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1
2 An act relating to insurance; providing a short title;
3 amending s. 215.5595, F.S.; revising legislative findings;
4 providing for an appropriation of state funds in exchange
5 for surplus notes issued by residential property insurers
6 under the program; revising the conditions and
7 requirements for providing funds to insurers under the
8 program; requiring a commitment by the insurer to meet
9 minimum premium-to-surplus writing ratios for residential
10 property insurance and for taking policies out of Citizens
11 Property Insurance Corporation; requiring insurers to
12 commit to maintaining certain levels of surplus and
13 reinsurance; authorizing the State Board of Administration
14 to charge a fee for late payments; providing for payment
15 of costs and fees incurred by the board in administering
16 the program from funds appropriated to the program,
17 subject to a specified limit; requiring the board to
18 submit an annual report to the Legislature on the program
19 and insurer compliance with certain requirements;
20 providing that amendments made by the act do not affect
21 the terms of surplus notes approved prior to a specified
22 date; authorizing the State Board of Administration and an
23 insurer to renegotiate such terms consistent with such
24 amendments; requiring the State Board of Administration to
25 transfer to Citizens Property Insurance Corporation
26 certain uncommitted or unreserved funds; amending s.
27 624.3161, F.S.; authorizing the Office of Insurance
28 Regulation to require an insurer to file its claims
29 handling practices and procedures as a public record based

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30 on findings of a market conduct examination; amending s.
31 624.4211, F.S.; increasing the maximum amounts of
32 administrative fines that may be imposed upon an insurer
33 by the Office of Insurance Regulation for nonwillful and
34 willful violations of an order or rule of the office or
35 any provision of the Florida Insurance Code; creating s.
36 624.4213, F.S.; specifying requirements for submission of
37 a document or information to the Office of Insurance
38 Regulation or the Department of Financial Services in
39 order for a person to claim that the document is a trade
40 secret; requiring each page or portion to be labeled as a
41 trade secret and be separated from non-trade secret
42 material; requiring the submitting party to include an
43 affidavit certifying certain information about the
44 documents claimed to be trade secrets; requiring the
45 office or department to notify persons who submit trade
46 secret documents of any public-records request and the
47 opportunity to file a court action to bar disclosure;
48 specifying conditions for the office to retain or release
49 such documents; creating s. 624.4305, F.S.; requiring that
50 an insurer planning to nonrenew more than a specified
51 number of residential property insurance policies notify
52 the Office of Insurance Regulation and obtain approval for
53 such nonrenewals; specifying procedures for issuance of
54 such notice; amending s. 626.9521, F.S.; increasing the
55 maximum fines that may be imposed by the office or
56 department for nonwillful and willful violations of state
57 law regarding unfair methods of competition and unfair or
58 deceptive acts or practices related to insurance; amending

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59 | s. 626.9541, F.S.; specifying an additional unfair claims
60 | settlement practice; amending s. 627.0612, F.S.; providing
61 | criteria for administrative hearings to determine whether
62 | an insurer's property insurance rates, rating manuals,
63 | premium credits, discount schedules, and surcharge
64 | schedules comply with the law; providing for entry of
65 | certain orders; amending s. 627.062, F.S.; requiring that
66 | an insurer seeking a rate for property insurance that is
67 | greater than the rate most recently approved by the Office
68 | of Insurance Regulation make a "file and use" filing for
69 | all such rate filings made after a specified date;
70 | revising the factors the office must consider in reviewing
71 | a rate filing; prohibiting the Office of Insurance
72 | Regulation from disapproving as excessive a rate solely
73 | because the insurer obtained reinsurance covering a
74 | specified probably maximum loss; allowing the office to
75 | disapprove a rate as excessive within 1 year after the
76 | rate has been approved under certain conditions related to
77 | nonrenewal of policies by the insurer; requiring the
78 | Division of Administrative Hearings to expedite a hearing
79 | request by an insurer and for the administrative law judge
80 | to commence the hearing within a specified time;
81 | authorizing an insurer to request an expedited appellate
82 | review pursuant to the Florida Rules of Appellate
83 | Procedure; expressing legislative intent for an expedited
84 | appellate review; revising provisions relating to the
85 | submission of a disputed rate filing, other than a rate
86 | filing for medical malpractice insurance, to an
87 | arbitration panel in lieu of an administrative hearing if

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88 | the rate is filed before a specified date; deleting
89 | provisions relating to mandatory arbitration in lieu of
90 | certain hearings; amending s. 627.0628, F.S.; providing
91 | legislative findings relating to final agency action for
92 | insurance ratemaking; requiring the Financial Services
93 | Commission to consider and adopt findings relating to
94 | certain actuarial models, principles, standards, or models
95 | for certain maximum loss level calculations; requiring
96 | that with respect to rate filings, insurers must use
97 | actuarial methods or models found to be accurate or
98 | reliable by the Florida Commission on Hurricane Loss
99 | Projection Methodology; deleting the requirement for the
100 | Office of Insurance Regulation and the Consumer Advocate
101 | to have access to all assumptions of a hurricane loss
102 | model in order for a model that has been found to be
103 | accurate and reliable by the Florida Commission on
104 | Hurricane Loss Projection Methodology to be admissible in
105 | a rate proceeding; deleting cross-references to conform to
106 | changes made by the act; amending s. 627.0629, F.S.;
107 | requiring that the Office of Insurance Regulation develop
108 | and make publicly available before a specified deadline a
109 | proposed method for insurers to establish windstorm
110 | mitigation premium discounts that correlate to the uniform
111 | home rating scale; requiring that the Financial Services
112 | Commission adopt rules before a specified deadline;
113 | requiring insurers to make rate filings pursuant to such
114 | method; authorizing the commission to make changes by rule
115 | to the uniform home grading scale and specify by rule the
116 | minimum required discounts, credits, or other rate

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117 differentials; requiring that such rate differentials be
118 consistent with generally accepted actuarial principles
119 and wind loss mitigation studies; amending s. 627.351,
120 F.S., relating to Citizens Property Insurance Corporation;
121 deleting a provision to conform to changes made in the
122 act; deleting provisions defining the terms "homestead
123 property" and "nonhomestead property"; increasing
124 threshold replacement costs of certain structures for
125 eligibility for coverage by the corporation; deleting
126 requirements for certain properties to meeting building
127 code plus requirements as a condition of eligibility for
128 coverage by the corporation; decreasing the value at which
129 certain structures are eligible for coverage; requiring
130 written disclosure of windstorm mitigation ratings for
131 certain structures; deleting outdated provisions requiring
132 the corporation to submit a report for approval of
133 offering multiperil coverage; revising threshold amounts
134 of deficits incurred in a calendar year on which the
135 decision to levy assessments and the types of such
136 assessments are based; revising the formula used to
137 calculate shares of assessments owed by certain assessable
138 insureds; requiring that the board of governors make
139 certain determinations before levying emergency
140 assessments; providing the board of governors with
141 discretion to set the amount of an emergency assessment
142 within specified limits; requiring the board of governors
143 to levy a Citizens policyholder surcharge under certain
144 conditions; increasing the amount of the surcharge;
145 deleting a provision requiring the levy of an immediate

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146 assessment against certain policyholders under such
147 conditions; requiring that funds collected from the levy
148 of such surcharges be used for certain purposes; providing
149 that such surcharges are not considered premium and are
150 not subject to commissions, fees, or premium taxes;
151 requiring that the failure to pay such surcharges be
152 treated as failure to pay premium; requiring that the
153 amount of any assessment or surcharge which exceeds the
154 amount of deficits be remitted to and used by the
155 corporation for specified purposes; deleting provisions
156 requiring that the plan of operation of the corporation
157 provide for the levy of a Citizens policyholder surcharge
158 if regular deficit assessments are levied as a result of
159 deficits in certain accounts; deleting provisions related
160 to the calculation, classification, and nonpayment of such
161 surcharge; requiring that the corporation make an annual
162 filing for each personal or commercial line of business it
163 writes, beginning on a specified date; deleting a
164 provision requiring an insurer to purchase bonds that
165 remain unsold; deleting provisions requiring the
166 corporation to make certain confidential underwriting and
167 claims files available to agents to conform to changes
168 made by the act relating to ineligibility of certain
169 dwellings; clarifying the right of certain parties to
170 discover underwriting and claims file records; authorizing
171 the corporation to release such records as it deems
172 necessary; amending s. 627.4133, F.S.; requiring insurers
173 to provide written notice of certain cancellations,
174 nonrenewals, or terminations; creating s. 689.262, F.S.;

