accepted and
1170 reasonable actuarial techniques, consider the following factors:

1171 1. Past and prospective loss experience within and without
1172 this state.

1173 2. Past and prospective expenses.

1174 3. The degree of competition among insurers for the risk
1175 insured.

1176 4. Investment income reasonably expected by the insurer,
1177 consistent with the insurer's investment practices, from
1178 investable premiums anticipated in the filing, plus any other
1179 expected income from currently invested assets representing the
1180 amount expected on unearned premium reserves and loss reserves.
1181 The commission may adopt rules using reasonable techniques of
1182 actuarial science and economics to specify the manner in which
1183 insurers shall calculate investment income attributable to such
1184 classes of insurance written in this state and the manner in
1185 which such investment income shall be used to calculate
1186 insurance rates. Such manner shall contemplate allowances for an
1187 underwriting profit factor and full consideration of investment
1188 income which produce a reasonable rate of return; however,
1189 investment income from invested surplus may not be considered.

20102044e1

- 1190 5. The reasonableness of the judgment reflected in the
1191 filing.
- 1192 6. Dividends, savings, or unabsorbed premium deposits
1193 allowed or returned to Florida policyholders, members, or
1194 subscribers.
- 1195 7. The adequacy of loss reserves.
- 1196 8. The cost of reinsurance. The office shall not disapprove
1197 a rate as excessive solely due to the insurer having obtained
1198 catastrophic reinsurance to cover the insurer's estimated 250-
1199 year probable maximum loss or any lower level of loss.
- 1200 9. Trend factors, including trends in actual losses per
1201 insured unit for the insurer making the filing.
- 1202 10. Conflagration and catastrophe hazards, if applicable.
- 1203 11. Projected hurricane losses, if applicable, which must
1204 be estimated using a model or method found to be acceptable or
1205 reliable by the Florida Commission on Hurricane Loss Projection
1206 Methodology, and as further provided in s. 627.0628.
- 1207 12. A reasonable margin for underwriting profit and
1208 contingencies.
- 1209 13. The cost of medical services, if applicable.
- 1210 14. Other relevant factors which impact upon the frequency
1211 or severity of claims or upon expenses.
- 1212 (c) In the case of fire insurance rates, consideration
1213 shall be given to the availability of water supplies and the
1214 experience of the fire insurance business during a period of not
1215 less than the most recent 5-year period for which such
1216 experience is available.
- 1217 (d) If conflagration or catastrophe hazards are given
1218 consideration by an insurer in its rates or rating plan,

20102044e1

1219 including surcharges and discounts, the insurer shall establish
1220 a reserve for that portion of the premium allocated to such
1221 hazard and shall maintain the premium in a catastrophe reserve.
1222 Any removal of such premiums from the reserve for purposes other
1223 than paying claims associated with a catastrophe or purchasing
1224 reinsurance for catastrophes shall be subject to approval of the
1225 office. Any ceding commission received by an insurer purchasing
1226 reinsurance for catastrophes shall be placed in the catastrophe
1227 reserve.

1228 (e) After consideration of the rate factors provided in
1229 paragraphs (b), (c), and (d), a rate may be found by the office
1230 to be excessive, inadequate, or unfairly discriminatory based
1231 upon the following standards:

1232 1. Rates shall be deemed excessive if they are likely to
1233 produce a profit from Florida business that is unreasonably high
1234 in relation to the risk involved in the class of business or if
1235 expenses are unreasonably high in relation to services rendered.

1236 2. Rates shall be deemed excessive if, among other things,
1237 the rate structure established by a stock insurance company
1238 provides for replenishment of surpluses from premiums, when the
1239 replenishment is attributable to investment losses.

1240 3. Rates shall be deemed inadequate if they are clearly
1241 insufficient, together with the investment income attributable
1242 to them, to sustain projected losses and expenses in the class
1243 of business to which they apply.

1244 4. A rating plan, including discounts, credits, or
1245 surcharges, shall be deemed unfairly discriminatory if it fails
1246 to clearly and equitably reflect consideration of the
1247 policyholder's participation in a risk management program

20102044e1

1248 adopted pursuant to s. 627.0625.

1249 5. A rate shall be deemed inadequate as to the premium
1250 charged to a risk or group of risks if discounts or credits are
1251 allowed which exceed a reasonable reflection of expense savings
1252 and reasonably expected loss experience from the risk or group
1253 of risks.

1254 6. A rate shall be deemed unfairly discriminatory as to a
1255 risk or group of risks if the application of premium discounts,
1256 credits, or surcharges among such risks does not bear a
1257 reasonable relationship to the expected loss and expense
1258 experience among the various risks.

1259 (f) In reviewing a rate filing, the office may require the
1260 insurer to provide at the insurer's expense all information
1261 necessary to evaluate the condition of the company and the
1262 reasonableness of the filing according to the criteria
1263 enumerated in this section.

1264 (g) The office may at any time review a rate, rating
1265 schedule, rating manual, or rate change; the pertinent records
1266 of the insurer; and market conditions. If the office finds on a
1267 preliminary basis that a rate may be excessive, inadequate, or
1268 unfairly discriminatory, the office shall initiate proceedings
1269 to disapprove the rate and shall so notify the insurer. However,
1270 the office may not disapprove as excessive any rate for which it
1271 has given final approval or which has been deemed approved for a
1272 period of 1 year after the effective date of the filing unless
1273 the office finds that a material misrepresentation or material
1274 error was made by the insurer or was contained in the filing.
1275 Upon being so notified, the insurer or rating organization
1276 shall, within 60 days, file with the office all information

20102044e1

1277 which, in the belief of the insurer or organization, proves the
1278 reasonableness, adequacy, and fairness of the rate or rate
1279 change. The office shall issue a notice of intent to approve or
1280 a notice of intent to disapprove pursuant to the procedures of
1281 paragraph (a) within 90 days after receipt of the insurer's
1282 initial response. In such instances and in any administrative
1283 proceeding relating to the legality of the rate, the insurer or
1284 rating organization shall carry the burden of proof by a
1285 preponderance of the evidence to show that the rate is not
1286 excessive, inadequate, or unfairly discriminatory. After the
1287 office notifies an insurer that a rate may be excessive,
1288 inadequate, or unfairly discriminatory, unless the office
1289 withdraws the notification, the insurer shall not alter the rate
1290 except to conform with the office's notice until the earlier of
1291 120 days after the date the notification was provided or 180
1292 days after the date of the implementation of the rate. The
1293 office may, subject to chapter 120, disapprove without the 60-
1294 day notification any rate increase filed by an insurer within
1295 the prohibited time period or during the time that the legality
1296 of the increased rate is being contested.

1297 (h) If ~~In the event~~ the office finds that a rate or rate
1298 change is excessive, inadequate, or unfairly discriminatory, the
1299 office shall issue an order of disapproval specifying that a new
1300 rate or rate schedule which responds to the findings of the
1301 office be filed by the insurer. The office shall further order,
1302 for any "use and file" filing made in accordance with
1303 subparagraph (a)2., that premiums charged each policyholder
1304 constituting the portion of the rate above that which was
1305 actuarially justified be returned to such policyholder in the

20102044e1

1306 form of a credit or refund. If the office finds that an
1307 insurer's rate or rate change is inadequate, the new rate or
1308 rate schedule filed with the office in response to such a
1309 finding shall be applicable only to new or renewal business of
1310 the insurer written on or after the effective date of the
1311 responsive filing.

1312 (i)1. Except as otherwise specifically provided in this
1313 chapter, the office shall not, directly or indirectly, prohibit
1314 any insurer, including any residual market plan or joint
1315 underwriting association, from paying acquisition costs based on
1316 the full amount of premium, as defined in s. 627.403, applicable
1317 to any policy, or directly or indirectly prohibit any such
1318 insurer from including the full amount of acquisition costs in a
1319 rate filing.

1320 2. The office shall not, directly or indirectly, impede,
1321 abridge, or otherwise compromise an insurer's right to acquire
1322 policyholders, advertise, or appoint agents, including the
1323 calculation, manner, or amount of such agent commissions, if
1324 any.

1325 (j) With respect to residential property insurance rate
1326 filings, the rate filing must account for mitigation measures
1327 undertaken by policyholders to reduce hurricane losses.

1328 (k)1.a. An insurer may make a separate filing limited
1329 solely to an adjustment of its rates for reinsurance, the cost
1330 of financing products used as a replacement for reinsurance, ~~or~~
1331 financing costs incurred in the purchase of reinsurance, and an
1332 inflation trend factor published by the office pursuant to
1333 subparagraph 4. If an insurer chooses to make a separate filing
1334 under this paragraph, it must implement the rate in such a

20102044e1

1335 manner that all rate increases implemented as a result of the
1336 separate filing, together with rate increases associated with
1337 any other rate filing, do ~~or financing products to replace or~~
1338 finance the payment of the amount covered by the Temporary
1339 Increase in Coverage Limits (TICL) portion of the Florida
1340 Hurricane Catastrophe Fund including replacement reinsurance for
1341 the TICL reductions made pursuant to s. 215.555(17) (c); the
1342 actual cost paid due to the application of the TICL premium
1343 factor pursuant to s. 215.555(17) (f); and the actual cost paid
1344 due to the application of the cash build-up factor pursuant to
1345 s. 215.555(5) (b) if the insurer:

1346 a. Elects to purchase financing products such as a
1347 liquidity instrument or line of credit, in which case the cost
1348 included in the filing for the liquidity instrument or line of
1349 credit may not result in a premium increase exceeding 3 percent
1350 for any individual policyholder. All costs contained in the
1351 filing may not result in an overall premium increase of more
1352 than 10 percent for any individual policyholder, excluding
1353 coverage changes and surcharges, within the same policy year.

1354 b. An insurer that makes a filing relating to reinsurance
1355 or financing products must include the following ~~Includes~~ in the
1356 filing: a copy of all of its reinsurance, liquidity instrument,
1357 or line of credit contracts; proof of the billing or payment for
1358 the contracts; and the calculation upon which the proposed rate
1359 change is based demonstrating ~~demonstrates~~ that the costs meet
1360 the criteria of this section and are not loaded for expenses or
1361 profit for the insurer making the filing.

1362 c. Any filing made pursuant this paragraph may include only
1363 the ~~Includes no other~~ changes to its rates which are expressly

20102044e1

1364 authorized by this paragraph in the filing.

1365 ~~d. Has not implemented a rate increase within the 6 months~~
1366 ~~immediately preceding the filing.~~

1367 ~~e. Does not file for a rate increase under any other~~
1368 ~~paragraph within 6 months after making a filing under this~~
1369 ~~paragraph.~~

1370 ~~d.f.~~ An insurer that purchases reinsurance or financing
1371 products from an affiliated company may make a filing pursuant
1372 to in compliance with this paragraph ~~does so~~ only if the costs
1373 for such reinsurance or financing products are charged at or
1374 below charges made for comparable coverage by nonaffiliated
1375 reinsurers or financial entities making such coverage or
1376 financing products available in this state.

1377 e. An insurer that makes a filing as the result of a change
1378 in an inflation trend factor published by the office need
1379 support that filing only with rates and rating examples and an
1380 explanation demonstrating the insurer's eligibility to adopt the
1381 inflation trend factor.

1382 2. An insurer may ~~only~~ make only one filing in any 12-month
1383 period under this paragraph.

1384 3. An insurer that elects to implement a rate change under
1385 this paragraph must file its rate filing with the office at
1386 least 45 days before the effective date of the rate change.
1387 After an insurer submits a complete filing that meets all of the
1388 requirements of this paragraph, the office has 45 days after the
1389 date of the filing to review the rate filing and determine if
1390 the rate is excessive, inadequate, or unfairly discriminatory.

1391 4. Beginning January 1, 2011, the office shall publish an
1392 annual informational memorandum to establish one or more

20102044e1

1393 inflation trend factors that may be stated separately for
1394 personal and residential property and for building coverage,
1395 contents coverage, additional living expense coverage, and
1396 liability coverage, if applicable. These factors shall represent
1397 an estimate of cost increases or decreases based upon publicly
1398 available relevant data and economic indices that are identified
1399 in the memorandum. Such factors are exempt from the rulemaking
1400 requirements of chapter 120, and insurers are not required to
1401 adopt the factors. The office may publish factors for any line
1402 of insurance, but is required to publish a factor only for
1403 residential property insurance.

1404
1405 The provisions of this subsection do ~~shall~~ not apply to workers'
1406 compensation and employer's liability insurance and to motor
1407 vehicle insurance.

1408 (3) (a) For individual risks that are not rated in
1409 accordance with the insurer's rates, rating schedules, rating
1410 manuals, and underwriting rules filed with the office and which
1411 have been submitted to the insurer for individual rating, the
1412 insurer must maintain documentation on each risk subject to
1413 individual risk rating. The documentation must identify the
1414 named insured and specify the characteristics and classification
1415 of the risk supporting the reason for the risk being
1416 individually risk rated, including any modifications to existing
1417 approved forms to be used on the risk. The insurer must maintain
1418 these records for a period of at least 5 years after the
1419 effective date of the policy.

1420 (b) Individual risk rates and modifications to existing
1421 approved forms are not subject to this part or part II, except

20102044e1

1422 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
1423 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
1424 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
1425 627.4265, 627.427, and 627.428, but are subject to all other
1426 applicable provisions of this code and rules adopted thereunder.

1427 (c) This subsection does not apply to private passenger
1428 motor vehicle insurance.

1429 (4) (a) Contingent on specific appropriations made to
1430 implement this subsection, in order to enhance the ability of
1431 consumers to compare premiums and to increase the accuracy and
1432 usefulness of rate and product comparison information for
1433 homeowners' insurance, the office shall develop or contract with
1434 a private entity to develop a comprehensive program for
1435 providing the consumer with all available information necessary
1436 to make an informed purchase of the insurance product that best
1437 serves the needs of the individual.

1438 (b) In developing the comprehensive program, the office
1439 shall rely as much as is practical on information that is
1440 currently available and shall consider:

1441 1. The most efficient means for developing, hosting, and
1442 operating a separate website that consolidates all consumer
1443 information for price comparisons, filed complaints, financial
1444 strength, underwriting, and receivership information and other
1445 data useful to consumers;

1446 2. Whether all admitted insurers should be required to
1447 submit additional information to populate the composite website
1448 and how often such submissions must be made;

1449 3. Whether all admitted insurers should be required to
1450 provide links from the website into each individual insurer's

20102044e1

1451 website in order to enable consumers to access product rate
1452 information and apply for quotations;

1453 4. Developing a plan to publicize the existence,
1454 availability, and value of the website; and

1455 5. Any other provision that would make relevant homeowners'
1456 insurance information more readily available so that consumers
1457 can make informed product comparisons and purchasing decisions.

1458 (c) Before establishing the program or website, the office
1459 shall conduct a cost-benefit analysis to determine the most
1460 effective approach for establishing and operating the program
1461 and website. Based on the results of the analysis, the office
1462 shall submit a proposed implementation plan for review and
1463 approval by the Financial Services Commission. The
1464 implementation plan shall include an estimated timeline for
1465 establishing the program and website; a description of the data
1466 and functionality to be provided by the site, a strategy for
1467 publicizing the website to consumers; a recommended approach for
1468 developing, hosting, and operating the website; and an estimate
1469 of all major nonrecurring and recurring costs required to
1470 establish and operate the website. Upon approval of the plan,
1471 the office may initiate the establishment of the program.

1472 (5)-(4) The establishment of any rate, rating
1473 classification, rating plan or schedule, or variation thereof in
1474 violation of part IX of chapter 626 is also in violation of this
1475 section. In order to enhance the ability of consumers to compare
1476 premiums and to increase the accuracy and usefulness of rate-
1477 comparison information provided by the office to the public, the
1478 office shall develop a proposed standard rating territory plan
1479 to be used by all authorized property and casualty insurers for

20102044e1

1480 ~~residential property insurance. In adopting the proposed plan,~~
1481 ~~the office may consider geographical characteristics relevant to~~
1482 ~~risk, county lines, major roadways, existing rating territories~~
1483 ~~used by a significant segment of the market, and other relevant~~
1484 ~~factors. Such plan shall be submitted to the President of the~~
1485 ~~Senate and the Speaker of the House of Representatives by~~
1486 ~~January 15, 2006. The plan may not be implemented unless~~
1487 ~~authorized by further act of the Legislature.~~

1488 (6)~~(5)~~ With respect to a rate filing involving coverage of
1489 the type for which the insurer is required to pay a
1490 reimbursement premium to the Florida Hurricane Catastrophe Fund,
1491 the insurer may fully recoup in its property insurance premiums
1492 any reimbursement premiums paid to the Florida Hurricane
1493 Catastrophe Fund, together with reasonable costs of other
1494 reinsurance, but except as otherwise provided in this section,
1495 may not recoup reinsurance costs that duplicate coverage
1496 provided by the Florida Hurricane Catastrophe Fund. An insurer
1497 may not recoup more than 1 year of reimbursement premium at a
1498 time. Any under-recoupment from the prior year may be added to
1499 the following year's reimbursement premium, and any over-
1500 recoupment shall be subtracted from the following year's
1501 reimbursement premium.

1502 (7)~~(6)~~ (a) If an insurer requests an administrative hearing
1503 pursuant to s. 120.57 related to a rate filing under this
1504 section, the director of the Division of Administrative Hearings
1505 shall expedite the hearing and assign an administrative law
1506 judge who shall commence the hearing within 30 days after the
1507 receipt of the formal request and shall enter a recommended
1508 order within 30 days after the hearing or within 30 days after

20102044e1

1509 receipt of the hearing transcript by the administrative law
1510 judge, whichever is later. Each party shall be allowed 10 days
1511 in which to submit written exceptions to the recommended order.
1512 The office shall enter a final order within 30 days after the
1513 entry of the recommended order. The provisions of this paragraph
1514 may be waived upon stipulation of all parties.