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175 requiring a purchaser of residential property in wind-
176 borne debris regions to be presented with the windstorm
177 mitigation rating of the structure; authorizing the
178 Financial Services Commission to adopt rules; requiring
179 Citizens Property Insurance Corporation to transfer funds
180 to the General Revenue Fund if the losses due to a
181 hurricane do not exceed a specified amount; requiring the
182 board of governors of Citizens Property Insurance
183 Corporation to make a reasonable estimate of such losses
184 by a certain date; requiring the board to make quarterly
185 transfers of funds to the corporation under certain
186 circumstances; requiring the corporation to credit certain
187 accounts for funds removed to make certain transfers;
188 requiring the State Board of Administration to transfer to
189 Citizens Property Insurance Corporation certain
190 uncommitted or unreserved funds under certain
191 circumstances; prohibiting Citizens Property Insurance
192 Corporation from using certain statutory changes or
193 authorized transfers of funds as justification or cause to
194 seek any rate or assessment increase; amending s.
195 627.06281, F.S.; providing for residential property
196 insurers to have access to and use a public hurricane loss
197 projection model; requiring the office to establish a fee
198 schedule for such model access and use; amending s.
199 627.0655, F.S.; expanding application of policyholder loss
200 or expense-related premium discounts; creating the
201 Citizens Property Insurance Corporation Mission Review
202 Task Force; providing purposes; requiring a report;
203 providing report requirements; providing for appointment

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204 of members; providing responsibilities; specifying service
205 without compensation; providing for reimbursement of per
206 diem and travel expenses; providing meeting requirements;
207 requiring the corporation to assist the task force;
208 providing for the expiration of the task force; requiring
209 the Chief Financial Officer to provide a report on the
210 economic impact on the state of certain hurricanes;
211 providing report requirements; creating s. 627.0621, F.S.;
212 providing requirements for transparency in rate
213 regulation; providing definitions; providing for a website
214 for public access to rate filing information; providing
215 requirements; providing for application of public meeting
216 requirements; specifying nonapplication of attorney-client
217 or work-product privileges to certain communications in
218 certain administrative or judicial proceedings under
219 certain circumstances; specifying criteria; amending s.
220 215.555, F.S.; extending for an additional year the offer
221 of reimbursement coverage for specified insurers; revising
222 the qualifying criteria for such insurers; revising
223 provisions to conform; amending s. 627.0613, F.S.;
224 deleting cross-references to conform to changes made by
225 the act; amending s. 627.712, F.S.; requiring insurers to
226 provide notice to mortgageholders or lienholders of
227 certain policies not providing wind coverage for certain
228 structures; providing for provisions of the act to
229 supersede and control over conflicting provisions of House
230 Bill 5057; providing effective dates.

231
232 Be It Enacted by the Legislature of the State of Florida:

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233
234 Section 1. This act may be cited as the "Homeowner's Bill
235 of Rights Act."

236 Section 2. Section 215.5595, Florida Statutes, is amended
237 to read:

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

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

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

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

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

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

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

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262 ~~cancellations or nonrenewals of residential property insurance~~
263 ~~policies is expected to increase and the number of new~~
264 ~~residential policies written in the voluntary market are likely~~
265 ~~to decrease, causing increased policy growth and exposure to the~~
266 ~~state insurer of last resort, Citizens Property Insurance~~
267 ~~Corporation, and threatening to increase the deficit of the~~
268 ~~corporation, currently estimated to be over \$1.7 billion. This~~
269 ~~deficit~~ must be funded by assessments against insurers and
270 policyholders, unless otherwise funded by the state. The program
271 has a substantial positive effect on the depopulation efforts of
272 Citizens Property Insurance Corporation since companies
273 participating in the program have removed over 199,000 policies
274 from the corporation. Companies participating in the program have
275 issued a significant number of new policies, thereby keeping an
276 estimated 480,000 new policies out of the corporation.

277 (c) ~~(f)~~ Policyholders are subject to high ~~increased~~ premiums
278 and assessments that are increasingly making such coverage
279 unaffordable and that may force policyholders to sell their homes
280 and even leave the state.

281 (d) ~~(g)~~ The increased risk to the public sector and private
282 sector continues to pose ~~poses~~ a serious threat to the economy of
283 this state, particularly the building and financing of
284 residential structures, and existing mortgages may be placed in
285 default.

286 ~~(h)~~ ~~The losses from 2004 and 2005, combined with the~~
287 ~~expectation that the increase in hurricane activity will continue~~
288 ~~for the foreseeable future, have caused both insurers and~~
289 ~~reinsurers to limit the capital they are willing to commit to~~
290 ~~covering the hurricane risk in Florida; attracting new capital to~~

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291 ~~the Florida market is a critical priority; and providing a low-~~
292 ~~cost source of capital would enable insurers to write additional~~
293 ~~residential property insurance coverage and act to mitigate~~
294 ~~premium increases.~~

295 (e)(i) Appropriating state funds to be exchanged for ~~used~~
296 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
297 under conditions requiring the insurer to contribute additional
298 private sector capital and to write a minimum level of premiums
299 for residential hurricane coverage, is a valid and important
300 public purpose.

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

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

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

317 (b) On or after April 1, 2008, the insurer must contribute
318 an amount of new capital to its surplus which is at least equal
319 to the amount of the surplus note and must apply to the board by

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320 September 1, 2008 ~~July 1, 2006~~. If an insurer applies after
321 September 1, 2008 ~~July 1, 2006~~, but before June 1, 2009 ~~2007~~, the
322 amount of the surplus note is limited to one-half of the new
323 capital that the insurer contributes to its surplus, except that
324 an insurer writing only manufactured housing policies is eligible
325 to receive a surplus note of up to \$7 million. For purposes of
326 this section, new capital must be in the form of cash or cash
327 equivalents as specified in s. 625.012(1).

328 (c) The insurer's surplus, new capital, and the surplus
329 note must total at least \$50 million, except for insurers writing
330 residential property insurance covering only manufactured
331 housing. The insurer's surplus, new capital, and the surplus note
332 must total at least \$14 million for insurers writing only
333 residential property insurance covering manufactured housing
334 policies as provided in paragraph (a).

335 (d) The insurer must commit to increase its writings of
336 residential property insurance, including the peril of wind, and
337 to meet ~~meeting~~ a minimum writing ratio of net written premium to
338 surplus of at least 1:1 for the first calendar year after
339 receiving the state funds or renegotiation of the surplus note,
340 1.5:1 for the second calendar year, and 2:1 for the remaining
341 term of the surplus note. Alternatively, the insurer must meet a
342 minimum writing ratio of gross written premium to surplus of at
343 least 3:1 for the first calendar year after receiving the state
344 funds or renegotiation of the surplus note, 4.5:1 for the second
345 calendar year, and 6:1 for the remaining term of the surplus
346 note. The writing ratios, ~~which~~ shall be determined by the Office
347 of Insurance Regulation and certified quarterly to the board. For
348 this purpose, the term "premium" ~~"net written premium"~~ means net

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349 ~~written~~ premium for residential property insurance in this state
350 ~~Florida~~, including the peril of wind, and "surplus" means the new
351 capital and surplus note ~~refers to the entire surplus~~ of the
352 insurer. An insurer that makes an initial application after July
353 1, 2008, must also commit to writing at least 15 percent of its
354 net or gross written premium for new policies, not including
355 renewal premiums, for policies taken out of Citizens Property
356 Insurance Corporation, during each of the first 3 years after
357 receiving the state funds in exchange for the surplus note, which
358 shall be determined by the Office of Insurance Regulation and
359 certified annually to the board. The insurer must also commit to
360 maintaining a level of surplus and reinsurance sufficient to
361 cover in excess of its 1-in-100 year probable maximum loss, as
362 determined by a hurricane loss model accepted by the Florida
363 Commission on Hurricane Loss Projection Methodology, which shall
364 be determined by the Office of Insurance Regulation and certified
365 annually to the board. If the board determines that the insurer
366 has failed to meet any of the requirements of this paragraph
367 ~~required ratio is not maintained~~ during the term of the surplus
368 note, the board may increase the interest rate, accelerate the
369 repayment of interest and principal, or shorten the term of the
370 surplus note, subject to approval by the Commissioner of
371 Insurance of payments by the insurer of principal and interest as
372 provided in paragraph (f).

373 (e) If the requirements of this section are met, the board
374 may approve an application by an insurer for funds in exchange
375 for issuance of a surplus note, unless the board determines that
376 the financial condition of the insurer and its business plan for
377 writing residential property insurance in Florida places an

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378 | unreasonably high level of financial risk to the state of
379 | nonpayment in full of the interest and principal. The board shall
380 | consult with the Office of Insurance Regulation and may contract
381 | with independent financial and insurance consultants in making
382 | this determination.

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

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

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407 residential property insurance market. Between insurers writing
408 residential property insurance covering manufactured housing,
409 priority shall be given to the insurer writing the highest
410 percentage of its policies covering manufactured housing.

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

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

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

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

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

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

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

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

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436 (4) The state funds provided to the insurer in exchange for
437 the A surplus note ~~provided to an insurer~~ pursuant to this
438 section are ~~is~~ considered borrowed surplus ~~an asset~~ of the
439 insurer pursuant to s. 628.401 ~~s. 625.012~~.

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

444 (6) The board shall adopt rules prescribing the procedures,
445 administration, and criteria for approving the applications of
446 insurers to receive funds in exchange for issuance of surplus
447 notes pursuant to this section, which may be adopted pursuant to
448 the procedures for emergency rules of chapter 120. Otherwise,
449 actions and determinations by the board pursuant to this section
450 are exempt from chapter 120.

451 (7) The board shall invest and reinvest the funds
452 appropriated for the program in accordance with s. 215.47 and
453 consistent with board policy.

454 (8) Costs and fees incurred by the board in administering
455 this program, including fees for investment services, shall be
456 paid from funds appropriated by the Legislature for this program,
457 but are limited to 1 percent of the amount appropriated.

458 (9) The board shall submit a report to the President of the
459 Senate and the Speaker of the House of Representatives by
460 February 1 of each year as to the results of the program and each
461 insurer's compliance with the terms of its surplus note.

462 (10) The amendments to this section enacted in 2008 do not
463 affect the terms or conditions of the surplus notes that were
464 approved prior to January 1, 2008. However, the board may

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465 renegotiate the terms of any surplus note issued by an insurer
466 prior to January 2008 under this program upon the agreement of
467 the insurer and the board and consistent with the requirements of
468 this section as amended in 2008.

469 (11) On January 15, 2009, the State Board of Administration
470 shall transfer to Citizens Property Insurance Corporation any
471 funds that have not been committed or reserved for insurers
472 approved to receive such funds under the program, from the funds
473 that were transferred from Citizens Property Insurance
474 Corporation in 2008-2009 for such purposes.

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

477 624.3161 Market conduct examinations.--

478 (6) Based on the findings of a market conduct examination
479 that an insurer has exhibited a pattern or practice of willful
480 violations of an unfair insurance trade practice related to
481 claims-handling which caused harm to policyholders, as prohibited
482 by s. 626.9541(1)(i), the office may order an insurer pursuant to
483 chapter 120 to file its claims-handling practices and procedures
484 related to that line of insurance with the office for review and
485 inspection, to be held by the office for the following 36-month
486 period. Such claims-handling practices and procedures are public
487 records and are not trade secrets or otherwise exempt from the
488 provisions of s. 119.07(1). As used in this section, "claims-
489 handling practices and procedures" are any policies, guidelines,
490 rules, protocols, standard operating procedures, instructions, or
491 directives that govern or guide how and the manner in which an
492 insured's claims for benefits under any policy will be processed.

493 Section 4. Subsections (2) and (3) of section 624.4211,

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494 Florida Statutes, are amended to read:

495 624.4211 Administrative fine in lieu of suspension or
496 revocation.--

497 (2) With respect to any nonwillful violation, such fine may
498 ~~shall~~ not exceed \$5,000 ~~\$2,500~~ per violation. In no event shall
499 such fine exceed an aggregate amount of \$20,000 ~~\$10,000~~ for all
500 nonwillful violations arising out of the same action. ~~If~~ When an
501 insurer discovers a nonwillful violation, the insurer shall
502 correct the violation and, if restitution is due, make
503 restitution to all affected persons. Such restitution shall
504 include interest at 12 percent per year from either the date of
505 the violation or the date of inception of the affected person's
506 policy, at the insurer's option. The restitution may be a credit
507 against future premiums due provided that ~~the~~ interest
508 accumulates ~~shall accumulate~~ until the premiums are due. If the
509 amount of restitution due to any person is \$50 or more and the
510 insurer wishes to credit it against future premiums, it shall
511 notify such person that she or he may receive a check instead of
512 a credit. If the credit is on a policy that ~~which~~ is not renewed,
513 the insurer shall pay the restitution to the person to whom it is
514 due.

515 (3) With respect to any knowing and willful violation of a
516 lawful order or rule of the office or commission or a provision
517 of this code, the office may impose a fine upon the insurer in an
518 amount not to exceed \$40,000 ~~\$20,000~~ for each such violation. In
519 no event shall such fine exceed an aggregate amount of \$200,000
520 ~~\$100,000~~ for all knowing and willful violations arising out of
521 the same action. In addition to such fines, the ~~such~~ insurer
522 shall make restitution when due in accordance with ~~the provisions~~

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523 ef subsection (2).

524 Section 5. Section 624.4213, Florida Statutes, is created
525 to read:

526 624.4213 Trade secret documents.--

527 (1) If any person who is required to submit documents or
528 other information to the office or department pursuant to the
529 Insurance Code or by rule or order of the office, department, or
530 commission claims that such submission contains a trade secret,
531 such person may file with the office or department a notice of
532 trade secret as provided in this section. Failure to do so
533 constitutes a waiver of any claim by such person that the
534 document or information is a trade secret.

535 (a) Each page of such document or specific portion of a
536 document claimed to be a trade secret must be clearly marked as
537 "trade secret."

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

541 (c) In submitting a notice of trade secret to the office or
542 department, the submitting party must include an affidavit
543 certifying under oath to the truth of the following statements
544 concerning all documents or information that are claimed to be
545 trade secrets:

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

550 2. [I have/My company has] taken measures to prevent the
551 disclosure of the information to anyone other than those who have

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552 been selected to have access for limited purposes, and [I
553 intend/my company intends] to continue to take such measures.

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

557 4. The information is not publicly available elsewhere.

558 (2) If the office or department receives a public-records
559 request for a document or information that is marked and
560 certified as a trade secret, the office or department shall
561 promptly notify the person that certified the document as a trade
562 secret. The notice shall inform such person that he or she or his
563 or her company has 30 days following receipt of such notice to
564 file an action in circuit court seeking a determination whether
565 the document in question contains trade secrets and an order
566 barring public disclosure of the document. If that person or
567 company files an action within 30 days after receipt of notice of
568 the public-records request, the office or department may not
569 release the documents pending the outcome of the legal action.
570 The failure to file an action within 30 days constitutes a waiver
571 of any claim of confidentiality and the office or department
572 shall release the document as requested.

573 (3) The office or department may disclose a trade secret,
574 together with the claim that it is a trade secret, to an officer
575 or employee of another governmental agency whose use of the trade
576 secret is within the scope of his or her employment.

577 Section 6. Section 624.4305, Florida Statutes, is created to
578 read:

579 624.4305 Nonrenewal of residential property insurance
580 policies.--Any insurer planning to nonrenew more than 10,000

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581 residential property insurance policies in this state within a
582 12-month period shall give notice in writing to the Office of
583 Insurance Regulation for informational purposes 90 days before
584 the issuance of any notices of nonrenewal. The notice provided to
585 the office must set forth the insurer's reasons for such action,
586 the effective dates of nonrenewal, and any arrangements made for
587 other insurers to offer coverage to affected policyholders.

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

590 626.9521 Unfair methods of competition and unfair or
591 deceptive acts or practices prohibited; penalties.--

592 (2) Any person who violates any provision of this part
593 shall be subject to a fine in an amount not greater than \$5,000
594 ~~\$2,500~~ for each nonwillful violation and not greater than \$40,000
595 ~~\$20,000~~ for each willful violation. Fines under this subsection
596 imposed against an insurer may not exceed an aggregate amount of
597 \$20,000 ~~\$10,000~~ for all nonwillful violations arising out of the
598 same action or an aggregate amount of \$200,000 ~~\$100,000~~ for all
599 willful violations arising out of the same action. The fines
600 authorized by this subsection may be imposed in addition to any
601 other applicable penalty.