1515 (b) Upon entry of a final order, the insurer may request a
1516 expedited appellate review pursuant to the Florida Rules of
1517 Appellate Procedure. It is the intent of the Legislature that
1518 the First District Court of Appeal grant an insurer's request
1519 for an expedited appellate review.

1520 (8)~~(7)~~(a) The provisions of this subsection apply only with
1521 respect to rates for medical malpractice insurance and shall
1522 control to the extent of any conflict with other provisions of
1523 this section.

1524 (b) Any portion of a judgment entered or settlement paid as
1525 a result of a statutory or common-law bad faith action and any
1526 portion of a judgment entered which awards punitive damages
1527 against an insurer may not be included in the insurer's rate
1528 base, and shall not be used to justify a rate or rate change.
1529 Any common-law bad faith action identified as such, any portion
1530 of a settlement entered as a result of a statutory or common-law
1531 action, or any portion of a settlement wherein an insurer agrees
1532 to pay specific punitive damages may not be used to justify a
1533 rate or rate change. The portion of the taxable costs and
1534 attorney's fees which is identified as being related to the bad
1535 faith and punitive damages in these judgments and settlements
1536 may not be included in the insurer's rate base and may not be
1537 used ~~utilized~~ to justify a rate or rate change.

20102044e1

1538 (c) Upon reviewing a rate filing and determining whether
1539 the rate is excessive, inadequate, or unfairly discriminatory,
1540 the office shall consider, in accordance with generally accepted
1541 and reasonable actuarial techniques, past and present
1542 prospective loss experience, either using loss experience solely
1543 for this state or giving greater credibility to this state's
1544 loss data after applying actuarially sound methods of assigning
1545 credibility to such data.

1546 (d) Rates shall be deemed excessive if, among other
1547 standards established by this section, the rate structure
1548 provides for replenishment of reserves or surpluses from
1549 premiums when the replenishment is attributable to investment
1550 losses.

1551 (e) The insurer must apply a discount or surcharge based on
1552 the health care provider's loss experience or shall establish an
1553 alternative method giving due consideration to the provider's
1554 loss experience. The insurer must include in the filing a copy
1555 of the surcharge or discount schedule or a description of the
1556 alternative method used, and must provide a copy of such
1557 schedule or description, as approved by the office, to
1558 policyholders at the time of renewal and to prospective
1559 policyholders at the time of application for coverage.

1560 (f) Each medical malpractice insurer must make a rate
1561 filing under this section, sworn to by at least two executive
1562 officers of the insurer, at least once each calendar year.

1563 ~~(8)(a)1. No later than 60 days after the effective date of~~
1564 ~~medical malpractice legislation enacted during the 2003 Special~~
1565 ~~Session D of the Florida Legislature, the office shall calculate~~
1566 ~~a presumed factor that reflects the impact that the changes~~

20102044e1

1567 ~~contained in such legislation will have on rates for medical~~
1568 ~~malpractice insurance and shall issue a notice informing all~~
1569 ~~insurers writing medical malpractice coverage of such presumed~~
1570 ~~factor. In determining the presumed factor, the office shall use~~
1571 ~~generally accepted actuarial techniques and standards provided~~
1572 ~~in this section in determining the expected impact on losses,~~
1573 ~~expenses, and investment income of the insurer. To the extent~~
1574 ~~that the operation of a provision of medical malpractice~~
1575 ~~legislation enacted during the 2003 Special Session D of the~~
1576 ~~Florida Legislature is stayed pending a constitutional~~
1577 ~~challenge, the impact of that provision shall not be included in~~
1578 ~~the calculation of a presumed factor under this subparagraph.~~

1579 ~~2. No later than 60 days after the office issues its notice~~
1580 ~~of the presumed rate change factor under subparagraph 1., each~~
1581 ~~insurer writing medical malpractice coverage in this state shall~~
1582 ~~submit to the office a rate filing for medical malpractice~~
1583 ~~insurance, which will take effect no later than January 1, 2004,~~
1584 ~~and apply retroactively to policies issued or renewed on or~~
1585 ~~after the effective date of medical malpractice legislation~~
1586 ~~enacted during the 2003 Special Session D of the Florida~~
1587 ~~Legislature. Except as authorized under paragraph (b), the~~
1588 ~~filing shall reflect an overall rate reduction at least as great~~
1589 ~~as the presumed factor determined under subparagraph 1. With~~
1590 ~~respect to policies issued on or after the effective date of~~
1591 ~~such legislation and prior to the effective date of the rate~~
1592 ~~filing required by this subsection, the office shall order the~~
1593 ~~insurer to make a refund of the amount that was charged in~~
1594 ~~excess of the rate that is approved.~~

1595 ~~(b) Any insurer or rating organization that contends that~~

20102044e1

1596 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1597 ~~or unfairly discriminatory shall separately state in its filing~~
1598 ~~the rate it contends is appropriate and shall state with~~
1599 ~~specificity the factors or data that it contends should be~~
1600 ~~considered in order to produce such appropriate rate. The~~
1601 ~~insurer or rating organization shall be permitted to use all of~~
1602 ~~the generally accepted actuarial techniques provided in this~~
1603 ~~section in making any filing pursuant to this subsection. The~~
1604 ~~office shall review each such exception and approve or~~
1605 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1606 ~~actuarially justify any deviations from the rates required to be~~
1607 ~~filed under paragraph (a). The insurer making a filing under~~
1608 ~~this paragraph shall include in the filing the expected impact~~
1609 ~~of medical malpractice legislation enacted during the 2003~~
1610 ~~Special Session D of the Florida Legislature on losses,~~
1611 ~~expenses, and rates.~~

1612 ~~(c) If any provision of medical malpractice legislation~~
1613 ~~enacted during the 2003 Special Session D of the Florida~~
1614 ~~Legislature is held invalid by a court of competent~~
1615 ~~jurisdiction, the office shall permit an adjustment of all~~
1616 ~~medical malpractice rates filed under this section to reflect~~
1617 ~~the impact of such holding on such rates so as to ensure that~~
1618 ~~the rates are not excessive, inadequate, or unfairly~~
1619 ~~discriminatory.~~

1620 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1621 ~~malpractice insurance shall remain in effect until the effective~~
1622 ~~date of a new rate filing approved under this subsection.~~

1623 ~~(e) The calculation and notice by the office of the~~
1624 ~~presumed factor pursuant to paragraph (a) is not an order or~~

20102044e1

1625 ~~rule that is subject to chapter 120. If the office enters into a~~
1626 ~~contract with an independent consultant to assist the office in~~
1627 ~~calculating the presumed factor, such contract shall not be~~
1628 ~~subject to the competitive solicitation requirements of s.~~
1629 ~~287.057.~~

1630 (9) (a) The chief executive officer or chief financial
1631 officer of a property insurer and the chief actuary of a
1632 property insurer must certify under oath and subject to the
1633 penalty of perjury, on a form approved by the commission, the
1634 following information, which must accompany a rate filing:

1635 1. The signing officer and actuary have reviewed the rate
1636 filing;

1637 2. Based on the signing officer's and actuary's knowledge,
1638 the rate filing does not contain any untrue statement of a
1639 material fact or omit to state a material fact necessary in
1640 order to make the statements made, in light of the circumstances
1641 under which such statements were made, not misleading;

1642 3. Based on the signing officer's and actuary's knowledge,
1643 the information and other factors described in paragraph (2) (b),
1644 including, but not limited to, investment income, fairly present
1645 in all material respects the basis of the rate filing for the
1646 periods presented in the filing; and

1647 4. Based on the signing officer's and actuary's knowledge,
1648 the rate filing reflects all premium savings that are reasonably
1649 expected to result from legislative enactments and are in
1650 accordance with generally accepted and reasonable actuarial
1651 techniques.

1652 (b) A signing officer or actuary knowingly making a false
1653 certification under this subsection commits a violation of s.

20102044e1

1654 626.9541(1) (e) and is subject to the penalties under s.
1655 626.9521.

1656 (c) Failure to provide such certification by the officer
1657 and actuary shall result in the rate filing being disapproved
1658 without prejudice to be refiled.

1659 (d) A certification made pursuant to paragraph (a) is not
1660 rendered false if, after making the subject rate filing, the
1661 insurer provides the office with additional or supplementary
1662 information pursuant to a formal or informal request from the
1663 office or for any other reason.

1664 (e)~~(d)~~ The commission may adopt rules and forms pursuant to
1665 ss. 120.536(1) and 120.54 to administer this subsection.

1666 (10) The burden is on the office to establish that rates
1667 are excessive for personal lines residential coverage with a
1668 dwelling replacement cost of \$1 million or more or for a single
1669 condominium unit with a combined dwelling and contents
1670 replacement cost of \$1 million or more. Upon request of the
1671 office, the insurer shall provide to the office such loss and
1672 expense information as the office reasonably needs to meet this
1673 burden.

1674 (11) Any interest paid pursuant to s. 627.70131(5) may not
1675 be included in the insurer's rate base and may not be used to
1676 justify a rate or rate change.

1677 Section 17. Section 627.0629, Florida Statutes, is amended
1678 to read:

1679 627.0629 Residential property insurance; rate filings.—

1680 (1)~~(a)~~ It is the intent of the Legislature that insurers
1681 ~~must~~ provide the most accurate pricing signals available ~~savings~~
1682 to encourage consumers to who install or implement windstorm

20102044e1

1683 damage mitigation techniques, alterations, or solutions to their
1684 properties to prevent windstorm losses. It is also the intent of
1685 the Legislature that implementation of mitigation discounts not
1686 result in a loss of income to the insurers granting the
1687 discounts, so that the aggregate of mitigation discounts should
1688 not exceed the aggregate of the expected reduction in loss that
1689 is attributable to the mitigation efforts for which discounts
1690 are granted. A rate filing for residential property insurance
1691 must include actuarially reasonable discounts, credits, debits,
1692 or other rate differentials, or appropriate reductions in
1693 deductibles, which provide the proper pricing for all
1694 properties. The rate filing must take into account the presence
1695 or absence of ~~on which~~ fixtures or construction techniques
1696 demonstrated to reduce the amount of loss in a windstorm have
1697 been installed or implemented. The fixtures or construction
1698 techniques shall include, but not be limited to, fixtures or
1699 construction techniques that ~~which~~ enhance roof strength, roof
1700 covering performance, roof-to-wall strength, wall-to-floor-to-
1701 foundation strength, opening protection, and window, door, and
1702 skylight strength. Credits, debits, discounts, or other rate
1703 differentials, or appropriate reductions or increases in
1704 deductibles, which recognize the presence or absence of ~~for~~
1705 fixtures and construction techniques that ~~which~~ meet the minimum
1706 requirements of the Florida Building Code must be included in
1707 the rate filing. If an insurer demonstrates that the aggregate
1708 of its mitigation discounts results in a reduction to revenue
1709 which exceeds the reduction of the aggregate loss that is
1710 expected to result from the mitigation, that insurer may recover
1711 the lost revenue through an increase in its base rates. ~~All~~

20102044e1

1712 ~~insurance companies must make a rate filing which includes the~~
1713 ~~credits, discounts, or other rate differentials or reductions in~~
1714 ~~deductibles by February 28, 2003.~~ By July 1, 2007, the office
1715 shall reevaluate the discounts, credits, other rate
1716 differentials, and appropriate reductions in deductibles for
1717 fixtures and construction techniques that meet the minimum
1718 requirements of the Florida Building Code, based upon actual
1719 experience or any other loss relativity studies available to the
1720 office. The office shall determine the discounts, credits,
1721 debts, other rate differentials, and appropriate reductions or
1722 increases in deductibles that reflect the full actuarial value
1723 of such revaluation, which may be used by insurers in rate
1724 filings.

1725 ~~(b) By February 1, 2011, the Office of Insurance~~
1726 ~~Regulation, in consultation with the Department of Financial~~
1727 ~~Services and the Department of Community Affairs, shall develop~~
1728 ~~and make publicly available a proposed method for insurers to~~
1729 ~~establish discounts, credits, or other rate differentials for~~
1730 ~~hurricane mitigation measures which directly correlate to the~~
1731 ~~numerical rating assigned to a structure pursuant to the uniform~~
1732 ~~home grading scale adopted by the Financial Services Commission~~
1733 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1734 ~~uniform home grading scale. By October 1, 2011, the commission~~
1735 ~~shall adopt rules requiring insurers to make rate filings for~~
1736 ~~residential property insurance which revise insurers' discounts,~~
1737 ~~credits, or other rate differentials for hurricane mitigation~~
1738 ~~measures so that such rate differentials correlate directly to~~
1739 ~~the uniform home grading scale. The rules may include such~~
1740 ~~changes to the uniform home grading scale as the commission~~

20102044e1

1741 ~~determines are necessary, and may specify the minimum required~~
1742 ~~discounts, credits, or other rate differentials. Such rate~~
1743 ~~differentials must be consistent with generally accepted~~
1744 ~~actuarial principles and wind loss mitigation studies. The rules~~
1745 ~~shall allow a period of at least 2 years after the effective~~
1746 ~~date of the revised mitigation discounts, credits, or other rate~~
1747 ~~differentials for a property owner to obtain an inspection or~~
1748 ~~otherwise qualify for the revised credit, during which time the~~
1749 ~~insurer shall continue to apply the mitigation credit that was~~
1750 ~~applied immediately prior to the effective date of the revised~~
1751 ~~credit. Discounts, credits, and other rate differentials~~
1752 ~~established for rate filings under this paragraph shall~~
1753 ~~supersede, after adoption, the discounts, credits, and other~~
1754 ~~rate differentials included in rate filings under paragraph (a).~~

1755 (2) (a) A rate filing for residential property insurance
1756 made on or before the implementation of paragraph (b) may
1757 include rate factors that reflect the manner in which building
1758 code enforcement in a particular jurisdiction addresses the risk
1759 of wind damage. ; However, such a rate filing must also provide
1760 for variations from such rate factors on an individual basis
1761 based on an inspection of a particular structure by a licensed
1762 home inspector, which inspection may be at the cost of the
1763 insured.

1764 (b) A rate filing for residential property insurance made
1765 more than 150 days after approval by the office of a building
1766 code rating factor plan submitted by a statewide rating
1767 organization shall include positive and negative rate factors
1768 that reflect the manner in which building code enforcement in a
1769 particular jurisdiction addresses risk of wind damage. The rate

20102044e1

1770 filing shall include variations from standard rate factors on an
1771 individual basis based on inspection of a particular structure
1772 by a licensed home inspector. If an inspection is requested by
1773 the insured, the insurer may require the insured to pay the
1774 reasonable cost of the inspection. This paragraph applies to
1775 structures constructed or renovated after the implementation of
1776 this paragraph.

1777 (c) The premium notice shall specify the amount by which
1778 the rate has been adjusted as a result of this subsection and
1779 shall also specify the maximum possible positive and negative
1780 adjustments that are approved for use by the insurer under this
1781 subsection.

1782 (3) A rate filing ~~made on or after July 1, 1995,~~ for mobile
1783 home owner's insurance must include appropriate discounts,
1784 credits, or other rate differentials for mobile homes
1785 constructed to comply with American Society of Civil Engineers
1786 Standard ANSI/ASCE 7-88, adopted by the United States Department
1787 of Housing and Urban Development on July 13, 1994, and that also
1788 comply with all applicable tie-down requirements provided by
1789 state law.

1790 (4) The Legislature finds that separate consideration and
1791 notice of hurricane insurance premiums will assist consumers by
1792 providing greater assurance that hurricane premiums are lawful
1793 and by providing more complete information regarding the
1794 components of property insurance premiums. ~~Effective January 1,~~
1795 ~~1997,~~ A rate filing for residential property insurance shall be
1796 separated into two components, rates for hurricane coverage and
1797 rates for all other coverages. A premium notice reflecting a
1798 rate implemented on the basis of such a filing shall separately

20102044e1

1799 indicate the premium for hurricane coverage and the premium for
1800 all other coverages.

1801 (5) In order to provide an appropriate transition period,
1802 an insurer may, in its sole discretion, implement an approved
1803 rate filing for residential property insurance over a period of
1804 years. An insurer electing to phase in its rate filing must
1805 provide an informational notice to the office setting out its
1806 schedule for implementation of the phased-in rate filing. An
1807 insurer may include in its rate the actual cost of private
1808 market reinsurance that corresponds to available coverage of the
1809 Temporary Increase in Coverage Limits, TICL, from the Florida
1810 Hurricane Catastrophe Fund. The insurer may also include the
1811 cost of reinsurance to replace the TICL reduction implemented
1812 pursuant to s. 215.555(17)(d)9. However, this cost for
1813 reinsurance may not ~~include any expense or profit load or result~~
1814 in a total annual base rate increase in excess of 10 percent.

1815 (6) Any rate filing that is based in whole or part on data
1816 from a computer model may not exceed 15 percent unless there is
1817 a public hearing.

1818 (7) An insurer may implement appropriate discounts or other
1819 rate differentials of up to 10 percent of the annual premium to
1820 mobile home owners who provide to the insurer evidence of a
1821 current inspection of tie-downs for the mobile home, certifying
1822 that the tie-downs have been properly installed and are in good
1823 condition.

1824 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
1825 SOUNDNESS.—

1826 (a) It is the intent of the Legislature to provide a
1827 program whereby homeowners may obtain an evaluation of the wind

20102044e1

1828 resistance of their homes with respect to preventing damage from
1829 hurricanes, together with a recommendation of reasonable steps
1830 that may be taken to upgrade their homes to better withstand
1831 hurricane force winds.

1832 (b) To the extent that funds are provided for this purpose
1833 in the General Appropriations Act, the Legislature hereby
1834 authorizes the establishment of a program to be administered by
1835 the Citizens Property Insurance Corporation for homeowners
1836 insured in the high-risk account.

1837 (c) The program shall provide grants to homeowners, for the
1838 purpose of providing homeowner applicants with funds to conduct
1839 an evaluation of the integrity of their homes with respect to
1840 withstanding hurricane force winds, recommendations to retrofit
1841 the homes to better withstand damage from such winds, and the
1842 estimated cost to make the recommended retrofits.

1843 (d) The Department of Community Affairs shall establish by
1844 rule standards to govern the quality of the evaluation, the
1845 quality of the recommendations for retrofitting, the eligibility
1846 of the persons conducting the evaluation, and the selection of
1847 applicants under the program. In establishing the rule, the
1848 Department of Community Affairs shall consult with the advisory
1849 committee to minimize the possibility of fraud or abuse in the
1850 evaluation and retrofitting process, and to ensure that funds
1851 spent by homeowners acting on the recommendations achieve
1852 positive results.

1853 (e) The Citizens Property Insurance Corporation shall
1854 identify areas of this state with the greatest wind risk to
1855 residential properties and recommend annually to the Department
1856 of Community Affairs priority target areas for such evaluations

20102044e1

1857 and inclusion with the associated residential construction
1858 mitigation program.

1859 (9) A property insurance rate filing that includes any
1860 adjustments related to premiums paid to the Florida Hurricane
1861 Catastrophe Fund must include a complete calculation of the
1862 insurer's catastrophe load, and the information in the filing
1863 may not be limited solely to recovery of moneys paid to the
1864 fund.

1865 Section 18. Paragraphs (b), (c), (d), and (y) of subsection
1866 (6) of section 627.351, Florida Statutes, are amended to read:

1867 627.351 Insurance risk apportionment plans.—

1868 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1869 (b)1. All insurers authorized to write one or more subject
1870 lines of business in this state are subject to assessment by the
1871 corporation and, for the purposes of this subsection, are
1872 referred to collectively as "assessable insurers." Insurers
1873 writing one or more subject lines of business in this state
1874 pursuant to part VIII of chapter 626 are not assessable
1875 insurers, but insureds who procure one or more subject lines of
1876 business in this state pursuant to part VIII of chapter 626 are
1877 subject to assessment by the corporation and are referred to
1878 collectively as "assessable insureds." An authorized insurer's
1879 assessment liability begins ~~shall begin~~ on the first day of the
1880 calendar year following the year in which the insurer was issued
1881 a certificate of authority to transact insurance for subject
1882 lines of business in this state and terminates ~~shall terminate~~ 1
1883 year after the end of the first calendar year during which the
1884 insurer no longer holds a certificate of authority to transact
1885 insurance for subject lines of business in this state.

20102044e1

1886 2.a. All revenues, assets, liabilities, losses, and
1887 expenses of the corporation are ~~shall be~~ divided into three
1888 separate accounts as follows:

1889 (I) A personal lines account for personal residential
1890 policies issued by the corporation or issued by the Residential
1891 Property and Casualty Joint Underwriting Association and renewed
1892 by the corporation which provides ~~that provide~~ comprehensive,
1893 multiperil coverage on risks that are not located in areas
1894 eligible for coverage in the Florida Windstorm Underwriting
1895 Association as those areas were defined on January 1, 2002, and
1896 for ~~such~~ policies that do not provide coverage for the peril of
1897 wind on risks that are located in such areas;

1898 (II) A commercial lines account for commercial residential
1899 and commercial nonresidential policies issued by the corporation
1900 or issued by the Residential Property and Casualty Joint
1901 Underwriting Association and renewed by the corporation which
1902 ~~that~~ provide coverage for basic property perils on risks which
1903 ~~that~~ are not located in areas eligible for coverage in the
1904 Florida Windstorm Underwriting Association as those areas were
1905 defined on January 1, 2002, and for ~~such~~ policies that do not
1906 provide coverage for the peril of wind on risks that are located
1907 in such areas; and

1908 (III) A coastal ~~high-risk~~ account for personal residential
1909 policies and commercial residential and commercial
1910 nonresidential property policies issued by the corporation or
1911 transferred to the corporation which provides ~~that provide~~
1912 coverage for the peril of wind on risks that are located in
1913 areas eligible for coverage in the Florida Windstorm
1914 Underwriting Association as those areas were defined on January

20102044e1

1915 1, 2002. The corporation may offer policies that provide
1916 multiperil coverage and the corporation shall continue to offer
1917 policies that provide coverage only for the peril of wind for
1918 risks located in areas eligible for coverage in the coastal
1919 ~~high-risk~~ account. In issuing multiperil coverage, the
1920 corporation may use its approved policy forms and rates for the
1921 personal lines account. An applicant or insured who is eligible
1922 to purchase a multiperil policy from the corporation may
1923 purchase a multiperil policy from an authorized insurer without
1924 prejudice to the applicant's or insured's eligibility to
1925 prospectively purchase a policy that provides coverage only for
1926 the peril of wind from the corporation. An applicant or insured
1927 who is eligible for a corporation policy that provides coverage
1928 only for the peril of wind may elect to purchase or retain such
1929 policy and also purchase or retain coverage excluding wind from
1930 an authorized insurer without prejudice to the applicant's or
1931 insured's eligibility to prospectively purchase a policy that
1932 provides multiperil coverage from the corporation. It is the
1933 goal of the Legislature that there ~~would~~ be an overall average
1934 savings of 10 percent or more for a policyholder who currently
1935 has a wind-only policy with the corporation, and an ex-wind
1936 policy with a voluntary insurer or the corporation, and who ~~then~~
1937 obtains a multiperil policy from the corporation. It is the
1938 intent of the Legislature that the offer of multiperil coverage
1939 in the coastal ~~high-risk~~ account be made and implemented in a
1940 manner that does not adversely affect the tax-exempt status of
1941 the corporation or creditworthiness of or security for currently
1942 outstanding financing obligations or credit facilities of the
1943 coastal ~~high-risk~~ account, the personal lines account, or the

20102044e1

1944 commercial lines account. The coastal ~~high-risk~~ account must
1945 also include quota share primary insurance under subparagraph
1946 (c)2. The area eligible for coverage under the coastal ~~high-risk~~
1947 account also includes the area within Port Canaveral, which is
1948 bordered on the south by the City of Cape Canaveral, bordered on
1949 the west by the Banana River, and bordered on the north by
1950 Federal Government property.

1951 b. The three separate accounts must be maintained as long
1952 as financing obligations entered into by the Florida Windstorm
1953 Underwriting Association or Residential Property and Casualty
1954 Joint Underwriting Association are outstanding, in accordance
1955 with the terms of the corresponding financing documents. If ~~When~~
1956 the financing obligations are no longer outstanding, in
1957 accordance with the terms of the corresponding financing
1958 documents, the corporation may use a single account for all
1959 revenues, assets, liabilities, losses, and expenses of the
1960 corporation. Consistent with ~~the requirement of~~ this
1961 subparagraph and prudent investment policies that minimize the
1962 cost of carrying debt, the board shall exercise its best efforts
1963 to retire existing debt or to obtain approval of necessary
1964 parties to amend the terms of existing debt, so as to structure
1965 the most efficient plan to consolidate the three separate
1966 accounts into a single account. ~~By February 1, 2007, the board~~
1967 ~~shall submit a report to the Financial Services Commission, the~~
1968 ~~President of the Senate, and the Speaker of the House of~~
1969 ~~Representatives which includes an analysis of consolidating the~~
1970 ~~accounts, the actions the board has taken to minimize the cost~~
1971 ~~of carrying debt, and its recommendations for executing the most~~
1972 ~~efficient plan.~~

20102044e1

1973 c. Creditors of the Residential Property and Casualty Joint
1974 Underwriting Association and ~~of~~ the accounts specified in sub-
1975 sub-subparagraphs a.(I) and (II) may have a claim against, and
1976 recourse to, the accounts referred to in sub-sub-subparagraphs
1977 a.(I) and (II) and ~~shall~~ have no claim against, or recourse to,
1978 the account referred to in sub-sub-subparagraph a.(III).

1979 Creditors of the Florida Windstorm Underwriting Association
1980 ~~shall~~ have a claim against, and recourse to, the account
1981 referred to in sub-sub-subparagraph a.(III) and ~~shall~~ have no
1982 claim against, or recourse to, the accounts referred to in sub-
1983 sub-subparagraphs a.(I) and (II).

1984 d. Revenues, assets, liabilities, losses, and expenses not
1985 attributable to particular accounts shall be prorated among the
1986 accounts.

1987 e. The Legislature finds that the revenues of the
1988 corporation are revenues that are necessary to meet the
1989 requirements set forth in documents authorizing the issuance of
1990 bonds under this subsection.

1991 f. No part of the income of the corporation may inure to
1992 the benefit of any private person.

1993 3. With respect to a deficit in an account:

1994 a. After accounting for the Citizens policyholder surcharge
1995 imposed under sub-subparagraph i., if ~~when~~ the remaining
1996 projected deficit incurred in a particular calendar year is not
1997 greater than 6 percent of the aggregate statewide direct written
1998 premium for the subject lines of business for the prior calendar
1999 year, the entire deficit shall be recovered through regular
2000 assessments of assessable insurers under paragraph (p) and
2001 assessable insureds.

20102044e1

2002 b. After accounting for the Citizens policyholder surcharge
2003 imposed under sub-subparagraph i., when the remaining projected
2004 deficit incurred in a particular calendar year exceeds 6 percent
2005 of the aggregate statewide direct written premium for the
2006 subject lines of business for the prior calendar year, the
2007 corporation shall levy regular assessments on assessable
2008 insurers under paragraph (q) ~~(p)~~ and on assessable insureds in
2009 an amount equal to the greater of 6 percent of the deficit or 6
2010 percent of the aggregate statewide direct written premium for
2011 the subject lines of business for the prior calendar year. Any
2012 remaining deficit shall be recovered through emergency
2013 assessments under sub-subparagraph d.

2014 c. Each assessable insurer's share of the amount being
2015 assessed under sub-subparagraph a. or sub-subparagraph b. must
2016 ~~shall~~ be in the proportion that the assessable insurer's direct
2017 written premium for the subject lines of business for the year
2018 preceding the assessment bears to the aggregate statewide direct
2019 written premium for the subject lines of business for that year.
2020 The assessment percentage applicable to each assessable insured
2021 is the ratio of the amount being assessed under sub-subparagraph
2022 a. or sub-subparagraph b. to the aggregate statewide direct
2023 written premium for the subject lines of business for the prior
2024 year. Assessments levied by the corporation on assessable
2025 insurers under sub-subparagraphs a. and b. shall be paid as
2026 required by the corporation's plan of operation and paragraph
2027 (q) ~~(p)~~. Assessments levied by the corporation on assessable
2028 insureds under sub-subparagraphs a. and b. shall be collected by
2029 the surplus lines agent at the time the surplus lines agent
2030 collects the surplus lines tax required by s. 626.932 and ~~shall~~

20102044e1

2031 ~~be~~ paid to the Florida Surplus Lines Service Office at the time
2032 the surplus lines agent pays the surplus lines tax to the
2033 Florida Surplus Lines Service Office. Upon receipt of regular
2034 assessments from surplus lines agents, the Florida Surplus Lines
2035 Service Office shall transfer the assessments directly to the
2036 corporation as determined by the corporation.

2037 d. Upon a determination by the board of governors that a
2038 deficit in an account exceeds the amount that will be recovered
2039 through regular assessments under sub-subparagraph a. or sub-
2040 subparagraph b., plus the amount that is expected to be
2041 recovered through surcharges under sub-subparagraph i., ~~as to~~
2042 ~~the remaining projected deficit~~ the board shall levy, after
2043 verification by the office, emergency assessments, for as many
2044 years as necessary to cover the deficits, to be collected by
2045 assessable insurers and the corporation and collected from
2046 assessable insureds upon issuance or renewal of policies for
2047 subject lines of business, excluding National Flood Insurance
2048 policies. The amount of the emergency assessment collected in a
2049 particular year shall be a uniform percentage of that year's
2050 direct written premium for subject lines of business and all
2051 accounts of the corporation, excluding National Flood Insurance
2052 Program policy premiums, as annually determined by the board and
2053 verified by the office. The office shall verify the arithmetic
2054 calculations involved in the board's determination within 30
2055 days after receipt of the information on which the determination
2056 was based. Notwithstanding any other provision of law, the
2057 corporation and each assessable insurer that writes subject
2058 lines of business shall collect emergency assessments from its
2059 policyholders without such obligation being affected by any

20102044e1

2060 credit, limitation, exemption, or deferment. Emergency
2061 assessments levied by the corporation on assessable insureds
2062 shall be collected by the surplus lines agent at the time the
2063 surplus lines agent collects the surplus lines tax required by
2064 s. 626.932 and shall be paid to the Florida Surplus Lines
2065 Service Office at the time the surplus lines agent pays the
2066 surplus lines tax to the Florida Surplus Lines Service Office.
2067 The emergency assessments ~~so~~ collected shall be transferred
2068 directly to the corporation on a periodic basis as determined by
2069 the corporation and ~~shall be~~ held by the corporation solely in
2070 the applicable account. The aggregate amount of emergency
2071 assessments levied for an account under this sub-subparagraph in
2072 any calendar year may, at the discretion of the board of
2073 governors, be less than but may not exceed the greater of 10
2074 percent of the amount needed to cover the deficit, plus
2075 interest, fees, commissions, required reserves, and other costs
2076 associated with financing of the original deficit, or 10 percent
2077 of the aggregate statewide direct written premium for subject
2078 lines of business and for all accounts of the corporation for
2079 the prior year, plus interest, fees, commissions, required
2080 reserves, and other costs associated with financing the deficit.

2081 e. The corporation may pledge the proceeds of assessments,
2082 projected recoveries from the Florida Hurricane Catastrophe
2083 Fund, other insurance and reinsurance recoverables, policyholder
2084 surcharges and other surcharges, and other funds available to
2085 the corporation as the source of revenue for and to secure bonds
2086 issued under paragraph (p), bonds or other indebtedness issued
2087 under subparagraph (c)3., or lines of credit or other financing
2088 mechanisms issued or created under this subsection, or to retire

20102044e1

2089 any other debt incurred as a result of deficits or events giving
2090 rise to deficits, or in any other way that the board determines
2091 will efficiently recover such deficits. The purpose of the lines
2092 of credit or other financing mechanisms is to provide additional
2093 resources to assist the corporation in covering claims and
2094 expenses attributable to a catastrophe. As used in this
2095 subsection, the term "assessments" includes regular assessments
2096 under sub-subparagraph a., sub-subparagraph b., or subparagraph
2097 (p)1. and emergency assessments under sub-subparagraph d.
2098 Emergency assessments collected under sub-subparagraph d. are
2099 not part of an insurer's rates, are not premium, and are not
2100 subject to premium tax, fees, or commissions; however, failure
2101 to pay the emergency assessment shall be treated as failure to
2102 pay premium. The emergency assessments under sub-subparagraph d.
2103 shall continue as long as any bonds issued or other indebtedness
2104 incurred with respect to a deficit for which the assessment was
2105 imposed remain outstanding, unless adequate provision has been
2106 made for the payment of such bonds or other indebtedness
2107 pursuant to the documents governing such bonds or other
2108 indebtedness.

2109 f. As used in this subsection for purposes of any deficit
2110 incurred on or after January 25, 2007, the term "subject lines
2111 of business" means insurance written by assessable insurers or
2112 procured by assessable insureds for all property and casualty
2113 lines of business in this state, but not including workers'
2114 compensation or medical malpractice. As used in the sub-
2115 subparagraph, the term "property and casualty lines of business"
2116 includes all lines of business identified on Form 2, Exhibit of
2117 Premiums and Losses, in the annual statement required of

20102044e1

2118 authorized insurers by s. 624.424 and any rule adopted under
2119 this section, except for those lines identified as accident and
2120 health insurance and except for policies written under the
2121 National Flood Insurance Program or the Federal Crop Insurance
2122 Program. For purposes of this sub-subparagraph, the term
2123 "workers' compensation" includes both workers' compensation
2124 insurance and excess workers' compensation insurance.

2125 g. The Florida Surplus Lines Service Office shall determine
2126 annually the aggregate statewide written premium in subject
2127 lines of business procured by assessable insureds and shall
2128 report that information to the corporation in a form and at a
2129 time the corporation specifies to ensure that the corporation
2130 can meet the requirements of this subsection and the
2131 corporation's financing obligations.

2132 h. The Florida Surplus Lines Service Office shall verify
2133 the proper application by surplus lines agents of assessment
2134 percentages for regular assessments and emergency assessments
2135 levied under this subparagraph on assessable insureds and shall
2136 assist the corporation in ensuring the accurate, timely
2137 collection and payment of assessments by surplus lines agents as
2138 required by the corporation.

2139 i. (I) If a deficit is incurred in any account in 2008 or
2140 thereafter, the board of governors shall levy a Citizens
2141 policyholder surcharge against all policyholders of the
2142 corporation. ~~for a 12-month period, which~~

2143 (II) The Citizens policyholder surcharge shall be levied
2144 ~~collected at the time of issuance or renewal of a policy,~~ as a
2145 uniform percentage of the premium for the policy of up to 15
2146 percent of such premium, which funds shall be used to offset the

20102044e1

2147 deficit.