602 Section 8. Paragraph (i) of subsection (1) of section
603 626.9541, Florida Statutes, is amended to read:

604 626.9541 Unfair methods of competition and unfair or
605 deceptive acts or practices defined.--

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

609 (i) Unfair claim settlement practices.--

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- 610 1. Attempting to settle claims on the basis of an
611 application, when serving as a binder or intended to become a
612 part of the policy, or any other material document which was
613 altered without notice to, or knowledge or consent of, the
614 insured;
- 615 2. A material misrepresentation made to an insured or any
616 other person having an interest in the proceeds payable under
617 such contract or policy, for the purpose and with the intent of
618 effecting settlement of such claims, loss, or damage under such
619 contract or policy on less favorable terms than those provided
620 in, and contemplated by, such contract or policy; or
- 621 3. Committing or performing with such frequency as to
622 indicate a general business practice any of the following:
- 623 a. Failing to adopt and implement standards for the proper
624 investigation of claims;
- 625 b. Misrepresenting pertinent facts or insurance policy
626 provisions relating to coverages at issue;
- 627 c. Failing to acknowledge and act promptly upon
628 communications with respect to claims;
- 629 d. Denying claims without conducting reasonable
630 investigations based upon available information;
- 631 e. Failing to affirm or deny full or partial coverage of
632 claims, and, as to partial coverage, the dollar amount or extent
633 of coverage, or failing to provide a written statement that the
634 claim is being investigated, upon the written request of the
635 insured within 30 days after proof-of-loss statements have been
636 completed;
- 637 f. Failing to promptly provide a reasonable explanation in
638 writing to the insured of the basis in the insurance policy, in

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639 relation to the facts or applicable law, for denial of a claim or
640 for the offer of a compromise settlement;

641 g. Failing to promptly notify the insured of any additional
642 information necessary for the processing of a claim; or

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

645 4. Failing to pay undisputed amounts of partial or full
646 benefits owed under first-party property insurance policies
647 within 90 days after an insurer receives notice of a residential
648 property insurance claim, determines the amounts of partial or
649 full benefits, and agrees to coverage, unless payment of the
650 undisputed benefits is prevented by an act of God, prevented by
651 the impossibility of performance, or due to actions by the
652 insured or claimant that constitute fraud, lack of cooperation,
653 or intentional misrepresentation regarding the claim for which
654 benefits are owed.

655 Section 9. Section 627.0612, Florida Statutes, is amended
656 to read:

657 627.0612 Administrative proceedings in rating
658 determinations.--

659 (1) In any proceeding to determine whether rates, rating
660 plans, or other matters governed by this part comply with the
661 law, the appellate court shall set aside a final order of the
662 office if the office has violated s. 120.57(1)(k) by substituting
663 its findings of fact for findings of an administrative law judge
664 which were supported by competent substantial evidence.

665 (2) In an administrative hearing to determine whether an
666 insurer's rates, rating schedules, rating manuals, premium
667 credits, discount schedules, surcharge schedules, or changes

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668 thereto, for property insurance comply with the law, in addition
669 to any other findings of fact, findings on the following matters
670 shall be considered findings of fact:

671 (a) Whether a factor or factors used in a rate filing or
672 applied by the office is consistent with standard actuarial
673 techniques or practices or are otherwise based on reasonable
674 actuarial judgment.

675 (b) Whether a factor for underwriting profit and
676 contingencies is reasonable or excessive.

677 (c) Whether the cost of reinsurance is reasonable or
678 excessive.

679 (3) In an administrative hearing to determine whether an
680 insurer's rates, rating schedules, rating manuals, premium
681 credits, discount schedules, surcharge schedules, or changes
682 thereto, for property insurance comply with the law, a
683 recommended order may be entered that approves, modifies, or
684 rejects the requested change. A recommended order modifying the
685 requested rate change shall recommend such change as is supported
686 by the record in the case.

687 Section 10. Paragraphs (a), (b), and (g) of subsection (2),
688 subsection (6), and paragraph (a) of subsection (9) of section
689 627.062, Florida Statutes, are amended to read:

690 627.062 Rate standards.--

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

692 (a) Insurers or rating organizations shall establish and
693 use rates, rating schedules, or rating manuals to allow the
694 insurer a reasonable rate of return on such classes of insurance
695 written in this state. A copy of rates, rating schedules, rating
696 manuals, premium credits or discount schedules, and surcharge

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697 | schedules, and changes thereto, shall be filed with the office
698 | under one of the following procedures except as provided in
699 | subparagraph 3.:

700 | 1. If the filing is made at least 90 days before the
701 | proposed effective date and the filing is not implemented during
702 | the office's review of the filing and any proceeding and judicial
703 | review, then such filing shall be considered a "file and use"
704 | filing. In such case, the office shall finalize its review by
705 | issuance of a notice of intent to approve or a notice of intent
706 | to disapprove within 90 days after receipt of the filing. The
707 | notice of intent to approve and the notice of intent to
708 | disapprove constitute agency action for purposes of the
709 | Administrative Procedure Act. Requests for supporting
710 | information, requests for mathematical or mechanical corrections,
711 | or notification to the insurer by the office of its preliminary
712 | findings shall not toll the 90-day period during any such
713 | proceedings and subsequent judicial review. The rate shall be
714 | deemed approved if the office does not issue a notice of intent
715 | to approve or a notice of intent to disapprove within 90 days
716 | after receipt of the filing.

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

724 | 3. For all property insurance filings made or submitted
725 | after January 25, 2007, but before December 31, 2009 ~~2008~~, an

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726 insurer seeking a rate that is greater than the rate most
727 recently approved by the office shall make a "file and use"
728 filing. ~~This subparagraph applies to property insurance only.~~ For
729 purposes of this subparagraph, motor vehicle collision and
730 comprehensive coverages are not considered to be property
731 coverages.

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

737 1. Past and prospective loss experience within and without
738 this state.

739 2. Past and prospective expenses.

740 3. The degree of competition among insurers for the risk
741 insured.

742 4. Investment income reasonably expected by the insurer,
743 consistent with the insurer's investment practices, from
744 investable premiums anticipated in the filing, plus any other
745 expected income from currently invested assets representing the
746 amount expected on unearned premium reserves and loss reserves.

747 The commission may adopt rules using ~~utilizing~~ reasonable
748 techniques of actuarial science and economics to specify the
749 manner in which insurers shall calculate investment income
750 attributable to such classes of insurance written in this state
751 and the manner in which such investment income shall be used to
752 calculate ~~in the calculation of~~ insurance rates. Such manner
753 shall contemplate allowances for an underwriting profit factor
754 and full consideration of investment income which produce a

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755 reasonable rate of return; however, investment income from
756 invested surplus may ~~shall~~ not be considered.

757 5. The reasonableness of the judgment reflected in the
758 filing.

759 6. Dividends, savings, or unabsorbed premium deposits
760 allowed or returned to Florida policyholders, members, or
761 subscribers.

762 7. The adequacy of loss reserves.

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

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

769 10. Conflagration and catastrophe hazards, if applicable.

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

774 12.11. A reasonable margin for underwriting profit and
775 contingencies. ~~For that portion of the rate covering the risk of~~
776 ~~hurricanes and other catastrophic losses for which the insurer~~
777 ~~has not purchased reinsurance and has exposed its capital and~~
778 ~~surplus to such risk, the office must approve a rating factor~~
779 ~~that provides the insurer a reasonable rate of return that is~~
780 ~~commensurate with such risk.~~

781 13.12. The cost of medical services, if applicable.

782 14.13. Other relevant factors which impact upon the
783 frequency or severity of claims or upon expenses.

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784 (g) The office may at any time review a rate, rating
785 schedule, rating manual, or rate change; the pertinent records of
786 the insurer; and market conditions. If the office finds on a
787 preliminary basis that a rate may be excessive, inadequate, or
788 unfairly discriminatory, the office shall initiate proceedings to
789 disapprove the rate and shall so notify the insurer. However, the
790 office may not disapprove as excessive any rate for which it has
791 given final approval or which has been deemed approved for a
792 period of 1 year after the effective date of the filing unless
793 the office finds that a material misrepresentation or material
794 error was made by the insurer or was contained in the filing.
795 Upon being so notified, the insurer or rating organization shall,
796 within 60 days, file with the office all information which, in
797 the belief of the insurer or organization, proves the
798 reasonableness, adequacy, and fairness of the rate or rate
799 change. The office shall issue a notice of intent to approve or a
800 notice of intent to disapprove pursuant to the procedures of
801 paragraph (a) within 90 days after receipt of the insurer's
802 initial response. In such instances and in any administrative
803 proceeding relating to the legality of the rate, the insurer or
804 rating organization shall carry the burden of proof by a
805 preponderance of the evidence to show that the rate is not
806 excessive, inadequate, or unfairly discriminatory. After the
807 office notifies an insurer that a rate may be excessive,
808 inadequate, or unfairly discriminatory, unless the office
809 withdraws the notification, the insurer shall not alter the rate
810 except to conform with the office's notice until the earlier of
811 120 days after the date the notification was provided or 180 days
812 after the date of the implementation of the rate. The office may,

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813 subject to chapter 120, disapprove without the 60-day
814 notification any rate increase filed by an insurer within the
815 prohibited time period or during the time that the legality of
816 the increased rate is being contested.