2148 (III) The Citizens policyholder surcharge is payable upon
2149 cancellation or termination of the policy, upon renewal of the
2150 policy, or upon issuance of a new policy by Citizens within the
2151 first 12 months after the date of the levy or the period of time
2152 necessary to fully collect the Citizens policyholder surcharge
2153 amount.

2154 (IV) The corporation may not levy any regular assessments
2155 under paragraph (q) pursuant to sub-subparagraph a. or sub-
2156 subparagraph b. with respect to a particular year's deficit
2157 until the corporation has first levied a Citizens policyholder
2158 surcharge under this sub-subparagraph in the full amount
2159 authorized by this sub-subparagraph.

2160 (V) Citizens policyholder surcharges under this sub-
2161 subparagraph are not considered premium and are not subject to
2162 commissions, fees, or premium taxes. However, failure to pay
2163 such surcharges shall be treated as failure to pay premium.

2164 j. If the amount of any assessments or surcharges collected
2165 from corporation policyholders, assessable insurers or their
2166 policyholders, or assessable insureds exceeds the amount of the
2167 deficits, such excess amounts shall be remitted to and retained
2168 by the corporation in a reserve to be used by the corporation,
2169 as determined by the board of governors and approved by the
2170 office, to pay claims or reduce any past, present, or future
2171 plan-year deficits or to reduce outstanding debt.

2172 (c) The plan of operation of the corporation:

2173 1. Must provide for adoption of residential property and
2174 casualty insurance policy forms and commercial residential and
2175 nonresidential property insurance forms, which forms must be

20102044e1

2176 approved by the office prior to use. The corporation shall adopt
2177 the following policy forms:

2178 a. Standard personal lines policy forms that are
2179 comprehensive multiperil policies providing full coverage of a
2180 residential property equivalent to the coverage provided in the
2181 private insurance market under an HO-3, HO-4, or HO-6 policy.

2182 b. Basic personal lines policy forms that are policies
2183 similar to an HO-8 policy or a dwelling fire policy that provide
2184 coverage meeting the requirements of the secondary mortgage
2185 market, but which coverage is more limited than the coverage
2186 under a standard policy.

2187 c. Commercial lines residential and nonresidential policy
2188 forms that are generally similar to the basic perils of full
2189 coverage obtainable for commercial residential structures and
2190 commercial nonresidential structures in the admitted voluntary
2191 market.

2192 d. Personal lines and commercial lines residential property
2193 insurance forms that cover the peril of wind only. The forms are
2194 applicable only to residential properties located in areas
2195 eligible for coverage under the coastal ~~high-risk~~ account
2196 referred to in sub-subparagraph (b)2.a.

2197 e. Commercial lines nonresidential property insurance forms
2198 that cover the peril of wind only. The forms are applicable only
2199 to nonresidential properties located in areas eligible for
2200 coverage under the coastal ~~high-risk~~ account referred to in sub-
2201 subparagraph (b)2.a.

2202 f. The corporation may adopt variations of the policy forms
2203 listed in sub-subparagraphs a.-e. that contain more restrictive
2204 coverage.

20102044e1

2205 2.a. Must provide that the corporation adopt a program in
2206 which the corporation and authorized insurers enter into quota
2207 share primary insurance agreements for hurricane coverage, as
2208 defined in s. 627.4025(2)(a), for eligible risks, and adopt
2209 property insurance forms for eligible risks which cover the
2210 peril of wind only. As used in this subsection, the term:

2211 (I) "Quota share primary insurance" means an arrangement in
2212 which the primary hurricane coverage of an eligible risk is
2213 provided in specified percentages by the corporation and an
2214 authorized insurer. The corporation and authorized insurer are
2215 each solely responsible for a specified percentage of hurricane
2216 coverage of an eligible risk as set forth in a quota share
2217 primary insurance agreement between the corporation and an
2218 authorized insurer and the insurance contract. The
2219 responsibility of the corporation or authorized insurer to pay
2220 its specified percentage of hurricane losses of an eligible
2221 risk, as set forth in the quota share primary insurance
2222 agreement, may not be altered by the inability of the other
2223 party to the agreement to pay its specified percentage of
2224 hurricane losses. Eligible risks that are provided hurricane
2225 coverage through a quota share primary insurance arrangement
2226 must be provided policy forms that set forth the obligations of
2227 the corporation and authorized insurer under the arrangement,
2228 clearly specify the percentages of quota share primary insurance
2229 provided by the corporation and authorized insurer, and
2230 conspicuously and clearly state that neither the authorized
2231 insurer nor the corporation may be held responsible beyond its
2232 specified percentage of coverage of hurricane losses.

2233 (II) "Eligible risks" means personal lines residential and

20102044e1

2234 commercial lines residential risks that meet the underwriting
2235 criteria of the corporation and are located in areas that were
2236 eligible for coverage by the Florida Windstorm Underwriting
2237 Association on January 1, 2002.

2238 b. The corporation may enter into quota share primary
2239 insurance agreements with authorized insurers at corporation
2240 coverage levels of 90 percent and 50 percent.

2241 c. If the corporation determines that additional coverage
2242 levels are necessary to maximize participation in quota share
2243 primary insurance agreements by authorized insurers, the
2244 corporation may establish additional coverage levels. However,
2245 the corporation's quota share primary insurance coverage level
2246 may not exceed 90 percent.

2247 d. Any quota share primary insurance agreement entered into
2248 between an authorized insurer and the corporation must provide
2249 for a uniform specified percentage of coverage of hurricane
2250 losses, by county or territory as set forth by the corporation
2251 board, for all eligible risks of the authorized insurer covered
2252 under the quota share primary insurance agreement.

2253 e. Any quota share primary insurance agreement entered into
2254 between an authorized insurer and the corporation is subject to
2255 review and approval by the office. However, such agreement shall
2256 be authorized only as to insurance contracts entered into
2257 between an authorized insurer and an insured who is already
2258 insured by the corporation for wind coverage.

2259 f. For all eligible risks covered under quota share primary
2260 insurance agreements, the exposure and coverage levels for both
2261 the corporation and authorized insurers shall be reported by the
2262 corporation to the Florida Hurricane Catastrophe Fund. For all

20102044e1

2263 policies of eligible risks covered under quota share primary
2264 insurance agreements, the corporation and the authorized insurer
2265 shall maintain complete and accurate records for the purpose of
2266 exposure and loss reimbursement audits as required by Florida
2267 Hurricane Catastrophe Fund rules. The corporation and the
2268 authorized insurer shall each maintain duplicate copies of
2269 policy declaration pages and supporting claims documents.

2270 g. The corporation board shall establish in its plan of
2271 operation standards for quota share agreements which ensure that
2272 there is no discriminatory application among insurers as to the
2273 terms of quota share agreements, pricing of quota share
2274 agreements, incentive provisions if any, and consideration paid
2275 for servicing policies or adjusting claims.

2276 h. The quota share primary insurance agreement between the
2277 corporation and an authorized insurer must set forth the
2278 specific terms under which coverage is provided, including, but
2279 not limited to, the sale and servicing of policies issued under
2280 the agreement by the insurance agent of the authorized insurer
2281 producing the business, the reporting of information concerning
2282 eligible risks, the payment of premium to the corporation, and
2283 arrangements for the adjustment and payment of hurricane claims
2284 incurred on eligible risks by the claims adjuster and personnel
2285 of the authorized insurer. Entering into a quota sharing
2286 insurance agreement between the corporation and an authorized
2287 insurer shall be voluntary and at the discretion of the
2288 authorized insurer.

2289 3. May provide that the corporation may employ or otherwise
2290 contract with individuals or other entities to provide
2291 administrative or professional services that may be appropriate

20102044e1

2292 to effectuate the plan. The corporation shall have the power to
2293 borrow funds, by issuing bonds or by incurring other
2294 indebtedness, and shall have other powers reasonably necessary
2295 to effectuate the requirements of this subsection, including,
2296 without limitation, the power to issue bonds and incur other
2297 indebtedness in order to refinance outstanding bonds or other
2298 indebtedness. The corporation may, but is not required to, seek
2299 judicial validation of its bonds or other indebtedness under
2300 chapter 75. The corporation may issue bonds or incur other
2301 indebtedness, or have bonds issued on its behalf by a unit of
2302 local government pursuant to subparagraph (p)2., in the absence
2303 of a hurricane or other weather-related event, upon a
2304 determination by the corporation, subject to approval by the
2305 office, that such action would enable it to efficiently meet the
2306 financial obligations of the corporation and that such
2307 financings are reasonably necessary to effectuate the
2308 requirements of this subsection. The corporation is authorized
2309 to take all actions needed to facilitate tax-free status for any
2310 such bonds or indebtedness, including formation of trusts or
2311 other affiliated entities. The corporation shall have the
2312 authority to pledge assessments, projected recoveries from the
2313 Florida Hurricane Catastrophe Fund, other reinsurance
2314 recoverables, market equalization and other surcharges, and
2315 other funds available to the corporation as security for bonds
2316 or other indebtedness. In recognition of s. 10, Art. I of the
2317 State Constitution, prohibiting the impairment of obligations of
2318 contracts, it is the intent of the Legislature that no action be
2319 taken whose purpose is to impair any bond indenture or financing
2320 agreement or any revenue source committed by contract to such

20102044e1

2321 bond or other indebtedness.

2322 4.a. Must require that the corporation operate subject to
2323 the supervision and approval of a board of governors consisting
2324 of eight individuals who are residents of this state, from
2325 different geographical areas of this state. The Governor, the
2326 Chief Financial Officer, the President of the Senate, and the
2327 Speaker of the House of Representatives shall each appoint two
2328 members of the board. At least one of the two members appointed
2329 by each appointing officer must have demonstrated expertise in
2330 insurance, and is deemed to be within the scope of the exemption
2331 provided in s. 112.313(7)(b). The Chief Financial Officer shall
2332 designate one of the appointees as chair. All board members
2333 serve at the pleasure of the appointing officer. All members of
2334 the board of governors are subject to removal at will by the
2335 officers who appointed them. All board members, including the
2336 chair, must be appointed to serve for 3-year terms beginning
2337 annually on a date designated by the plan. However, for the
2338 first term beginning on or after July 1, 2009, each appointing
2339 officer shall appoint one member of the board for a 2-year term
2340 and one member for a 3-year term. Any board vacancy shall be
2341 filled for the unexpired term by the appointing officer. The
2342 Chief Financial Officer shall appoint a technical advisory group
2343 to provide information and advice to the board of governors in
2344 connection with the board's duties under this subsection. The
2345 executive director and senior managers of the corporation shall
2346 be engaged by the board and serve at the pleasure of the board.
2347 Any executive director appointed on or after July 1, 2006, is
2348 subject to confirmation by the Senate. The executive director is
2349 responsible for employing other staff as the corporation may

20102044e1

2350 require, subject to review and concurrence by the board.

2351 b. The board shall create a Market Accountability Advisory
2352 Committee to assist the corporation in developing awareness of
2353 its rates and its customer and agent service levels in
2354 relationship to the voluntary market insurers writing similar
2355 coverage. The members of the advisory committee shall consist of
2356 the following 11 persons, one of whom must be elected chair by
2357 the members of the committee: four representatives, one
2358 appointed by the Florida Association of Insurance Agents, one by
2359 the Florida Association of Insurance and Financial Advisors, one
2360 by the Professional Insurance Agents of Florida, and one by the
2361 Latin American Association of Insurance Agencies; three
2362 representatives appointed by the insurers with the three highest
2363 voluntary market share of residential property insurance
2364 business in the state; one representative from the Office of
2365 Insurance Regulation; one consumer appointed by the board who is
2366 insured by the corporation at the time of appointment to the
2367 committee; one representative appointed by the Florida
2368 Association of Realtors; and one representative appointed by the
2369 Florida Bankers Association. All members must serve for 3-year
2370 terms and may serve for consecutive terms. The committee shall
2371 report to the corporation at each board meeting on insurance
2372 market issues which may include rates and rate competition with
2373 the voluntary market; service, including policy issuance, claims
2374 processing, and general responsiveness to policyholders,
2375 applicants, and agents; and matters relating to depopulation.

2376 5. Must provide a procedure for determining the eligibility
2377 of a risk for coverage, as follows:

2378 a. Subject to the provisions of s. 627.3517, with respect

20102044e1

2379 to personal lines residential risks, if the risk is offered
2380 coverage from an authorized insurer at the insurer's approved
2381 rate under either a standard policy including wind coverage or,
2382 if consistent with the insurer's underwriting rules as filed
2383 with the office, a basic policy including wind coverage, for a
2384 new application to the corporation for coverage, the risk is not
2385 eligible for any policy issued by the corporation unless the
2386 premium for coverage from the authorized insurer is more than 15
2387 percent greater than the premium for comparable coverage from
2388 the corporation. If the risk is not able to obtain any such
2389 offer, the risk is eligible for either a standard policy
2390 including wind coverage or a basic policy including wind
2391 coverage issued by the corporation; however, if the risk could
2392 not be insured under a standard policy including wind coverage
2393 regardless of market conditions, the risk shall be eligible for
2394 a basic policy including wind coverage unless rejected under
2395 subparagraph 8. However, with regard to a policyholder of the
2396 corporation or a policyholder removed from the corporation
2397 through an assumption agreement until the end of the assumption
2398 period, the policyholder remains eligible for coverage from the
2399 corporation regardless of any offer of coverage from an
2400 authorized insurer or surplus lines insurer. The corporation
2401 shall determine the type of policy to be provided on the basis
2402 of objective standards specified in the underwriting manual and
2403 based on generally accepted underwriting practices.

2404 (I) If the risk accepts an offer of coverage through the
2405 market assistance plan or an offer of coverage through a
2406 mechanism established by the corporation before a policy is
2407 issued to the risk by the corporation or during the first 30

20102044e1

2408 days of coverage by the corporation, and the producing agent who
2409 submitted the application to the plan or to the corporation is
2410 not currently appointed by the insurer, the insurer shall:

2411 (A) Pay to the producing agent of record of the policy, for
2412 the first year, an amount that is the greater of the insurer's
2413 usual and customary commission for the type of policy written or
2414 a fee equal to the usual and customary commission of the
2415 corporation; or

2416 (B) Offer to allow the producing agent of record of the
2417 policy to continue servicing the policy for a period of not less
2418 than 1 year and offer to pay the agent the greater of the
2419 insurer's or the corporation's usual and customary commission
2420 for the type of policy written.

2421
2422 If the producing agent is unwilling or unable to accept
2423 appointment, the new insurer shall pay the agent in accordance
2424 with sub-sub-sub-subparagraph (A).

2425 (II) When the corporation enters into a contractual
2426 agreement for a take-out plan, the producing agent of record of
2427 the corporation policy is entitled to retain any unearned
2428 commission on the policy, and the insurer shall:

2429 (A) Pay to the producing agent of record of the corporation
2430 policy, for the first year, an amount that is the greater of the
2431 insurer's usual and customary commission for the type of policy
2432 written or a fee equal to the usual and customary commission of
2433 the corporation; or

2434 (B) Offer to allow the producing agent of record of the
2435 corporation policy to continue servicing the policy for a period
2436 of not less than 1 year and offer to pay the agent the greater

20102044e1

2437 of the insurer's or the corporation's usual and customary
2438 commission for the type of policy written.

2439

2440 If the producing agent is unwilling or unable to accept
2441 appointment, the new insurer shall pay the agent in accordance
2442 with sub-sub-sub-subparagraph (A).

2443 b. With respect to commercial lines residential risks, for
2444 a new application to the corporation for coverage, if the risk
2445 is offered coverage under a policy including wind coverage from
2446 an authorized insurer at its approved rate, the risk is not
2447 eligible for any policy issued by the corporation unless the
2448 premium for coverage from the authorized insurer is more than 15
2449 percent greater than the premium for comparable coverage from
2450 the corporation. If the risk is not able to obtain any such
2451 offer, the risk is eligible for a policy including wind coverage
2452 issued by the corporation. However, with regard to a
2453 policyholder of the corporation or a policyholder removed from
2454 the corporation through an assumption agreement until the end of
2455 the assumption period, the policyholder remains eligible for
2456 coverage from the corporation regardless of any offer of
2457 coverage from an authorized insurer or surplus lines insurer.

2458 (I) If the risk accepts an offer of coverage through the
2459 market assistance plan or an offer of coverage through a
2460 mechanism established by the corporation before a policy is
2461 issued to the risk by the corporation or during the first 30
2462 days of coverage by the corporation, and the producing agent who
2463 submitted the application to the plan or the corporation is not
2464 currently appointed by the insurer, the insurer shall:

2465 (A) Pay to the producing agent of record of the policy, for

20102044e1

2466 the first year, an amount that is the greater of the insurer's
2467 usual and customary commission for the type of policy written or
2468 a fee equal to the usual and customary commission of the
2469 corporation; or

2470 (B) Offer to allow the producing agent of record of the
2471 policy to continue servicing the policy for a period of not less
2472 than 1 year and offer to pay the agent the greater of the
2473 insurer's or the corporation's usual and customary commission
2474 for the type of policy written.

2475

2476 If the producing agent is unwilling or unable to accept
2477 appointment, the new insurer shall pay the agent in accordance
2478 with sub-sub-sub-subparagraph (A).

2479 (II) When the corporation enters into a contractual
2480 agreement for a take-out plan, the producing agent of record of
2481 the corporation policy is entitled to retain any unearned
2482 commission on the policy, and the insurer shall:

2483 (A) Pay to the producing agent of record of the corporation
2484 policy, for the first year, an amount that is the greater of the
2485 insurer's usual and customary commission for the type of policy
2486 written or a fee equal to the usual and customary commission of
2487 the corporation; or

2488 (B) Offer to allow the producing agent of record of the
2489 corporation policy to continue servicing the policy for a period
2490 of not less than 1 year and offer to pay the agent the greater
2491 of the insurer's or the corporation's usual and customary
2492 commission for the type of policy written.

2493

2494 If the producing agent is unwilling or unable to accept

20102044e1

2495 appointment, the new insurer shall pay the agent in accordance
2496 with sub-sub-sub-subparagraph (A).

2497 c. For purposes of determining comparable coverage under
2498 sub-subparagraphs a. and b., the comparison shall be based on
2499 those forms and coverages that are reasonably comparable. The
2500 corporation may rely on a determination of comparable coverage
2501 and premium made by the producing agent who submits the
2502 application to the corporation, made in the agent's capacity as
2503 the corporation's agent. A comparison may be made solely of the
2504 premium with respect to the main building or structure only on
2505 the following basis: the same coverage A or other building
2506 limits; the same percentage hurricane deductible that applies on
2507 an annual basis or that applies to each hurricane for commercial
2508 residential property; the same percentage of ordinance and law
2509 coverage, if the same limit is offered by both the corporation
2510 and the authorized insurer; the same mitigation credits, to the
2511 extent the same types of credits are offered both by the
2512 corporation and the authorized insurer; the same method for loss
2513 payment, such as replacement cost or actual cash value, if the
2514 same method is offered both by the corporation and the
2515 authorized insurer in accordance with underwriting rules; and
2516 any other form or coverage that is reasonably comparable as
2517 determined by the board. If an application is submitted to the
2518 corporation for wind-only coverage in the coastal ~~high-risk~~
2519 account, the premium for the corporation's wind-only policy plus
2520 the premium for the ex-wind policy that is offered by an
2521 authorized insurer to the applicant shall be compared to the
2522 premium for multiperil coverage offered by an authorized
2523 insurer, subject to the standards for comparison specified in

20102044e1

2524 this subparagraph. If the corporation or the applicant requests
2525 from the authorized insurer a breakdown of the premium of the
2526 offer by types of coverage so that a comparison may be made by
2527 the corporation or its agent and the authorized insurer refuses
2528 or is unable to provide such information, the corporation may
2529 treat the offer as not being an offer of coverage from an
2530 authorized insurer at the insurer's approved rate.

2531 6. Must include rules for classifications of risks and
2532 rates therefor.

2533 7. Must provide that if premium and investment income for
2534 an account attributable to a particular calendar year are in
2535 excess of projected losses and expenses for the account
2536 attributable to that year, such excess shall be held in surplus
2537 in the account. Such surplus shall be available to defray
2538 deficits in that account as to future years and shall be used
2539 for that purpose prior to assessing assessable insurers and
2540 assessable insureds as to any calendar year.

2541 8. Must provide objective criteria and procedures to be
2542 uniformly applied for all applicants in determining whether an
2543 individual risk is so hazardous as to be uninsurable. In making
2544 this determination and in establishing the criteria and
2545 procedures, the following shall be considered:

2546 a. Whether the likelihood of a loss for the individual risk
2547 is substantially higher than for other risks of the same class;
2548 and

2549 b. Whether the uncertainty associated with the individual
2550 risk is such that an appropriate premium cannot be determined.

2551
2552 The acceptance or rejection of a risk by the corporation shall

20102044e1

2553 be construed as the private placement of insurance, and the
2554 provisions of chapter 120 shall not apply.

2555 9. Must provide that the corporation shall make its best
2556 efforts to procure catastrophe reinsurance at reasonable rates,
2557 to cover its projected 100-year probable maximum loss as
2558 determined by the board of governors.

2559 10. The policies issued by the corporation must provide
2560 that, if the corporation or the market assistance plan obtains
2561 an offer from an authorized insurer to cover the risk at its
2562 approved rates, the risk is no longer eligible for renewal
2563 through the corporation, except as otherwise provided in this
2564 subsection.

2565 11. Corporation policies and applications must include a
2566 notice that the corporation policy could, under this section, be
2567 replaced with a policy issued by an authorized insurer that does
2568 not provide coverage identical to the coverage provided by the
2569 corporation. The notice shall also specify that acceptance of
2570 corporation coverage creates a conclusive presumption that the
2571 applicant or policyholder is aware of this potential.

2572 12. May establish, subject to approval by the office,
2573 different eligibility requirements and operational procedures
2574 for any line or type of coverage for any specified county or
2575 area if the board determines that such changes to the
2576 eligibility requirements and operational procedures are
2577 justified due to the voluntary market being sufficiently stable
2578 and competitive in such area or for such line or type of
2579 coverage and that consumers who, in good faith, are unable to
2580 obtain insurance through the voluntary market through ordinary
2581 methods would continue to have access to coverage from the

20102044e1

2582 corporation. When coverage is sought in connection with a real
2583 property transfer, such requirements and procedures shall not
2584 provide for an effective date of coverage later than the date of
2585 the closing of the transfer as established by the transferor,
2586 the transferee, and, if applicable, the lender.

2587 13. Must provide that, with respect to the coastal ~~high-~~
2588 ~~risk~~ account, any assessable insurer with a surplus as to
2589 policyholders of \$25 million or less writing 25 percent or more
2590 of its total countrywide property insurance premiums in this
2591 state may petition the office, within the first 90 days of each
2592 calendar year, to qualify as a limited apportionment company. A
2593 regular assessment levied by the corporation on a limited
2594 apportionment company for a deficit incurred by the corporation
2595 for the coastal ~~high-risk~~ account in 2006 or thereafter may be
2596 paid to the corporation on a monthly basis as the assessments
2597 are collected by the limited apportionment company from its
2598 insureds pursuant to s. 627.3512, but the regular assessment
2599 must be paid in full within 12 months after being levied by the
2600 corporation. A limited apportionment company shall collect from
2601 its policyholders any emergency assessment imposed under sub-
2602 subparagraph (b)3.d. The plan shall provide that, if the office
2603 determines that any regular assessment will result in an
2604 impairment of the surplus of a limited apportionment company,
2605 the office may direct that all or part of such assessment be
2606 deferred as provided in subparagraph (p)4. However, there shall
2607 be no limitation or deferment of an emergency assessment to be
2608 collected from policyholders under sub-subparagraph (b)3.d.

2609 14. Must provide that the corporation appoint as its
2610 licensed agents only those agents who also hold an appointment

20102044e1

2611 as defined in s. 626.015(3) with an insurer who at the time of
2612 the agent's initial appointment by the corporation is authorized
2613 to write and is actually writing personal lines residential
2614 property coverage, commercial residential property coverage, or
2615 commercial nonresidential property coverage within the state.

2616 15. Must provide, by July 1, 2007, a premium payment plan
2617 option to its policyholders which allows at a minimum for
2618 quarterly and semiannual payment of premiums. A monthly payment
2619 plan may, but is not required to, be offered.

2620 16. Must limit coverage on mobile homes or manufactured
2621 homes built prior to 1994 to actual cash value of the dwelling
2622 rather than replacement costs of the dwelling.

2623 17. May provide such limits of coverage as the board
2624 determines, consistent with the requirements of this subsection.

2625 18. May require commercial property to meet specified
2626 hurricane mitigation construction features as a condition of
2627 eligibility for coverage.

2628 19.a. Shall require the agent to obtain from any applicant
2629 for coverage the following acknowledgement, signed by the
2630 applicant, and shall require the agent of record to obtain the
2631 following acknowledgment from each corporation policyholder,
2632 signed by the policyholder, before the policy's first renewal on
2633 or after July 1, 2010:

2634
2635 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT

2636 LIABILITY:

2637
2638 I UNDERSTAND, AS A CITIZENS PROPERTY INSURANCE CORPORATION
2639 POLICYHOLDER, THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A

20102044e1

2640 RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY
2641 COULD BE SUBJECT TO CITIZENS POLICYHOLDER SURCHARGES, WHICH
2642 WOULD BE DUE AND PAYABLE UPON ISSUANCE, RENEWAL, CANCELLATION,
2643 OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE
2644 AS HIGH AS 15 PERCENT OF MY PREMIUM FOR DEFICITS IN EACH OF
2645 THREE CITIZENS ACCOUNTS, OR A DIFFERENT AMOUNT AS ESTABLISHED BY
2646 THE FLORIDA LEGISLATURE.

2647 I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
2648 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
2649 INSURANCE COMPANIES.

2650
2651 ... (Signature of applicant or policyholder) (date) ...
2652

2653 b. The corporation shall permanently maintain a copy of the
2654 signed acknowledgement required by this subparagraph, and the
2655 agent may also retain a copy.

2656 c. The signed acknowledgement form creates a conclusive
2657 presumption that the policyholder understood and accepted his or
2658 her potential surcharge and assessment liability as a Citizens
2659 policyholder.

2660 (d)1. All prospective employees for senior management
2661 positions, as defined by the plan of operation, are subject to
2662 background checks as a prerequisite for employment. The office
2663 shall conduct background checks on such prospective employees
2664 pursuant to ss. 624.34, 624.404(3), and 628.261.

2665 2. On or before July 1 of each year, employees of the
2666 corporation are required to sign and submit a statement
2667 attesting that they do not have a conflict of interest, as
2668 defined in part III of chapter 112. As a condition of

20102044e1

2669 employment, all prospective employees are required to sign and
2670 submit to the corporation a conflict-of-interest statement.

2671 3. Senior managers and members of the board of governors
2672 are subject to ~~the provisions of~~ part III of chapter 112,
2673 including, but not limited to, the code of ethics and public
2674 disclosure and reporting of financial interests, pursuant to s.
2675 112.3145. Notwithstanding s. 112.3143(2), a board member may not
2676 vote on any measure that would inure to his or her special
2677 private gain or loss; that he or she knows would inure to the
2678 special private gain or loss of any principal by whom he or she
2679 is retained or to the parent organization or subsidiary of a
2680 corporate principal by which he or she is retained, other than
2681 an agency as defined in s. 112.312; or that he or she knows
2682 would inure to the special private gain or loss of a relative or
2683 business associate of the public officer. Before the vote is
2684 taken, such member shall publicly state to the assembly the
2685 nature of the his or her interest in the matter from which he or
2686 she is abstaining from voting and, within 15 days after the vote
2687 occurs, disclose the nature of his or her interest as a public
2688 record in a memorandum filed with the person responsible for
2689 recording the minutes of the meeting, who shall incorporate the
2690 memorandum in the minutes. Senior managers and board members are
2691 also required to file such disclosures with the Commission on
2692 Ethics and the Office of Insurance Regulation. The executive
2693 director of the corporation or ~~his or her~~ designee shall notify
2694 each existing and newly appointed ~~and existing appointed~~ member
2695 of the board of governors and senior managers of their duty to
2696 comply with the reporting requirements of part III of chapter
2697 112. At least quarterly, the executive director or ~~his or her~~

20102044e1

2698 designee shall submit to the Commission on Ethics a list of
2699 names of the senior managers and members of the board of
2700 governors who are subject to the public disclosure requirements
2701 under s. 112.3145.

2702 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other
2703 provision of law, an employee or board member may not knowingly
2704 accept, directly or indirectly, any gift or expenditure from a
2705 person or entity, or an employee or representative of such
2706 person or entity, that has a contractual relationship with the
2707 corporation or who is under consideration for a contract. An
2708 employee or board member who fails to comply with subparagraph
2709 3. or this subparagraph is subject to penalties provided under
2710 ss. 112.317 and 112.3173.

2711 5. Any senior manager of the corporation who is employed on
2712 or after January 1, 2007, regardless of the date of hire, who
2713 subsequently retires or terminates employment is prohibited from
2714 representing another person or entity before the corporation for
2715 2 years after retirement or termination of employment from the
2716 corporation.

2717 6. Any senior manager of the corporation who is employed on
2718 or after January 1, 2007, regardless of the date of hire, who
2719 subsequently retires or terminates employment is prohibited from
2720 having any employment or contractual relationship for 2 years
2721 with an insurer that has entered into a take-out bonus agreement
2722 with the corporation.

2723 (y) It is the intent of the Legislature that the amendments
2724 to this subsection enacted in 2002 should, over time, reduce the
2725 probable maximum windstorm losses in the residual markets and
2726 should reduce the potential assessments to be levied on property

20102044e1

2727 insurers and policyholders statewide. In furtherance of this
2728 intent:

2729 1. The board shall, on or before February 1 of each year,
2730 provide a report to the President of the Senate and the Speaker
2731 of the House of Representatives showing the reduction or
2732 increase in the 100-year probable maximum loss attributable to
2733 wind-only coverages and the quota share program under this
2734 subsection combined, as compared to the benchmark 100-year
2735 probable maximum loss of the Florida Windstorm Underwriting
2736 Association. For purposes of this paragraph, the benchmark 100-
2737 year probable maximum loss of the Florida Windstorm Underwriting
2738 Association shall be the calculation dated February 2001 and
2739 based on November 30, 2000, exposures. In order to ensure
2740 comparability of data, the board shall use the same methods for
2741 calculating its probable maximum loss as were used to calculate
2742 the benchmark probable maximum loss.

2743 2. Beginning December 1, 2012 ~~2010~~, if the report under
2744 subparagraph 1. for any year indicates that the 100-year
2745 probable maximum loss attributable to wind-only coverages and
2746 the quota share program combined does not reflect a reduction of
2747 at least 25 percent from the benchmark, the board shall reduce
2748 the boundaries of the high-risk area eligible for wind-only
2749 coverages under this subsection in a manner calculated to reduce
2750 such probable maximum loss to an amount at least 25 percent
2751 below the benchmark.

2752 3. Beginning February 1, 2015, if the report under
2753 subparagraph 1. for any year indicates that the 100-year
2754 probable maximum loss attributable to wind-only coverages and
2755 the quota share program combined does not reflect a reduction of

20102044e1

2756 at least 50 percent from the benchmark, the boundaries of the
2757 high-risk area eligible for wind-only coverages under this
2758 subsection shall be reduced by the elimination of any area that
2759 is not seaward of a line 1,000 feet inland from the Intracoastal
2760 Waterway.

2761 Section 19. The Division of Statutory Revision is directed
2762 to prepare a reviser's bill for introduction at the next regular
2763 session of the Legislature to change the term "high-risk
2764 account" to "coastal account" to conform the Florida Statutes to
2765 the amendment to s. 627.351(6)(b)2.a.(III), Florida Statutes,
2766 made by the this act.

2767 Section 20. Subsection (2) of section 627.4133, Florida
2768 Statutes, is amended to read:

2769 627.4133 Notice of cancellation, nonrenewal, or renewal
2770 premium.—

2771 (2) With respect to any personal lines or commercial
2772 residential property insurance policy, including, but not
2773 limited to, any homeowner's, mobile home owner's, farmowner's,
2774 condominium association, condominium unit owner's, apartment
2775 building, or other policy covering a residential structure or
2776 its contents:

2777 (a) The insurer shall give the named insured at least 45
2778 days' advance written notice of the renewal premium.

2779 (b) The insurer shall give the named insured written notice
2780 of nonrenewal, cancellation, or termination at least 100 days
2781 before ~~prior to~~ the effective date of the nonrenewal,
2782 cancellation, or termination. However, the insurer shall give at
2783 least 100 days' written notice, or written notice by June 1,
2784 whichever is earlier, for any nonrenewal, cancellation, or

20102044e1

2785 termination that would be effective between June 1 and November
2786 30. The notice must include the reason or reasons for the
2787 nonrenewal, cancellation, or termination, except that:

2788 1. The insurer must ~~shall~~ give the named insured written
2789 notice of nonrenewal, cancellation, or termination at least 180
2790 days before ~~prior to~~ the effective date of the nonrenewal,
2791 cancellation, or termination for a named insured whose
2792 residential structure has been insured by that insurer or an
2793 affiliated insurer for at least a 5-year period immediately
2794 prior to the date of the written notice.

2795 2. When cancellation is for nonpayment of premium, at least
2796 10 days' written notice of cancellation accompanied by the
2797 reason therefor must ~~shall~~ be given. As used in this
2798 subparagraph, the term "nonpayment of premium" means failure of
2799 the named insured to discharge when due any of her or his
2800 obligations in connection with the payment of premiums on a
2801 policy or any installment of such premium, whether the premium
2802 is payable directly to the insurer or its agent or indirectly
2803 under any premium finance plan or extension of credit, or
2804 failure to maintain membership in an organization if such
2805 membership is a condition precedent to insurance coverage.
2806 "Nonpayment of premium" also means the failure of a financial
2807 institution to honor an insurance applicant's check after
2808 delivery to a licensed agent for payment of a premium, even if
2809 the agent has previously delivered or transferred the premium to
2810 the insurer. If a dishonored check represents the initial
2811 premium payment, the contract and all contractual obligations
2812 are ~~shall be~~ void ab initio unless the nonpayment is cured
2813 within the earlier of 5 days after actual notice by certified

20102044e1

2814 mail is received by the applicant or 15 days after notice is
2815 sent to the applicant by certified mail or registered mail, and
2816 if the contract is void, any premium received by the insurer
2817 from a third party must ~~shall~~ be refunded to that party in full.

2818 3. When such cancellation or termination occurs during the
2819 first 90 days during which the insurance is in force and the
2820 insurance is canceled or terminated for reasons other than
2821 nonpayment of premium, at least 20 days' written notice of
2822 cancellation or termination accompanied by the reason therefor
2823 must ~~shall~~ be given except if ~~where~~ there has been a material
2824 misstatement or misrepresentation or failure to comply with the
2825 underwriting requirements established by the insurer.