817
818 The provisions of this subsection shall not apply to workers'
819 compensation and employer's liability insurance and to motor
820 vehicle insurance.

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

834 (b) Upon entry of a final order, the insurer may request a
835 expedited appellate review pursuant to the Florida Rules of
836 Appellate Procedure. It is the intent of the Legislature that the
837 First District Court of Appeal grant an insurer's request for an
838 expedited appellate review.

839 ~~(a) After any action with respect to a rate filing that~~
840 ~~constitutes agency action for purposes of the Administrative~~
841 ~~Procedure Act, except for a rate filing for medical malpractice,~~

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

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

865 ~~(c) Upon initiation of the arbitration process, the insurer~~
866 ~~waives all rights to challenge the action of the office under the~~
867 ~~Administrative Procedure Act or any other provision of law;~~
868 ~~however, such rights are restored to the insurer if the~~
869 ~~arbitrators fail to render a decision within 90 days after~~
870 ~~initiation of the arbitration process.~~

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

876 1. The signing officer and actuary have reviewed the rate
877 filing;

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

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

888 4. Based on the signing officer's and actuary's knowledge,
889 the rate filing reflects all premium savings that are reasonably
890 expected to result from legislative enactments and are in
891 accordance with generally accepted and reasonable actuarial
892 techniques.

893 Section 11. Paragraph (c) of subsection (1) and subsection
894 (3) of section 627.0628, Florida Statutes, are amended, and
895 paragraph (e) is added to subsection (1) of that section, to
896 read:

897 627.0628 Florida Commission on Hurricane Loss Projection
898 Methodology; public records exemption; public meetings
899 exemption.--

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(1) LEGISLATIVE FINDINGS AND INTENT.--

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

(e) The Legislature finds that the authority to take final agency action with respect to insurance ratemaking is vested in the Office of Insurance Regulation and the Financial Services Commission, and that the processes, standards, and guidelines of the Florida Commission on Hurricane Loss Projection Methodology do not constitute final agency action or statements of general applicability that implement, interpret, or prescribe law or policy; accordingly, chapter 120 does not apply to the processes, standards, and guidelines of the Florida Commission on Hurricane Loss Projection Methodology.

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

(a) The commission shall consider any actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in residential property insurance

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929 rate filings. The commission shall, from time to time, adopt
930 findings as to the accuracy or reliability of particular methods,
931 principles, standards, models, or output ranges.

932 (b) The commission shall consider any actuarial methods,
933 principles, standards, or models that have the potential for
934 improving the accuracy of or reliability of projecting probable
935 maximum loss levels. The commission shall adopt findings as to
936 the accuracy or reliability of particular methods, principles,
937 standards, or models related to probable maximum loss
938 calculations.

939 (c)~~(b)~~ In establishing reimbursement premiums for the
940 Florida Hurricane Catastrophe Fund, the State Board of
941 Administration must, to the extent feasible, employ actuarial
942 methods, principles, standards, models, or output ranges found by
943 the commission to be accurate or reliable.

944 (d)~~(e)~~ With respect to a rate filing under s. 627.062, an
945 insurer shall ~~may~~ employ and may not modify or adjust actuarial
946 methods, principles, standards, models, or output ranges found by
947 the commission to be accurate or reliable in determining ~~to~~
948 ~~determine~~ hurricane loss factors for use in a rate filing under
949 s. 627.062. An insurer shall employ and may not modify or adjust
950 models found by the commission to be accurate or reliable in
951 determining probable maximum loss levels pursuant to paragraph
952 (b) with respect to a rate filing under s. 627.062 made more than
953 60 days after the commission has made such findings. ~~Such~~
954 ~~findings and factors are admissible and relevant in consideration~~
955 ~~of a rate filing by the office or in any arbitration or~~
956 ~~administrative or judicial review only if the office and the~~
957 ~~consumer advocate appointed pursuant to s. 627.0613 have access~~

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958 ~~to all of the assumptions and factors that were used in~~
959 ~~developing the actuarial methods, principles, standards, models,~~
960 ~~or output ranges, and are not precluded from disclosing such~~
961 ~~information in a rate proceeding. In any rate hearing under s.~~
962 ~~120.57 or in any arbitration proceeding under s. 627.062(6), the~~
963 ~~hearing officer, judge, or arbitration panel may determine~~
964 ~~whether the office and the consumer advocate were provided with~~
965 ~~access to all of the assumptions and factors that were used in~~
966 ~~developing the actuarial methods, principles, standards, models,~~
967 ~~or output ranges and to determine their admissibility.~~

968 (e)~~(d)~~ The commission shall adopt revisions to previously
969 adopted actuarial methods, principles, standards, models, or
970 output ranges at least annually.

971 (f)~~(e)~~1. A trade secret, as defined in s. 812.081, that is
972 used in designing and constructing a hurricane loss model and
973 that is provided pursuant to this section, by a private company,
974 to the commission, office, or consumer advocate appointed
975 pursuant to s. 627.0613, is confidential and exempt from s.
976 119.07(1) and s. 24(a), Art. I of the State Constitution.

977 2. That portion of a meeting of the commission or of a rate
978 proceeding on an insurer's rate filing at which a trade secret
979 made confidential and exempt by this paragraph is discussed is
980 exempt from s. 286.011 and s. 24(b), Art. I of the State
981 Constitution.

982 3. This paragraph is subject to the Open Government Sunset
983 Review Act of 1995 in accordance with s. 119.15, and shall stand
984 repealed on October 2, 2010, unless reviewed and saved from
985 repeal through reenactment by the Legislature.

986 Section 12. Subsection (1) of section 627.0629, Florida

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987 Statutes, is amended to read:

988 627.0629 Residential property insurance; rate filings.--

989 (1) (a) It is the intent of the Legislature that insurers
990 must provide savings to consumers who install or implement
991 windstorm damage mitigation techniques, alterations, or solutions
992 to their properties to prevent windstorm losses. A rate filing
993 for residential property insurance must include actuarially
994 reasonable discounts, credits, or other rate differentials, or
995 appropriate reductions in deductibles, for properties on which
996 fixtures or construction techniques demonstrated to reduce the
997 amount of loss in a windstorm have been installed or implemented.
998 The fixtures or construction techniques shall include, but not be
999 limited to, fixtures or construction techniques which enhance
1000 roof strength, roof covering performance, roof-to-wall strength,
1001 wall-to-floor-to-foundation strength, opening protection, and
1002 window, door, and skylight strength. Credits, discounts, or other
1003 rate differentials, or appropriate reductions in deductibles, for
1004 fixtures and construction techniques which meet the minimum
1005 requirements of the Florida Building Code must be included in the
1006 rate filing. All insurance companies must make a rate filing
1007 which includes the credits, discounts, or other rate
1008 differentials or reductions in deductibles by February 28, 2003.
1009 By July 1, 2007, the office shall reevaluate the discounts,
1010 credits, other rate differentials, and appropriate reductions in
1011 deductibles for fixtures and construction techniques that meet
1012 the minimum requirements of the Florida Building Code, based upon
1013 actual experience or any other loss relativity studies available
1014 to the office. The office shall determine the discounts, credits,
1015 other rate differentials, and appropriate reductions in

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1016 deductibles that reflect the full actuarial value of such
1017 revaluation, which may be used by insurers in rate filings.

1018 (b) By February 1, 2011, the Office of Insurance
1019 Regulation, in consultation with the Department of Financial
1020 Services and the Department of Community Affairs, shall develop
1021 and make publicly available a proposed method for insurers to
1022 establish discounts, credits, or other rate differentials for
1023 hurricane mitigation measures which directly correlate to the
1024 numerical rating assigned to a structure pursuant to the uniform
1025 home grading scale adopted by the Financial Services Commission
1026 pursuant to s. 215.55865, including any proposed changes to the
1027 uniform home grading scale. By October 1, 2011, the commission
1028 shall adopt rules requiring insurers to make rate filings for
1029 residential property insurance which revise insurers' discounts,
1030 credits, or other rate differentials for hurricane mitigation
1031 measures so that such rate differentials correlate directly to
1032 the uniform home grading scale. The rules may include such
1033 changes to the uniform home grading scale as the commission
1034 determines are necessary, and may specify the minimum required
1035 discounts, credits, or other rate differentials. Such rate
1036 differentials must be consistent with generally accepted
1037 actuarial principles and wind-loss mitigation studies. The rules
1038 shall allow a period of at least 2 years after the effective date
1039 of the revised mitigation discounts, credits, or other rate
1040 differentials for a property owner to obtain an inspection or
1041 otherwise qualify for the revised credit, during which time the
1042 insurer shall continue to apply the mitigation credit that was
1043 applied immediately prior to the effective date of the revised
1044 credit.