2826 4. The requirement for providing written notice of
2827 nonrenewal by June 1 of any nonrenewal that would be effective
2828 between June 1 and November 30 does not apply to the following
2829 situations, but the insurer remains subject to the requirement
2830 to provide such notice at least 100 days before ~~prior to~~ the
2831 effective date of nonrenewal:

2832 a. A policy that is nonrenewed due to a revision in the
2833 coverage for sinkhole losses and catastrophic ground cover
2834 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
2835 ~~2007-1, Laws of Florida.~~

2836 b. A policy that is nonrenewed by Citizens Property
2837 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2838 that has been assumed by an authorized insurer offering
2839 replacement ~~or renewal~~ coverage to the policyholder is exempt
2840 from the notice requirements of paragraph (a) and this
2841 paragraph. In such cases, Citizens Property Insurance
2842 Corporation shall give the named insured written notice of

20102044e1

2843 nonrenewal at least 45 days before the effective date of the
2844 nonrenewal.

2845
2846 After the policy has been in effect for 90 days, the policy may
2847 ~~shall~~ not be canceled by the insurer except if ~~when~~ there has
2848 been a material misstatement, a nonpayment of premium, a failure
2849 to comply with underwriting requirements established by the
2850 insurer within 90 days of the date of effectuation of coverage,
2851 or a substantial change in the risk covered by the policy or if
2852 ~~when~~ the cancellation is for all insureds under such policies
2853 for a given class of insureds. This paragraph does not apply to
2854 individually rated risks having a policy term of less than 90
2855 days.

2856 5. Notwithstanding any other provision of law, an insurer
2857 may cancel or nonrenew a property insurance policy upon a
2858 minimum of 45 days' notice if the office finds that the early
2859 cancellation of some or all of the insurer's policies is
2860 necessary to protect the best interests of the public or
2861 policyholders and the office approves the insurer's plan for
2862 early cancellation or nonrenewal of some or all of its policies.
2863 The office may base such a finding upon the financial condition
2864 of the insurer, lack of adequate reinsurance coverage for
2865 hurricane risk, or other relevant factors. The office may
2866 condition its finding on the consent of the insurer to be placed
2867 in administrative supervision pursuant to s. 624.81 or consent
2868 to the appointment of a receiver under chapter 631.

2869 (c) If the insurer fails to provide the notice required by
2870 this subsection, other than the 10-day notice, the coverage
2871 provided to the named insured shall remain in effect until the

20102044e1

2872 effective date of replacement coverage or until the expiration
2873 of a period of days after the notice is given equal to the
2874 required notice period, whichever occurs first. The premium for
2875 the coverage shall remain the same during any such extension
2876 period except that, in the event of failure to provide notice of
2877 nonrenewal, if the rate filing then in effect would have
2878 resulted in a premium reduction, the premium during such
2879 extension must ~~shall~~ be calculated based on the later rate
2880 filing.

2881 (d)1. Upon a declaration of an emergency pursuant to s.
2882 252.36 and the filing of an order by the Commissioner of
2883 Insurance Regulation, an insurer may not cancel or nonrenew a
2884 personal residential or commercial residential property
2885 insurance policy covering a dwelling or residential property
2886 located in this state which has been damaged as a result of a
2887 hurricane or wind loss that is the subject of the declaration of
2888 emergency for a period of 90 days after the dwelling or
2889 residential property has been repaired. A structure is deemed to
2890 be repaired when substantially completed and restored to the
2891 extent that it is insurable by another authorized insurer that
2892 is writing policies in this state.

2893 2. However, an insurer or agent may cancel or nonrenew such
2894 a policy before ~~prior to~~ the repair of the dwelling or
2895 residential property:

2896 a. Upon 10 days' notice for nonpayment of premium; or

2897 b. Upon 45 days' notice:

2898 (I) For a material misstatement or fraud related to the
2899 claim;

2900 (II) If the insurer determines that the insured has

20102044e1

2901 unreasonably caused a delay in the repair of the dwelling; or
2902 (III) If the insurer has paid policy limits.

2903 3. If the insurer elects to nonrenew a policy covering a
2904 property that has been damaged, the insurer shall provide at
2905 least 90 days' notice to the insured that the insurer intends to
2906 nonrenew the policy 90 days after the dwelling or residential
2907 property has been repaired. Nothing in this paragraph shall
2908 prevent the insurer from canceling or nonrenewing the policy 90
2909 days after the repairs are complete for the same reasons the
2910 insurer would otherwise have canceled or nonrenewed the policy
2911 but for the limitations of subparagraph 1. The Financial
2912 Services Commission may adopt rules, and the Commissioner of
2913 Insurance Regulation may issue orders, necessary to implement
2914 this paragraph.

2915 4. This paragraph ~~shall~~ also applies ~~apply~~ to personal
2916 residential and commercial residential policies covering
2917 property that was damaged as the result of Tropical Storm
2918 Bonnie, Hurricane Charley, Hurricane Frances, Hurricane Ivan, or
2919 Hurricane Jeanne.

2920 (e) If any cancellation or nonrenewal of a policy subject
2921 to this subsection is to take effect during the duration of a
2922 hurricane as defined in s. 627.4025(2)(c), the effective date of
2923 such cancellation or nonrenewal is extended until the end of the
2924 duration of such hurricane. The insurer may collect premium at
2925 the prior rates or the rates then in effect for the period of
2926 time for which coverage is extended. This paragraph does not
2927 apply to any property with respect to which replacement coverage
2928 has been obtained and which is in effect for a claim occurring
2929 during the duration of the hurricane.

20102044e1

2930 Section 21. Section 627.43141, Florida Statutes, is created
2931 to read:

2932 627.43141 Notice of change in policy terms.-

2933 (1) As used in this section, the term:

2934 (a) "Change in policy terms" means the modification,
2935 addition, or deletion of any term, coverage, duty, or condition
2936 from the previous policy. The correction of typographical or
2937 scrivener's errors or the application of mandated legislative
2938 changes is not a change in policy terms.

2939 (b) "Policy" means a written contract of personal lines
2940 property insurance or a written agreement for insurance, or the
2941 certificate of such insurance, by whatever name called, and
2942 includes all clauses, riders, endorsements, and papers that are
2943 a part of such policy. The term does not include a binder as
2944 defined in s. 627.420 unless the duration of the binder period
2945 exceeds 60 days.

2946 (c) "Renewal" means the issuance and delivery by an insurer
2947 of a policy superseding at the end of the policy period a policy
2948 previously issued and delivered by the same insurer or the
2949 issuance and delivery of a certificate or notice extending the
2950 term of a policy beyond its policy period or term. Any policy
2951 that has a policy period or term of less than 6 months or any
2952 policy that does not have a fixed expiration date shall, for
2953 purposes of this section, be considered as written for
2954 successive policy periods or terms of 6 months.

2955 (2) A renewal policy may contain a change in policy terms.
2956 If a renewal policy contains a change in policy terms, the
2957 insurer shall give the named insured a written notice of the
2958 change in policy terms, which must be enclosed along with the

20102044e1

2959 written notice of renewal premium required by ss. 627.4133 and
2960 627.728. Such notice should be entitled "Notice of Change in
2961 Policy Terms."

2962 (3) Although not required, proof of mailing or registered
2963 mailing through the United States Postal Service of the Notice
2964 of Change in Policy Terms to the named insured at the address
2965 shown in the policy is sufficient proof of notice.

2966 (4) Receipt of payment of the premium for the renewal
2967 policy by the insurer is deemed to be acceptance of the new
2968 policy terms by the named insured.

2969 (5) If an insurer fails to provide the notice required in
2970 subsection (2), the original policy terms shall remain in effect
2971 until the next renewal and the proper service of the notice or
2972 until the effective date of replacement coverage obtained by the
2973 named insured, whichever occurs first.

2974 (6) The intent of this section is to:

2975 (a) Allow an insurer to make a change in policy terms
2976 without nonrenewing policyholders that the insurer wishes to
2977 continue insuring.

2978 (b) Alleviate concern and confusion to the policyholder
2979 caused by the required policy nonrenewal for the limited issue
2980 when an insurer intends to renew the insurance policy but the
2981 new policy contains a change in policy terms.

2982 (c) Encourage policyholders to discuss their coverages with
2983 their insurance agents.

2984 Section 22. Section 627.7011, Florida Statutes, is amended
2985 to read:

2986 627.7011 Homeowners' policies; offer of replacement cost
2987 coverage and law and ordinance coverage.—

20102044e1

2988 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
2989 insurance policy ~~on or after October 1, 2005, or prior to the~~
2990 ~~first renewal of a homeowner's insurance policy on or after~~
2991 ~~October 1, 2005,~~ the insurer must offer each of the following:

2992 (a) A policy or endorsement providing that any loss which
2993 is repaired or replaced will be adjusted on the basis of
2994 replacement costs not exceeding policy limits as to the
2995 dwelling, rather than actual cash value, but not including costs
2996 necessary to meet applicable laws and ordinances regulating the
2997 construction, use, or repair of any property or requiring the
2998 tearing down of any property, including the costs of removing
2999 debris.

3000 (b) A policy or endorsement providing that, subject to
3001 other policy provisions, any loss which is repaired or replaced
3002 at any location will be adjusted on the basis of replacement
3003 costs not exceeding policy limits as to the dwelling, rather
3004 than actual cash value, and also including costs necessary to
3005 meet applicable laws and ordinances regulating the construction,
3006 use, or repair of any property or requiring the tearing down of
3007 any property, including the costs of removing debris. ~~+~~ However,
3008 such additional costs necessary to meet applicable laws and
3009 ordinances may be limited to either 25 percent or 50 percent of
3010 the dwelling limit, as selected by the policyholder, and such
3011 coverage shall apply only to repairs of the damaged portion of
3012 the structure unless the total damage to the structure exceeds
3013 50 percent of the replacement cost of the structure.

3014
3015 An insurer is not required to make the offers required by this
3016 subsection with respect to the issuance or renewal of a

20102044e1

3017 homeowner's policy that contains the provisions specified in
3018 paragraph (b) for law and ordinance coverage limited to 25
3019 percent of the dwelling limit, except that the insurer must
3020 offer the law and ordinance coverage limited to 50 percent of
3021 the dwelling limit. This subsection does not prohibit the offer
3022 of a guaranteed replacement cost policy.

3023 (2) Unless the insurer obtains the policyholder's written
3024 refusal of the policies or endorsements specified in subsection
3025 (1), any policy covering the dwelling is deemed to include the
3026 law and ordinance coverage limited to 25 percent of the dwelling
3027 limit. The rejection or selection of alternative coverage shall
3028 be made on a form approved by the office. The form shall fully
3029 advise the applicant of the nature of the coverage being
3030 rejected. If this form is signed by a named insured, it will be
3031 conclusively presumed that there was an informed, knowing
3032 rejection of the coverage or election of the alternative
3033 coverage on behalf of all insureds. Unless the policyholder
3034 requests in writing the coverage specified in this section, it
3035 need not be provided in or supplemental to any other policy that
3036 renews, insures, extends, changes, supersedes, or replaces an
3037 existing policy when the policyholder has rejected the coverage
3038 specified in this section or has selected alternative coverage.
3039 The insurer must provide such policyholder with notice of the
3040 availability of such coverage in a form approved by the office
3041 at least once every 3 years. The failure to provide such notice
3042 constitutes a violation of this code, but does not affect the
3043 coverage provided under the policy.

3044 (3) (a) In the event of a loss for which a dwelling is
3045 insured on the basis of replacement costs, the insurer initially

20102044e1

3046 must pay at least the actual cash value of the insured loss,
3047 less any applicable deductible. An insured shall subsequently
3048 enter into a contract for the performance of building and
3049 structural repairs. The insurer shall pay any remaining amounts
3050 incurred to perform such repairs as the work is performed. With
3051 the exception of incidental expenses to mitigate further damage,
3052 the insurer or any contractor or subcontractor may not require
3053 the policyholder to advance payment for such repairs or
3054 expenses. The insurer may waive the requirement for a contract
3055 as provided in this paragraph. An insured shall have a period of
3056 one 1 year after the date the insurer pays actual cash value to
3057 make a claim for replacement cost. If a total loss of a dwelling
3058 occurs, the insurer shall pay the replacement cost coverage
3059 without reservation or holdback of any depreciation in value,
3060 pursuant to s. 627.702(1)(a).

3061 (b) In the event of a loss for which ~~a dwelling or~~ personal
3062 property is insured on the basis of replacement costs, the
3063 insurer shall pay the replacement cost without reservation or
3064 holdback of any depreciation in value, whether or not the
3065 insured replaces or repairs the ~~dwelling or~~ property.

3066 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on~~
3067 ~~or after October 1, 2005,~~ must include in bold type no smaller
3068 than 18 points the following statement:

3069
3070 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
3071 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
3072 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
3073 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
3074 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE

20102044e1

3075 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."
3076 The intent of this subsection is to encourage policyholders to
3077 purchase sufficient coverage to protect them in case events
3078 excluded from the standard homeowners policy, such as law and
3079 ordinance enforcement and flood, combine with covered events to
3080 produce damage or loss to the insured property. The intent is
3081 also to encourage policyholders to discuss these issues with
3082 their insurance agent.

3083 (5) ~~Nothing in~~ This section does not ~~shall be construed to~~
3084 apply to policies not considered to be "homeowners' policies,"
3085 as that term is commonly understood in the insurance industry.
3086 This section specifically does not apply to mobile home
3087 policies. ~~Nothing in~~ This section does not limit ~~shall be~~
3088 ~~construed as limiting~~ the ability of any insurer to reject or
3089 nonrenew any insured or applicant on the grounds that the
3090 structure does not meet underwriting criteria applicable to
3091 replacement cost or law and ordinance policies or for other
3092 lawful reasons.

3093 (6) This section does not prohibit an insurer from limiting
3094 its liability under a policy or endorsement providing that loss
3095 will be adjusted on the basis of replacement costs to the lesser
3096 of:

3097 (a) The limit of liability shown on the policy declarations
3098 page;

3099 (b) The reasonable and necessary cost to repair the
3100 damaged, destroyed, or stolen covered property; or

3101 (c) The reasonable and necessary cost to replace the
3102 damaged, destroyed, or stolen covered property.

3103 (7) This section does not prohibit an insurer from

20102044e1

3104 exercising its right to repair damaged property in compliance
3105 with its policy and s. 627.702(7).

3106 Section 23. Paragraph (a) of subsection (5) of section
3107 627.70131, Florida Statutes, is amended to read:

3108 627.70131 Insurer's duty to acknowledge communications
3109 regarding claims; investigation.—

3110 (5) (a) Within 90 days after an insurer receives notice of
3111 an initial or supplemental ~~a~~ property insurance claim from a
3112 policyholder, the insurer shall pay or deny such claim or a
3113 portion of the claim unless the failure to pay such claim or a
3114 portion of the claim is caused by factors beyond the control of
3115 the insurer which reasonably prevent such payment. Any payment
3116 of an initial or supplemental ~~a~~ claim or portion of such ~~a~~ claim
3117 made ~~paid~~ 90 days after the insurer receives notice of the
3118 claim, or made ~~paid~~ more than 15 days after there are no longer
3119 factors beyond the control of the insurer which reasonably
3120 prevented such payment, whichever is later, shall bear interest
3121 at the rate set forth in s. 55.03. Interest begins to accrue
3122 from the date the insurer receives notice of the claim. The
3123 provisions of this subsection may not be waived, voided, or
3124 nullified by the terms of the insurance policy. If there is a
3125 right to prejudgment interest, the insured shall select whether
3126 to receive prejudgment interest or interest under this
3127 subsection. Interest is payable when the claim or portion of the
3128 claim is paid. Failure to comply with this subsection
3129 constitutes a violation of this code. However, failure to comply
3130 with this subsection shall not form the sole basis for a private
3131 cause of action.

3132 Section 24. Section 627.7015, Florida Statutes, is amended

20102044e1

3133 to read:

3134 627.7015 Alternative procedure for resolution of disputed
3135 property insurance claims.—

3136 (1) ~~PURPOSE AND SCOPE.~~ This section sets forth a
3137 nonadversarial alternative dispute resolution procedure for a
3138 mediated claim resolution conference prompted by the need for
3139 effective, fair, and timely handling of property insurance
3140 claims. There is a particular need for an informal,
3141 nonthreatening forum for helping parties who elect this
3142 procedure to resolve their claims disputes because most
3143 homeowner's and commercial residential insurance policies
3144 obligate insureds to participate in a potentially expensive and
3145 time-consuming adversarial appraisal process before ~~prior to~~
3146 litigation. The procedure set forth in this section is designed
3147 to bring the parties together for a mediated claims settlement
3148 conference without any of the trappings or drawbacks of an
3149 adversarial process. Before resorting to these procedures,
3150 insureds and insurers are encouraged to resolve claims as
3151 quickly and fairly as possible. This section is available with
3152 respect to claims under personal lines and commercial
3153 residential policies for all claimants and insurers prior to
3154 commencing the appraisal process, or commencing litigation. If
3155 requested by the insured, participation by legal counsel shall
3156 be permitted. Mediation under this section is also available to
3157 litigants referred to the department by a county court or
3158 circuit court. This section does not apply to commercial
3159 coverages, to private passenger motor vehicle insurance
3160 coverages, or to disputes relating to liability coverages in
3161 policies of property insurance.