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1045 Section 13. Subsection (2) and paragraphs (a), (b), (c),
1046 (m), (p), (w), (dd), (ee), and (ff) of subsection (6) of section
1047 627.351, Florida Statutes, are amended to read:

1048 627.351 Insurance risk apportionment plans.--

1049 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

1050 (b) The department shall require all insurers holding a
1051 certificate of authority to transact property insurance on a
1052 direct basis in this state, other than joint underwriting
1053 associations and other entities formed pursuant to this section,
1054 to provide windstorm coverage to applicants from areas determined
1055 to be eligible pursuant to paragraph (c) who in good faith are
1056 entitled to, but are unable to procure, such coverage through
1057 ordinary means; or it shall adopt a reasonable plan or plans for
1058 the equitable apportionment or sharing among such insurers of
1059 windstorm coverage, which may include formation of an association
1060 for this purpose. As used in this subsection, the term "property
1061 insurance" means insurance on real or personal property, as
1062 defined in s. 624.604, including insurance for fire, industrial
1063 fire, allied lines, farmowners multiperil, homeowners'
1064 multiperil, commercial multiperil, and mobile homes, and
1065 including liability coverages on all such insurance, but
1066 excluding inland marine as defined in s. 624.607(3) and excluding
1067 vehicle insurance as defined in s. 624.605(1)(a) other than
1068 insurance on mobile homes used as permanent dwellings. The
1069 department shall adopt rules that provide a formula for the
1070 recovery and repayment of any deferred assessments.

1071 1. For the purpose of this section, properties eligible for
1072 such windstorm coverage are defined as dwellings, buildings, and
1073 other structures, including mobile homes which are used as

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1074 dwellings and which are tied down in compliance with mobile home
1075 tie-down requirements prescribed by the Department of Highway
1076 Safety and Motor Vehicles pursuant to s. 320.8325, and the
1077 contents of all such properties. An applicant or policyholder is
1078 eligible for coverage only if an offer of coverage cannot be
1079 obtained by or for the applicant or policyholder from an admitted
1080 insurer at approved rates.

1081 2.a.(I) All insurers required to be members of such
1082 association shall participate in its writings, expenses, and
1083 losses. Surplus of the association shall be retained for the
1084 payment of claims and shall not be distributed to the member
1085 insurers. Such participation by member insurers shall be in the
1086 proportion that the net direct premiums of each member insurer
1087 written for property insurance in this state during the preceding
1088 calendar year bear to the aggregate net direct premiums for
1089 property insurance of all member insurers, as reduced by any
1090 credits for voluntary writings, in this state during the
1091 preceding calendar year. For the purposes of this subsection, the
1092 term "net direct premiums" means direct written premiums for
1093 property insurance, reduced by premium for liability coverage and
1094 for the following if included in allied lines: rain and hail on
1095 growing crops; livestock; association direct premiums booked;
1096 National Flood Insurance Program direct premiums; and similar
1097 deductions specifically authorized by the plan of operation and
1098 approved by the department. A member's participation shall begin
1099 on the first day of the calendar year following the year in which
1100 it is issued a certificate of authority to transact property
1101 insurance in the state and shall terminate 1 year after the end
1102 of the calendar year during which it no longer holds a

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1103 certificate of authority to transact property insurance in the
1104 state. The commissioner, after review of annual statements, other
1105 reports, and any other statistics that the commissioner deems
1106 necessary, shall certify to the association the aggregate direct
1107 premiums written for property insurance in this state by all
1108 member insurers.

1109 (II) Effective July 1, 2002, the association shall operate
1110 subject to the supervision and approval of a board of governors
1111 who are the same individuals that have been appointed by the
1112 Treasurer to serve on the board of governors of the Citizens
1113 Property Insurance Corporation.

1114 (III) The plan of operation shall provide a formula whereby
1115 a company voluntarily providing windstorm coverage in affected
1116 areas will be relieved wholly or partially from apportionment of
1117 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
1118 sub-sub-subparagraph d.(II).

1119 (IV) A company which is a member of a group of companies
1120 under common management may elect to have its credits applied on
1121 a group basis, and any company or group may elect to have its
1122 credits applied to any other company or group.

1123 (V) There shall be no credits or relief from apportionment
1124 to a company for emergency assessments collected from its
1125 policyholders under sub-sub-subparagraph d.(III).

1126 (VI) The plan of operation may also provide for the award
1127 of credits, for a period not to exceed 3 years, from a regular
1128 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
1129 subparagraph d.(II) as an incentive for taking policies out of
1130 the Residential Property and Casualty Joint Underwriting
1131 Association. In order to qualify for the exemption under this

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1132 sub-sub-subparagraph, the take-out plan must provide that at
1133 least 40 percent of the policies removed from the Residential
1134 Property and Casualty Joint Underwriting Association cover risks
1135 located in Dade, Broward, and Palm Beach Counties or at least 30
1136 percent of the policies so removed cover risks located in Dade,
1137 Broward, and Palm Beach Counties and an additional 50 percent of
1138 the policies so removed cover risks located in other coastal
1139 counties, and must also provide that no more than 15 percent of
1140 the policies so removed may exclude windstorm coverage. With the
1141 approval of the department, the association may waive these
1142 geographic criteria for a take-out plan that removes at least the
1143 lesser of 100,000 Residential Property and Casualty Joint
1144 Underwriting Association policies or 15 percent of the total
1145 number of Residential Property and Casualty Joint Underwriting
1146 Association policies, provided the governing board of the
1147 Residential Property and Casualty Joint Underwriting Association
1148 certifies that the take-out plan will materially reduce the
1149 Residential Property and Casualty Joint Underwriting
1150 Association's 100-year probable maximum loss from hurricanes.
1151 With the approval of the department, the board may extend such
1152 credits for an additional year if the insurer guarantees an
1153 additional year of renewability for all policies removed from the
1154 Residential Property and Casualty Joint Underwriting Association,
1155 or for 2 additional years if the insurer guarantees 2 additional
1156 years of renewability for all policies removed from the
1157 Residential Property and Casualty Joint Underwriting Association.

1158 b. Assessments to pay deficits in the association under
1159 this subparagraph shall be included as an appropriate factor in
1160 the making of rates as provided in s. 627.3512.

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1161 c. The Legislature finds that the potential for unlimited
1162 deficit assessments under this subparagraph may induce insurers
1163 to attempt to reduce their writings in the voluntary market, and
1164 that such actions would worsen the availability problems that the
1165 association was created to remedy. It is the intent of the
1166 Legislature that insurers remain fully responsible for paying
1167 regular assessments and collecting emergency assessments for any
1168 deficits of the association; however, it is also the intent of
1169 the Legislature to provide a means by which assessment
1170 liabilities may be amortized over a period of years.

1171 d.(I) When the deficit incurred in a particular calendar
1172 year is 10 percent or less of the aggregate statewide direct
1173 written premium for property insurance for the prior calendar
1174 year for all member insurers, the association shall levy an
1175 assessment on member insurers in an amount equal to the deficit.

1176 (II) When the deficit incurred in a particular calendar
1177 year exceeds 10 percent of the aggregate statewide direct written
1178 premium for property insurance for the prior calendar year for
1179 all member insurers, the association shall levy an assessment on
1180 member insurers in an amount equal to the greater of 10 percent
1181 of the deficit or 10 percent of the aggregate statewide direct
1182 written premium for property insurance for the prior calendar
1183 year for member insurers. Any remaining deficit shall be
1184 recovered through emergency assessments under sub-sub-
1185 subparagraph (III).

1186 (III) Upon a determination by the board of directors that a
1187 deficit exceeds the amount that will be recovered through regular
1188 assessments on member insurers, pursuant to sub-sub-subparagraph
1189 (I) or sub-sub-subparagraph (II), the board shall levy, after

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1190 verification by the department, emergency assessments to be
1191 collected by member insurers and by underwriting associations
1192 created pursuant to this section which write property insurance,
1193 upon issuance or renewal of property insurance policies other
1194 than National Flood Insurance policies in the year or years
1195 following levy of the regular assessments. The amount of the
1196 emergency assessment collected in a particular year shall be a
1197 uniform percentage of that year's direct written premium for
1198 property insurance for all member insurers and underwriting
1199 associations, excluding National Flood Insurance policy premiums,
1200 as annually determined by the board and verified by the
1201 department. The department shall verify the arithmetic
1202 calculations involved in the board's determination within 30 days
1203 after receipt of the information on which the determination was
1204 based. Notwithstanding any other provision of law, each member
1205 insurer and each underwriting association created pursuant to
1206 this section shall collect emergency assessments from its
1207 policyholders without such obligation being affected by any
1208 credit, limitation, exemption, or deferment. The emergency
1209 assessments so collected shall be transferred directly to the
1210 association on a periodic basis as determined by the association.
1211 The aggregate amount of emergency assessments levied under this
1212 sub-sub-subparagraph in any calendar year may not exceed the
1213 greater of 10 percent of the amount needed to cover the original
1214 deficit, plus interest, fees, commissions, required reserves, and
1215 other costs associated with financing of the original deficit, or
1216 10 percent of the aggregate statewide direct written premium for
1217 property insurance written by member insurers and underwriting
1218 associations for the prior year, plus interest, fees,

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1219 commissions, required reserves, and other costs associated with
1220 financing the original deficit. The board may pledge the proceeds
1221 of the emergency assessments under this sub-sub-subparagraph as
1222 the source of revenue for bonds, to retire any other debt
1223 incurred as a result of the deficit or events giving rise to the
1224 deficit, or in any other way that the board determines will
1225 efficiently recover the deficit. The emergency assessments under
1226 this sub-sub-subparagraph shall continue as long as any bonds
1227 issued or other indebtedness incurred with respect to a deficit
1228 for which the assessment was imposed remain outstanding, unless
1229 adequate provision has been made for the payment of such bonds or
1230 other indebtedness pursuant to the document governing such bonds
1231 or other indebtedness. Emergency assessments collected under this
1232 sub-sub-subparagraph are not part of an insurer's rates, are not
1233 premium, and are not subject to premium tax, fees, or
1234 commissions; however, failure to pay the emergency assessment
1235 shall be treated as failure to pay premium.

1236 (IV) Each member insurer's share of the total regular
1237 assessments under sub-sub-subparagraph (I) or sub-sub-
1238 subparagraph (II) shall be in the proportion that the insurer's
1239 net direct premium for property insurance in this state, for the
1240 year preceding the assessment bears to the aggregate statewide
1241 net direct premium for property insurance of all member insurers,
1242 as reduced by any credits for voluntary writings for that year.

1243 (V) If regular deficit assessments are made under sub-sub-
1244 subparagraph (I) or sub-sub-subparagraph (II), or by the
1245 Residential Property and Casualty Joint Underwriting Association
1246 under sub-subparagraph (6) (b) 3.a. or sub-subparagraph (6) (b) 3.b.,
1247 the association shall levy upon the association's policyholders,

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1248 as part of its next rate filing, or by a separate rate filing
1249 solely for this purpose, a market equalization surcharge in a
1250 percentage equal to the total amount of such regular assessments
1251 divided by the aggregate statewide direct written premium for
1252 property insurance for member insurers for the prior calendar
1253 year. Market equalization surcharges under this sub-sub-
1254 subparagraph are not considered premium and are not subject to
1255 commissions, fees, or premium taxes; however, failure to pay a
1256 market equalization surcharge shall be treated as failure to pay
1257 premium.

1258 e. The governing body of any unit of local government, any
1259 residents of which are insured under the plan, may issue bonds as
1260 defined in s. 125.013 or s. 166.101 to fund an assistance
1261 program, in conjunction with the association, for the purpose of
1262 defraying deficits of the association. In order to avoid needless
1263 and indiscriminate proliferation, duplication, and fragmentation
1264 of such assistance programs, any unit of local government, any
1265 residents of which are insured by the association, may provide
1266 for the payment of losses, regardless of whether or not the
1267 losses occurred within or outside of the territorial jurisdiction
1268 of the local government. Revenue bonds may not be issued until
1269 validated pursuant to chapter 75, unless a state of emergency is
1270 declared by executive order or proclamation of the Governor
1271 pursuant to s. 252.36 making such findings as are necessary to
1272 determine that it is in the best interests of, and necessary for,
1273 the protection of the public health, safety, and general welfare
1274 of residents of this state and the protection and preservation of
1275 the economic stability of insurers operating in this state, and
1276 declaring it an essential public purpose to permit certain

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1277 municipalities or counties to issue bonds as will provide relief
1278 to claimants and policyholders of the association and insurers
1279 responsible for apportionment of plan losses. Any such unit of
1280 local government may enter into such contracts with the
1281 association and with any other entity created pursuant to this
1282 subsection as are necessary to carry out this paragraph. Any
1283 bonds issued under this sub-subparagraph shall be payable from
1284 and secured by moneys received by the association from
1285 assessments under this subparagraph, and assigned and pledged to
1286 or on behalf of the unit of local government for the benefit of
1287 the holders of such bonds. The funds, credit, property, and
1288 taxing power of the state or of the unit of local government
1289 shall not be pledged for the payment of such bonds. If any of the
1290 bonds remain unsold 60 days after issuance, the department shall
1291 require all insurers subject to assessment to purchase the bonds,
1292 which shall be treated as admitted assets; each insurer shall be
1293 required to purchase that percentage of the unsold portion of the
1294 bond issue that equals the insurer's relative share of assessment
1295 liability under this subsection. An insurer shall not be required
1296 to purchase the bonds to the extent that the department
1297 determines that the purchase would endanger or impair the
1298 solvency of the insurer. The authority granted by this sub-
1299 subparagraph is additional to any bonding authority granted by
1300 subparagraph 6.

1301 3. The plan shall also provide that any member with a
1302 surplus as to policyholders of \$20 million or less writing 25
1303 percent or more of its total countrywide property insurance
1304 premiums in this state may petition the department, within the
1305 first 90 days of each calendar year, to qualify as a limited

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1306 | apportionment company. The apportionment of such a member company
1307 | in any calendar year for which it is qualified shall not exceed
1308 | its gross participation, which shall not be affected by the
1309 | formula for voluntary writings. In no event shall a limited
1310 | apportionment company be required to participate in any
1311 | apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1312 | or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
1313 | \$50 million after payment of available plan funds in any calendar
1314 | year. However, a limited apportionment company shall collect from
1315 | its policyholders any emergency assessment imposed under sub-sub-
1316 | subparagraph 2.d.(III). The plan shall provide that, if the
1317 | department determines that any regular assessment will result in
1318 | an impairment of the surplus of a limited apportionment company,
1319 | the department may direct that all or part of such assessment be
1320 | deferred. However, there shall be no limitation or deferment of
1321 | an emergency assessment to be collected from policyholders under
1322 | sub-sub-subparagraph 2.d.(III).

1323 | 4. The plan shall provide for the deferment, in whole or in
1324 | part, of a regular assessment of a member insurer under sub-sub-
1325 | subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not
1326 | for an emergency assessment collected from policyholders under
1327 | sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1328 | commissioner, payment of such regular assessment would endanger
1329 | or impair the solvency of the member insurer. In the event a
1330 | regular assessment against a member insurer is deferred in whole
1331 | or in part, the amount by which such assessment is deferred may
1332 | be assessed against the other member insurers in a manner
1333 | consistent with the basis for assessments set forth in sub-sub-
1334 | subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

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1335 5.a. The plan of operation may include deductibles and
1336 rules for classification of risks and rate modifications
1337 consistent with the objective of providing and maintaining funds
1338 sufficient to pay catastrophe losses.

1339 ~~b. The association may require arbitration of a rate filing~~
1340 ~~under s. 627.062(6).~~ It is the intent of the Legislature that the
1341 rates for coverage provided by the association be actuarially
1342 sound and not competitive with approved rates charged in the
1343 admitted voluntary market such that the association functions as
1344 a residual market mechanism to provide insurance only when the
1345 insurance cannot be procured in the voluntary market. The plan of
1346 operation shall provide a mechanism to assure that, beginning no
1347 later than January 1, 1999, the rates charged by the association
1348 for each line of business are reflective of approved rates in the
1349 voluntary market for hurricane coverage for each line of business
1350 in the various areas eligible for association coverage.

1351 c. The association shall provide for windstorm coverage on
1352 residential properties in limits up to \$10 million for commercial
1353 lines residential risks and up to \$1 million for personal lines
1354 residential risks. If coverage with the association is sought for
1355 a residential risk valued in excess of these limits, coverage
1356 shall be available to the risk up to the replacement cost or
1357 actual cash value of the property, at the option of the insured,
1358 if coverage for the risk cannot be located in the authorized
1359 market. The association must accept a commercial lines
1360 residential risk with limits above \$10 million or a personal
1361 lines residential risk with limits above \$1 million if coverage
1362 is not available in the authorized market. The association may
1363 write coverage above the limits specified in this subparagraph

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1364 with or without facultative or other reinsurance coverage, as the
1365 association determines appropriate.