20102044e1

3162 (2) At the time a first-party claim dispute within the
3163 scope of this section is filed, the insurer shall notify all
3164 first-party claimants of their right to participate in the
3165 mediation program under this section. The department shall
3166 prepare a statement or information relating to the mediation
3167 program which an insurer must include in the notice. The content
3168 of the statement or information must be adopted by rule of the
3169 department ~~consumer information pamphlet for distribution to~~
3170 ~~persons participating in mediation under this section.~~

3171 (3) The costs of mediation shall be reasonable, and the
3172 insurer shall bear all of the cost of conducting mediation
3173 conferences, except as otherwise provided in this section. If an
3174 insured fails to appear at the conference, the conference shall
3175 be rescheduled upon the insured's payment of the costs of a
3176 rescheduled conference. If the insurer fails to appear at the
3177 conference, the insurer shall pay the insured's actual cash
3178 expenses incurred in attending the conference if the insurer's
3179 failure to attend was not due to a good cause acceptable to the
3180 department. An insurer will be deemed to have failed to appear
3181 if the insurer's representative lacks authority to settle the
3182 full value of the claim. The insurer shall incur an additional
3183 fee for a rescheduled conference necessitated by the insurer's
3184 failure to appear at a scheduled conference. The fees assessed
3185 by the administrator shall include a charge necessary to defray
3186 the expenses of the department related to its duties under this
3187 section and shall be deposited in the Insurance Regulatory Trust
3188 Fund.

3189 (4) In a dispute over the cost to replace or repair insured
3190 property, the insurer and insured shall each provide

20102044e1

3191 documentation to the mediator which supports his or her estimate
3192 to repair or replace the property. The documentation must be
3193 provided before the beginning of the mediation conference. The
3194 insurer's documentation must include its reports or other
3195 evidence relating to the loss and show that the insurer's
3196 estimates were created in compliance with s. 626.9744(3). The
3197 insured must submit quotes obtained from licensed contractors in
3198 the local market area, retail price quotes for products and
3199 materials, or other documentation specific to the loss which
3200 clearly documents the actual cost to repair or replace the
3201 property.

3202 (5)~~(4)~~ The department shall adopt by rule a property
3203 insurance mediation program to be administered by the department
3204 or its designee. The department may also adopt special rules
3205 that which are applicable in cases of an emergency within the
3206 state. The rules shall be modeled after practices and procedures
3207 set forth in mediation rules of procedure adopted by the Supreme
3208 Court. The rules shall provide for:

3209 (a) Reasonable requirement for processing and scheduling of
3210 requests for mediation.

3211 (b) Qualifications of mediators as provided in s. 627.745
3212 and in the Florida Rules of Certified and Court Appointed
3213 Mediators, and for such other individuals as are qualified by
3214 education, training, or experience as the department determines
3215 to be appropriate.

3216 (c) Provisions governing who may attend mediation
3217 conferences.

3218 (d) Selection of mediators.

3219 (e) Criteria for the conduct of mediation conferences.

20102044e1

3220 (f) Right to legal counsel.

3221 (g) The types of documentation required to be submitted
3222 during the mediation process.

3223 (6)~~(5)~~ All statements made and documents produced at a
3224 mediation conference shall be deemed to be settlement
3225 negotiations in anticipation of litigation within the scope of
3226 s. 90.408. All parties to the mediation must negotiate in good
3227 faith and must have the authority to immediately settle the
3228 claim. Mediators are deemed to be agents of the department and
3229 shall have the immunity from suit provided in s. 44.107.

3230 (7)~~(6)~~ Mediation is nonbinding.~~†~~ However, if a written
3231 settlement is reached, the insured has 3 business days within
3232 which the insured may rescind the settlement unless the insured
3233 has cashed or deposited any check or draft disbursed to the
3234 insured for the disputed matters as a result of the conference.
3235 If a settlement agreement is reached and is not rescinded, it
3236 shall be binding and act as a release of all specific claims
3237 that were presented in that mediation conference.

3238 (8)~~(7)~~ If the insurer fails to comply with subsection (2)
3239 by failing to notify a first-party claimant of its right to
3240 participate in the mediation program under this section or if
3241 the insurer requests the mediation, and the mediation results
3242 are rejected by either party, the insured may ~~shall~~ not be
3243 required to submit to or participate in any contractual loss
3244 appraisal process of the property loss damage as a precondition
3245 to legal action for breach of contract against the insurer for
3246 its failure to pay the policyholder's claims covered by the
3247 policy.

3248 (9)~~(8)~~ The department may designate an entity or person to

20102044e1

3249 serve as administrator to carry out any of the provisions of
3250 this section and may take this action by means of a written
3251 contract or agreement.

3252 (10)~~(9)~~ As used in ~~For purposes of~~ this section, the term
3253 "claim dispute" refers to any dispute between an insurer and an
3254 insured relating to a material issue of fact other than a
3255 dispute:

3256 (a) With respect to which the insurer has a reasonable
3257 basis to suspect fraud;

3258 (b) Where, based on agreed-upon facts as to the cause of
3259 loss, there is no coverage under the policy;

3260 (c) With respect to which the insurer has a reasonable
3261 basis to believe that the claimant has intentionally made a
3262 material misrepresentation of fact which is relevant to the
3263 claim, and the entire request for payment of a loss has been
3264 denied on the basis of the material misrepresentation; ~~or~~

3265 (d) With respect to which the amount in controversy is less
3266 than \$500, unless the parties agree to mediate a dispute
3267 involving a lesser amount; or

3268 (e) With respect to which the date of loss occurred more
3269 than 5 years before the request for mediation, unless the
3270 parties agree to mediate a dispute involving a longer period.

3271 Section 25. Effective June 1, 2010, and applying only to
3272 insurance claims made on or after that date, subsection (1),
3273 paragraph (b) of subsection (2), and subsections (5), (7), and
3274 (8) of section 627.707, Florida Statutes, are amended to read:

3275 627.707 Standards for investigation of sinkhole claims by
3276 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
3277 loss, an insurer must meet the following standards in

20102044e1

3278 investigating a claim:

3279 (1) The insurer must make an inspection of the insured's
3280 premises to determine if there has been physical damage to the
3281 structure which is consistent with ~~may be the result of~~ sinkhole
3282 loss activity.

3283 (2) Following the insurer's initial inspection, the insurer
3284 shall engage a professional engineer or a professional geologist
3285 to conduct testing as provided in s. 627.7072 to determine the
3286 cause of the loss within a reasonable professional probability
3287 and issue a report as provided in s. 627.7073, if:

3288 (b) The policyholder demands testing in accordance with
3289 this section or s. 627.7072 and coverage under the policy is
3290 available if sinkhole loss is verified.

3291 (5) (a) Subject to paragraph (b), if a sinkhole loss is
3292 verified, the insurer shall pay to stabilize the land and
3293 building and repair the foundation in accordance with the
3294 recommendations of the professional engineer as provided under
3295 s. 627.7073, with notice to ~~and in consultation with~~ the
3296 policyholder, subject to the coverage and terms of the policy.
3297 The insurer shall pay for other repairs to the structure and
3298 contents in accordance with the terms of the policy.

3299 (b) 1. After a ~~The insurer may limit its payment to the~~
3300 ~~actual cash value of the sinkhole loss, not including~~
3301 ~~underpinning or grouting or any other repair technique performed~~
3302 ~~below the existing foundation of the building, until the~~
3303 policyholder enters into a contract for the performance of
3304 building stabilization or foundation repairs, the claim shall be
3305 paid up to the full cost of the stabilization or foundation
3306 repairs and up to full replacement cost for above-ground repairs

20102044e1

3307 as set forth in this paragraph, less the insured's deductible.
3308 After the policyholder enters into a contract for the
3309 performance of building stabilization or foundation repairs, the
3310 insurer may:

3311 a. Limit its initial payment to 10 percent of the estimated
3312 costs to implement the building stabilization and foundation
3313 repairs.

3314 b. Limit its initial payment to the actual cash value of
3315 the sinkhole loss for above-ground repairs to the structure.

3316 2. However, after the policyholder enters into the contract
3317 for the performance of building stabilization or foundation
3318 repairs, the insurer shall pay the amounts necessary to begin
3319 and perform such stabilization and repairs as the work is
3320 performed and the expenses are incurred. Final payments for the
3321 structural or building stabilization and foundation repair work
3322 shall be remitted within 20 days after such work is completed in
3323 accordance with the terms of the policy and the report's
3324 recommendations and after final bills or receipts have been
3325 submitted to the insurer. An insured shall have 1 year after the
3326 date the insurer pays actual cash value to make a claim for
3327 replacement cost. If a total loss of a dwelling occurs, the
3328 insurer shall pay the replacement cost coverage without
3329 reservation or holdback of any depreciation in value, pursuant
3330 to s. 627.702. The insurer may not require the policyholder to
3331 advance payment for such repairs. If repair covered by a
3332 personal lines residential property insurance policy has begun
3333 and the professional engineer selected or approved by the
3334 insurer determines that the repair cannot be completed within
3335 the policy limits, the insurer must either complete the

20102044e1

3336 professional engineer's recommended repair or tender the policy
3337 limits to the policyholder without a reduction for the repair
3338 expenses incurred.

3339 (c) The policyholder shall enter into such contract for
3340 repairs within 90 days after the insurance company approves
3341 coverage for a sinkhole loss to prevent additional damage to the
3342 building or structure. The 90-day period may be extended for an
3343 additional reasonable time period if the policyholder is unable
3344 to find a qualified person or entity to contract for such
3345 repairs within the 90-day period based upon factors beyond the
3346 policyholder's control or if the policyholder is actively
3347 seeking to retain a professional engineer or geologist as
3348 provided in s. 627.7073(1)(c). This period shall be tolled if
3349 either party invokes neutral evaluation.

3350 (d) The stabilization and all other repairs to the
3351 structure and contents must be completed within 12 months after
3352 entering into the contract for repairs as described in paragraph
3353 (c) unless:

3354 1. There is a mutual agreement between the insurer and the
3355 insured;

3356 2. The stabilization and all other repairs cannot be
3357 completed due to factors beyond the control of the insured which
3358 reasonably prevent completion;

3359 3. The claim is involved with the neutral evaluation
3360 process under s. 627.7074;

3361 4. The claim is in litigation; or

3362 5. The claim is under appraisal.

3363 (e)~~(e)~~ Upon the insurer's obtaining the written approval of
3364 the policyholder and any lienholder, the insurer may make

20102044e1

3365 payment directly to the persons selected by the policyholder to
3366 perform the land and building stabilization and foundation
3367 repairs. The decision by the insurer to make payment to such
3368 persons does not hold the insurer liable for the work performed.

3369 (7) If the insurer obtains, pursuant to s. 627.7073,
3370 written certification that there is no sinkhole loss ~~or that the~~
3371 ~~cause of the damage was not sinkhole activity~~, and if the
3372 policyholder has submitted the sinkhole claim without good faith
3373 grounds for submitting such claim, the policyholder shall
3374 reimburse the insurer for 50 percent of the actual costs of the
3375 analyses and services provided under ss. 627.7072 and 627.7073;
3376 however, a policyholder is not required to reimburse an insurer
3377 more than \$2,500 with respect to any claim. A policyholder is
3378 required to pay reimbursement under this subsection only if the
3379 insurer, prior to ordering the analysis under s. 627.7072,
3380 informs the policyholder in writing of the policyholder's
3381 potential liability for reimbursement and gives the policyholder
3382 the opportunity to withdraw the claim.

3383 (8) No insurer shall nonrenew any policy of property
3384 insurance on the basis of filing of claims for partial loss
3385 caused by sinkhole damage or clay shrinkage as long as the total
3386 of such payments does not exceed the ~~current~~ policy limits of
3387 coverage for property damage for the policy in effect on the
3388 date of the loss, and provided the insured has repaired the
3389 structure in accordance with the engineering recommendations
3390 upon which any payment or policy proceeds were based.

3391 Section 26. Effective June 1, 2010, and applying only to
3392 insurance claims made on or after that date, section 627.7073,
3393 Florida Statutes, is amended to read:

20102044e1

3394 627.7073 Sinkhole reports.—

3395 (1) Upon completion of testing as provided in s. 627.7072,
3396 the professional engineer or professional geologist shall issue
3397 a report and certification to the insurer, with an additional
3398 copy and certification for the insurer to forward to ~~and~~ the
3399 policyholder as provided in this section.

3400 (a) Sinkhole loss is verified if, based upon tests
3401 performed in accordance with s. 627.7072, a professional
3402 engineer or a professional geologist issues a written report and
3403 certification stating:

3404 1. That the cause of the actual physical and structural
3405 damage is sinkhole activity within a reasonable professional
3406 probability.

3407 2. That the analyses conducted were of sufficient scope to
3408 identify sinkhole activity as the cause of damage within a
3409 reasonable professional probability.

3410 3. A description of the tests performed.

3411 4. A recommendation by the professional engineer of methods
3412 for stabilizing the land and building and for making repairs to
3413 the foundation.

3414 (b) If sinkhole activity is eliminated as the cause of
3415 damage to the structure, the professional engineer or
3416 professional geologist shall issue a written report and
3417 certification to the policyholder and the insurer stating:

3418 1. That the cause of the damage is not sinkhole activity
3419 within a reasonable professional probability.

3420 2. That the analyses and tests conducted were of sufficient
3421 scope to eliminate sinkhole activity as the cause of damage
3422 within a reasonable professional probability.

20102044e1

3423 3. A statement of the cause of the damage within a
3424 reasonable professional probability.

3425 4. A description of the tests performed.

3426 (c) If the policyholder disagrees with the findings,
3427 opinions, or recommendations of the professional engineer or
3428 professional geologist engaged by the insurer, the policyholder
3429 may engage a professional engineer or professional geologist, at
3430 the policyholder's expense, to conduct testing under s.
3431 627.7072; to render findings, opinions, and recommendations as
3432 to the cause of distress to the property and the appropriate
3433 method of land and building stabilization and foundation repair;
3434 certify such findings, opinions, and recommendations in a report
3435 that meets the requirements of this section; and forward a copy
3436 of the report to the insurer. Unless the policyholder engages a
3437 professional engineer or professional geologist as described in
3438 this paragraph who disputes the findings of the insurer's
3439 engineer or geologist, the respective findings, opinions, and
3440 recommendations of the professional engineer or professional
3441 geologist as to the cause of distress to the property and the
3442 findings, opinions, and recommendations of the insurer's
3443 professional engineer as to land and building stabilization and
3444 foundation repair as required by s. 627.707(2), shall be
3445 presumed correct, and such presumption shall shift the burden of
3446 proof under s. 90.304.

3447 (2) (a) Any insurer that has paid a claim for a sinkhole
3448 loss shall file a copy of the report and certification, prepared
3449 pursuant to subsection (1), including the legal description of
3450 the real property, ~~and~~ the name of the property owner, and the
3451 amount paid by the insurer, with the county clerk of court, who

20102044e1

3452 shall record the report and certification. The insurer shall
3453 also file a copy of any report prepared on behalf of the insured
3454 or the insured's representative which has been provided to the
3455 insurer which indicates that sinkhole loss caused the damage
3456 claimed. The insurer shall bear the cost of filing and recording
3457 of one or more reports ~~the report~~ and certifications
3458 ~~certification~~. There shall be no cause of action or liability
3459 against an insurer for compliance with this section. The
3460 recording of the report and certification does not:

3461 1. Constitute a lien, encumbrance, or restriction on the
3462 title to the real property or constitute a defect in the title
3463 to the real property;

3464 2. Create any cause of action or liability against any
3465 grantor of the real property for breach of any warranty of good
3466 title or warranty against encumbrances; or

3467 3. Create any cause of action or liability against any
3468 title insurer that insures the title to the real property.

3469 (b) The seller of real property upon which a sinkhole claim
3470 has been made by the seller and paid by the insurer shall
3471 disclose to the buyer of such property that a claim has been
3472 paid, the amount of the payment, and whether or not the full
3473 amount of the proceeds were used to repair the sinkhole damage.
3474 The seller shall also provide to the buyer a copy of the report
3475 prepared pursuant to subsection (1) and any report prepared on
3476 behalf of the insured.

3477 Section 27. Effective June 1, 2010, and applying only to
3478 insurance claims made on or after that date, section 627.7074,
3479 Florida Statutes, is amended to read:

3480 627.7074 Alternative procedure for resolution of disputed

20102044e1

3481 sinkhole insurance claims.—

3482 (1) As used in this section, the term:

3483 (a) "Neutral evaluation" means the alternative dispute
3484 resolution provided for in this section.

3485 (b) "Neutral evaluator" means a professional engineer or a
3486 professional geologist who has completed a course of study in
3487 alternative dispute resolution designed or approved by the
3488 department for use in the neutral evaluation process, who is
3489 determined to be fair and impartial.

3490 (2) (a) The department shall certify and maintain a list of
3491 persons who are neutral evaluators.

3492 (b) The department shall prepare a consumer information
3493 pamphlet for distribution by insurers to policyholders which
3494 clearly describes the neutral evaluation process and includes
3495 information and forms necessary for the policyholder to request
3496 a neutral evaluation.

3497 (3) Neutral evaluation is available to either party if a
3498 sinkhole report has been issued pursuant to s. 627.7073. Neutral
3499 evaluation shall, at a minimum, determine causation, all methods
3500 of stabilization and repair both above and below ground, and
3501 information necessary to carry out subsection (13). Following
3502 the receipt of the report provided under s. 627.7073 or the
3503 denial of a claim for a sinkhole loss, the insurer shall notify
3504 the policyholder of his or her right to participate in the
3505 neutral evaluation program under this section. Neutral
3506 evaluation supersedes the alternative dispute resolution process
3507 under s. 627.7015 but does not invalidate the appraisal clause
3508 if an appraisal clause is provided by the insurance policy. The
3509 appraisal process must be performed in accordance with the terms

20102044e1

3510 of the applicable policy and the requirements of this section.
3511 The insurer shall provide to the policyholder the consumer
3512 information pamphlet prepared by the department pursuant to
3513 paragraph (2) (b).

3514 (4) Neutral evaluation is nonbinding, but mandatory if
3515 requested by either party. A request for neutral evaluation may
3516 be filed with the department by the policyholder or the insurer
3517 on a form approved by the department. The insurance carrier must
3518 request neutral evaluation within 1 year after the
3519 policyholder's written notice to the insurer's claims adjuster
3520 who is primarily responsible for adjusting the loss of a
3521 disputed issue relating to the sinkhole claim. The request for
3522 neutral evaluation must state the reason for the request and
3523 must include an explanation of all the issues in dispute at the
3524 time of the request. Filing a request for neutral evaluation
3525 tolls the applicable time requirements for filing suit for a
3526 period of 60 days following the conclusion of the neutral
3527 evaluation process or the time prescribed in s. 95.11, whichever
3528 is later.

3529 (5) Neutral evaluation shall be conducted as an informal
3530 process in which formal rules of evidence and procedure need not
3531 be observed. A party to neutral evaluation is not required to
3532 attend neutral evaluation if a representative of the party
3533 attends and has the authority to make a binding decision on
3534 behalf of the party. All parties shall participate in the
3535 evaluation in good faith. If an appraisal clause is present in
3536 the policy, a remaining dispute as to the amount of the loss may
3537 be resolved in the applicable policy's appraisal process in
3538 compliance with the terms of such policy, by other proceedings

20102044e1

3539 agreed to by the parties, or by trial.

3540 (6) The insurer shall pay the costs associated with the
3541 neutral evaluation.

3542 (7) (a) Upon receipt of a request for neutral evaluation,
3543 the department shall ~~provide the parties a list of certified~~
3544 ~~neutral evaluators. the parties shall mutually select a neutral~~
3545 ~~evaluator from the list and promptly inform the department. If~~
3546 ~~the parties cannot agree to a neutral evaluator within 10~~
3547 ~~business days, the department~~ allow the parties to submit
3548 requests to disqualify neutral evaluators on the list for cause.
3549 For purposes of this subsection, a ground for cause is required
3550 to be found by the department only if:

3551 1. A familial relationship exists between the neutral
3552 evaluator and either party or a representative of either party
3553 within the third degree;

3554 2. The proposed neutral evaluator has, in a professional
3555 capacity, previously represented either party or a
3556 representative of either party in the same or a substantially
3557 related matter;

3558 3. The proposed neutral evaluator has, in a professional
3559 capacity, represented another person in the same or a
3560 substantially related matter and that person's interests are
3561 materially adverse to the interests of the parties;

3562 4. The proposed neutral evaluator works in the same firm or
3563 corporation as a person who has, in a professional capacity,
3564 previously represented either party or a representative of
3565 either party in the same or a substantially related matter; or

3566 5. The proposed neutral evaluator has, within the preceding
3567 5 years, worked as an employee of any party to the case.

20102044e1

3568 (b) The parties shall mutually appoint a neutral evaluator
3569 from the ~~department~~ list and promptly inform the department. If
3570 the parties cannot agree to a neutral evaluator within 10
3571 business days, the department shall appoint a neutral evaluator
3572 from the department's list of certified neutral evaluators. The
3573 department shall allow each party to disqualify one neutral
3574 evaluator without cause. Upon selection or appointment, the
3575 department shall promptly refer the request to the neutral
3576 evaluator.

3577 (c) Within 5 business days after the referral, the neutral
3578 evaluator shall notify the policyholder and the insurer of the
3579 date, time, and place of the neutral evaluation conference. The
3580 conference may be held by telephone, if feasible and desirable.
3581 The neutral evaluation conference shall be held within 90 ~~45~~
3582 days after the receipt of the request by the department. If the
3583 neutral evaluator fails to hold a neutral evaluation conference
3584 in accordance with this paragraph, the neutral evaluator's fee
3585 will be reduced by 10 percent unless the delay was due to
3586 factors beyond the control of the neutral evaluator.

3587 (d) As used in this subsection, the term "substantially
3588 related matter" means participation by the neutral evaluator on
3589 the same claim, property, or any adjacent property.

3590 (8) The department shall adopt rules of procedure for the
3591 neutral evaluation process.

3592 (9) For policyholders not represented by an attorney, a
3593 consumer affairs specialist of the department or an employee
3594 designated as the primary contact for consumers on issues
3595 relating to sinkholes under s. 20.121 shall be available for
3596 consultation to the extent that he or she may lawfully do so.

20102044e1

3597 (10) Evidence of an offer to settle a claim during the
3598 neutral evaluation process, as well as any relevant conduct or
3599 statements made in negotiations concerning the offer to settle a
3600 claim, is inadmissible to prove liability or absence of
3601 liability for the claim or its value, except as provided in
3602 subsection (14) ~~(13)~~.

3603 (11) Regardless of when invoked, any court proceeding
3604 related to the subject matter of the neutral evaluation shall be
3605 stayed pending completion of the neutral evaluation and for 5
3606 days after the filing of the neutral evaluator's report with the
3607 court.

3608 (12) If the neutral evaluator, based upon his or her
3609 professional training and credentials, is qualified only to
3610 determine the causation issue or the method of repair issue, the
3611 department shall allow the neutral evaluator to enlist the
3612 assistance of another professional from the qualified neutral
3613 evaluators list, not previously stricken by parties with respect
3614 to the subject evaluation, who, based upon his or her
3615 professional training and credentials, is able to provide an
3616 opinion as to the other disputed issue. Any professional who, if
3617 appointed as the neutral evaluator, would be disqualified for
3618 any reason listed in subsection (7) must be disqualified. In
3619 addition, the neutral evaluator may use the service of other
3620 experts or professionals as necessary to ensure that all items
3621 in dispute are addressed in order to complete the neutral
3622 evaluation. Any experts or professionals retained by the neutral
3623 evaluator to provide an opinion may be disqualified for any of
3624 the reasons listed in subsection (7) and must be agreed upon by
3625 both parties to the neutral evaluation. The neutral evaluator

20102044e1

3626 may request that the entity that performed testing pursuant to
3627 s. 627.7072 perform such additional reasonable testing deemed
3628 necessary in the professional opinion of the neutral evaluator
3629 to complete the neutral evaluation.

3630 (13)~~(12)~~ For all matters that are not resolved by the
3631 parties at the conclusion of the neutral evaluation, the neutral
3632 evaluator shall prepare a report stating that in his or her
3633 opinion the sinkhole loss has been verified or eliminated within
3634 a reasonable degree of professional probability and, if
3635 verified, whether the sinkhole loss has caused structural or
3636 cosmetic damage to the building and, if so, the need for and
3637 estimated costs of stabilizing the land and any covered
3638 structures or buildings and other appropriate remediation or
3639 structural repairs that are necessary due to the sinkhole loss.
3640 The evaluator's report shall be sent to all parties in
3641 attendance at the neutral evaluation and to the department.

3642 (14)~~(13)~~ The recommendation of the neutral evaluator is not
3643 binding on any party, and the parties retain access to court.
3644 The neutral evaluator's written recommendation is admissible in
3645 any ~~subsequent~~ action or proceeding relating to the claim or to
3646 the cause of action giving rise to the claim.

3647 (15)~~(14)~~ If the neutral evaluator first verifies the
3648 existence of a sinkhole and, second, recommends the need for and
3649 estimates costs of stabilizing the land and any covered
3650 structures or buildings and other appropriate remediation or
3651 structural repairs, which costs exceed the amount that the
3652 insurer has offered to pay the policyholder, the insurer is
3653 liable to the policyholder for up to \$2,500 in attorney's fees
3654 for the attorney's participation in the neutral evaluation

20102044e1

3655 process. For purposes of this subsection, the term "offer to
3656 pay" means a written offer signed by the insurer or its legal
3657 representative and delivered to the policyholder within 10 days
3658 after the insurer receives notice that a request for neutral
3659 evaluation has been made under this section.

3660 (16)~~(15)~~ If the insurer timely agrees in writing to comply
3661 and timely complies with the recommendation of the neutral
3662 evaluator, but the policyholder declines to resolve the matter
3663 in accordance with the recommendation of the neutral evaluator
3664 pursuant to this section:

3665 (a) The insurer is not liable for extracontractual damages
3666 related to a claim for a sinkhole loss but only as related to
3667 the issues determined by the neutral evaluation process. This
3668 section does not affect or impair claims for extracontractual
3669 damages unrelated to the issues determined by the neutral
3670 evaluation process contained in this section; and

3671 (b) The insurer is not liable for attorney's fees under s.
3672 627.428 or other provisions of the insurance code unless the
3673 policyholder obtains a judgment that is more favorable than the
3674 recommendation of the neutral evaluator.

3675 (17) If the insurer agrees to comply with the neutral
3676 evaluator's report, payment for stabilizing the land and
3677 building and repairing the foundation shall be made in
3678 accordance with the terms and conditions of the applicable
3679 insurance policy.

3680 Section 28. Section 627.711, Florida Statutes, is amended
3681 to read:

3682 627.711 Notice of premium discounts for hurricane loss
3683 mitigation; uniform mitigation verification inspection form.—

20102044e1

3684 (1) Using a form prescribed by the Office of Insurance
3685 Regulation, the insurer shall clearly notify the applicant or
3686 policyholder of any personal lines residential property
3687 insurance policy, at the time of the issuance of the policy and
3688 at each renewal, of the availability and the range of each
3689 premium discount, credit, other rate differential, or reduction
3690 in deductibles, and combinations of discounts, credits, rate
3691 differentials, or reductions in deductibles, for properties on
3692 which fixtures or construction techniques demonstrated to reduce
3693 the amount of loss in a windstorm can be or have been installed
3694 or implemented. The prescribed form shall describe generally
3695 what actions the policyholders may be able to take to reduce
3696 their windstorm premium. The prescribed form and a list of such
3697 ranges approved by the office for each insurer licensed in the
3698 state and providing such discounts, credits, other rate
3699 differentials, or reductions in deductibles for properties
3700 described in this subsection shall be available for electronic
3701 viewing and download from the Department of Financial Services'
3702 or the Office of Insurance Regulation's Internet website. The
3703 Financial Services Commission may adopt rules to implement this
3704 subsection.

3705 (2) (a) ~~By July 1, 2007,~~ The Financial Services Commission
3706 shall develop by rule a uniform mitigation verification
3707 inspection form that shall be used by all insurers when
3708 submitted by policyholders for the purpose of factoring
3709 discounts for wind insurance. In developing the form, the
3710 commission shall seek input from insurance, construction, and
3711 building code representatives. Further, the commission shall
3712 provide guidance as to the length of time the inspection results

20102044e1

3713 are valid. An insurer shall accept as valid a uniform mitigation
3714 verification form ~~certified by the Department of Financial~~
3715 ~~Services~~ or signed by the following authorized mitigation
3716 inspectors:

3717 1. ~~(a)~~ A home inspector licensed under s. 468.8314 who has
3718 completed at least 3 hours of hurricane mitigation training
3719 which includes hurricane mitigation techniques and compliance
3720 with the uniform mitigation verification form and completion of
3721 a proficiency exam. Thereafter, home inspectors licensed under
3722 s. 468.8314, must complete at least 2 hours of continuing
3723 education, as part of the existing licensure renewal
3724 requirements each year, related to mitigation inspection and the
3725 uniform mitigation form ~~hurricane mitigation inspector certified~~
3726 ~~by the My Safe Florida Home program;~~

3727 2. ~~(b)~~ A building code inspector certified under s. 468.607;

3728 3. ~~(c)~~ A general, building, or residential contractor
3729 licensed under s. 489.111;

3730 4. ~~(d)~~ A professional engineer licensed under s. 471.015 ~~who~~
3731 has passed the appropriate equivalency test of the building code
3732 training program as required by s. 553.841;

3733 5. ~~(e)~~ A professional architect licensed under s. 481.213;
3734 or

3735 6. ~~(f)~~ Any other individual or entity recognized by the
3736 insurer as possessing the necessary qualifications to properly
3737 complete a uniform mitigation verification form.

3738 (b) An insurer may, but is not required to, accept a form
3739 from any other person possessing qualifications and experience
3740 acceptable to the insurer.

3741 (3) A person who is authorized to sign a mitigation

20102044e1

3742 verification form must inspect the structures referenced by the
3743 form personally, not through employees or other persons, and
3744 must certify or attest to personal inspection of the structures
3745 referenced by the form. However, licensees under s. 489.111, may
3746 authorize a direct employee, who is not an independent
3747 contractor, and who possesses the requisite skill, knowledge and
3748 experience to conduct a mitigation verification inspection.
3749 Insurers shall have the right to request and obtain information
3750 from the authorized mitigation inspector under s. 489.111,
3751 regarding any authorized employee's qualifications prior to
3752 accepting a mitigation verification form performed by an
3753 employee that is not licensed under s. 489.111.

3754 (4) An authorized mitigation inspector that signs a uniform
3755 mitigation form, and a direct employee authorized to conduct
3756 mitigation verification inspections under paragraph (3), may not
3757 commit misconduct in performing hurricane mitigation inspections
3758 or in completing a uniform mitigation form that causes financial
3759 harm to a customer or their insurer; or that jeopardizes a
3760 customer's health and safety. Misconduct occurs when an
3761 authorized mitigation inspector signs a uniform mitigation
3762 verification form that:

3763 (a) Falsely indicates that he or she personally inspected
3764 the structures referenced by the form;

3765 (b) Falsely indicates the existence of a feature which
3766 entitles an insured to a mitigation discount which the inspector
3767 knows does not exist or did not personally inspect;

3768 (c) Contains erroneous information due to the gross
3769 negligence of the inspector; or

3770 (d) Contains a pattern of demonstrably false information

20102044e1

3771 regarding the existence of mitigation features that could give
3772 an insured a false evaluation of the ability of the structure to
3773 withstand major damage from a hurricane endangering the safety
3774 of the insured's life and property.

3775 (5) The licensing board of an authorized mitigation
3776 inspector that violates subsection (4) may commence disciplinary
3777 proceedings and impose administrative fines and other sanctions
3778 authorized under the authorized mitigation inspector's licensing
3779 act. Authorized mitigation inspectors licensed under s. 489.111,
3780 shall be directly liable for the acts of employees that violate
3781 subsection (4) as if the authorized mitigation inspector
3782 personally performed the inspection.

3783 (6) An insurer, person, or other entity that obtains
3784 evidence of fraud or evidence that an authorized mitigation
3785 inspector or an employee authorized to conduct mitigation
3786 verification inspections under paragraph (3), has made false
3787 statements in the completion of a mitigation inspection form
3788 shall file a report with the Division of Insurance Fraud, along
3789 with all of the evidence in its possession that supports the
3790 allegation of fraud or falsity. An insurer, person, or other
3791 entity making the report shall be immune from liability in
3792 accordance with s. 626.989(4), for any statements made in the
3793 report, during the investigation, or in connection with the
3794 report. The Division of Insurance Fraud shall issue an
3795 investigative report if it finds that probable cause exists to
3796 believe that the authorized mitigation inspector, or an employee
3797 authorized to conduct mitigation verification inspections under
3798 paragraph (3), made intentionally false or fraudulent statements
3799 in the inspection form. Upon conclusion of the investigation and

20102044e1

3800 a finding of probable cause that a violation has occurred, the
3801 Division of Insurance Fraud shall send a copy of the
3802 investigative report to the office and a copy to the agency
3803 responsible for the professional licensure of the authorized
3804 mitigation inspector, whether or not a prosecutor takes action
3805 based upon the report.

3806 (7)(3) An individual or entity who knowingly provides or
3807 utters a false or fraudulent mitigation verification form with
3808 the intent to obtain or receive a discount on an insurance
3809 premium to which the individual or entity is not entitled
3810 commits a misdemeanor of the first degree, punishable as
3811 provided in s. 775.082 or s. 775.083.

3812 (8) At its expense, the insurer may require that any
3813 uniform mitigation verification form provided by an authorized
3814 mitigation inspector or inspection company be independently
3815 verified by an inspector, inspection company or an independent
3816 third-party quality assurance provider which does possess a
3817 quality assurance program prior to accepting the uniform
3818 mitigation verification form as valid.

3819 Section 29. Section 628.252, Florida Statutes, is created
3820 to read:

3821 628.252 Servicing affiliates of domestic property
3822 insurers.—Every domestic property insurer shall notify the
3823 office of its intention to enter into with affiliates all
3824 management agreements, service contracts, and cost-sharing
3825 arrangements. A domestic property insurer may not enter into
3826 such an agreement, contract, or arrangement unless the insurer
3827 has it has provided the office with at least 30 days' written
3828 notice of its intention to enter into such agreement, contract,

20102044e1

3829 or arrangement, or such shorter period as the office, in its
3830 discretion, may permit and the office has not disapproved such
3831 agreement, contract, or arrangement within such period. This
3832 section does not limit any existing authority of the office.

3833 Section 30. The sums of \$263,200 in nonrecurring funds and
3834 \$47,500 in recurring funds from the Insurance Regulatory Trust
3835 Fund are appropriated and one full-time equivalent position and
3836 associated salary rate is authorized to the Office of Insurance
3837 Regulation to implement the provisions of the act relating to
3838 the design, development, and operation of a comprehensive
3839 website for consumers which provides comparisons of homeowners'
3840 insurance rates and products.

3841 Section 31. Except as otherwise expressly provided in this
3842 act and except for this section, which shall take effect June 1,
3843 2010, this act shall take effect July 1, 2010.