1366 d. The plan of operation must provide objective criteria
1367 and procedures, approved by the department, to be uniformly
1368 applied for all applicants in determining whether an individual
1369 risk is so hazardous as to be uninsurable. In making this
1370 determination and in establishing the criteria and procedures,
1371 the following shall be considered:

1372 (I) Whether the likelihood of a loss for the individual
1373 risk is substantially higher than for other risks of the same
1374 class; and

1375 (II) Whether the uncertainty associated with the individual
1376 risk is such that an appropriate premium cannot be determined.

1377
1378 The acceptance or rejection of a risk by the association pursuant
1379 to such criteria and procedures must be construed as the private
1380 placement of insurance, and the provisions of chapter 120 do not
1381 apply.

1382 e. If the risk accepts an offer of coverage through the
1383 market assistance program or through a mechanism established by
1384 the association, either before the policy is issued by the
1385 association or during the first 30 days of coverage by the
1386 association, and the producing agent who submitted the
1387 application to the association is not currently appointed by the
1388 insurer, the insurer shall:

1389 (I) Pay to the producing agent of record of the policy, for
1390 the first year, an amount that is the greater of the insurer's
1391 usual and customary commission for the type of policy written or
1392 a fee equal to the usual and customary commission of the

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1393 association; or

1394 (II) Offer to allow the producing agent of record of the
1395 policy to continue servicing the policy for a period of not less
1396 than 1 year and offer to pay the agent the greater of the
1397 insurer's or the association's usual and customary commission for
1398 the type of policy written.

1399
1400 If the producing agent is unwilling or unable to accept
1401 appointment, the new insurer shall pay the agent in accordance
1402 with sub-sub-subparagraph (I). Subject to the provisions of s.
1403 627.3517, the policies issued by the association must provide
1404 that if the association obtains an offer from an authorized
1405 insurer to cover the risk at its approved rates under either a
1406 standard policy including wind coverage or, if consistent with
1407 the insurer's underwriting rules as filed with the department, a
1408 basic policy including wind coverage, the risk is no longer
1409 eligible for coverage through the association. Upon termination
1410 of eligibility, the association shall provide written notice to
1411 the policyholder and agent of record stating that the association
1412 policy must be canceled as of 60 days after the date of the
1413 notice because of the offer of coverage from an authorized
1414 insurer. Other provisions of the insurance code relating to
1415 cancellation and notice of cancellation do not apply to actions
1416 under this sub-subparagraph.

1417 f. When the association enters into a contractual agreement
1418 for a take-out plan, the producing agent of record of the
1419 association policy is entitled to retain any unearned commission
1420 on the policy, and the insurer shall:

1421 (I) Pay to the producing agent of record of the association

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1422 | policy, for the first year, an amount that is the greater of the
1423 | insurer's usual and customary commission for the type of policy
1424 | written or a fee equal to the usual and customary commission of
1425 | the association; or

1426 | (II) Offer to allow the producing agent of record of the
1427 | association policy to continue servicing the policy for a period
1428 | of not less than 1 year and offer to pay the agent the greater of
1429 | the insurer's or the association's usual and customary commission
1430 | for the type of policy written.

1431

1432 | If the producing agent is unwilling or unable to accept
1433 | appointment, the new insurer shall pay the agent in accordance
1434 | with sub-sub-subparagraph (I).

1435 | 6.a. The plan of operation may authorize the formation of a
1436 | private nonprofit corporation, a private nonprofit unincorporated
1437 | association, a partnership, a trust, a limited liability company,
1438 | or a nonprofit mutual company which may be empowered, among other
1439 | things, to borrow money by issuing bonds or by incurring other
1440 | indebtedness and to accumulate reserves or funds to be used for
1441 | the payment of insured catastrophe losses. The plan may authorize
1442 | all actions necessary to facilitate the issuance of bonds,
1443 | including the pledging of assessments or other revenues.

1444 | b. Any entity created under this subsection, or any entity
1445 | formed for the purposes of this subsection, may sue and be sued,
1446 | may borrow money; issue bonds, notes, or debt instruments; pledge
1447 | or sell assessments, market equalization surcharges and other
1448 | surcharges, rights, premiums, contractual rights, projected
1449 | recoveries from the Florida Hurricane Catastrophe Fund, other
1450 | reinsurance recoverables, and other assets as security for such

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1451 | bonds, notes, or debt instruments; enter into any contracts or
1452 | agreements necessary or proper to accomplish such borrowings; and
1453 | take other actions necessary to carry out the purposes of this
1454 | subsection. The association may issue bonds or incur other
1455 | indebtedness, or have bonds issued on its behalf by a unit of
1456 | local government pursuant to subparagraph (6)(p)2., in the
1457 | absence of a hurricane or other weather-related event, upon a
1458 | determination by the association subject to approval by the
1459 | department that such action would enable it to efficiently meet
1460 | the financial obligations of the association and that such
1461 | financings are reasonably necessary to effectuate the
1462 | requirements of this subsection. Any such entity may accumulate
1463 | reserves and retain surpluses as of the end of any association
1464 | year to provide for the payment of losses incurred by the
1465 | association during that year or any future year. The association
1466 | shall incorporate and continue the plan of operation and articles
1467 | of agreement in effect on the effective date of chapter 76-96,
1468 | Laws of Florida, to the extent that it is not inconsistent with
1469 | chapter 76-96, and as subsequently modified consistent with
1470 | chapter 76-96. The board of directors and officers currently
1471 | serving shall continue to serve until their successors are duly
1472 | qualified as provided under the plan. The assets and obligations
1473 | of the plan in effect immediately prior to the effective date of
1474 | chapter 76-96 shall be construed to be the assets and obligations
1475 | of the successor plan created herein.

1476 | c. In recognition of s. 10, Art. I of the State
1477 | Constitution, prohibiting the impairment of obligations of
1478 | contracts, it is the intent of the Legislature that no action be
1479 | taken whose purpose is to impair any bond indenture or financing

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1480 | agreement or any revenue source committed by contract to such
1481 | bond or other indebtedness issued or incurred by the association
1482 | or any other entity created under this subsection.

1483 | 7. On such coverage, an agent's remuneration shall be that
1484 | amount of money payable to the agent by the terms of his or her
1485 | contract with the company with which the business is placed.
1486 | However, no commission will be paid on that portion of the
1487 | premium which is in excess of the standard premium of that
1488 | company.

1489 | 8. Subject to approval by the department, the association
1490 | may establish different eligibility requirements and operational
1491 | procedures for any line or type of coverage for any specified
1492 | eligible area or portion of an eligible area if the board
1493 | determines that such changes to the eligibility requirements and
1494 | operational procedures are justified due to the voluntary market
1495 | being sufficiently stable and competitive in such area or for
1496 | such line or type of coverage and that consumers who, in good
1497 | faith, are unable to obtain insurance through the voluntary
1498 | market through ordinary methods would continue to have access to
1499 | coverage from the association. When coverage is sought in
1500 | connection with a real property transfer, such requirements and
1501 | procedures shall not provide for an effective date of coverage
1502 | later than the date of the closing of the transfer as established
1503 | by the transferor, the transferee, and, if applicable, the
1504 | lender.

1505 | 9. Notwithstanding any other provision of law:

1506 | a. The pledge or sale of, the lien upon, and the security
1507 | interest in any rights, revenues, or other assets of the
1508 | association created or purported to be created pursuant to any

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1509 financing documents to secure any bonds or other indebtedness of
1510 the association shall be and remain valid and enforceable,
1511 notwithstanding the commencement of and during the continuation
1512 of, and after, any rehabilitation, insolvency, liquidation,
1513 bankruptcy, receivership, conservatorship, reorganization, or
1514 similar proceeding against the association under the laws of this
1515 state or any other applicable laws.

1516 b. No such proceeding shall relieve the association of its
1517 obligation, or otherwise affect its ability to perform its
1518 obligation, to continue to collect, or levy and collect,
1519 assessments, market equalization or other surcharges, projected
1520 recoveries from the Florida Hurricane Catastrophe Fund,
1521 reinsurance recoverables, or any other rights, revenues, or other
1522 assets of the association pledged.

1523 c. Each such pledge or sale of, lien upon, and security
1524 interest in, including the priority of such pledge, lien, or
1525 security interest, any such assessments, emergency assessments,
1526 market equalization or renewal surcharges, projected recoveries
1527 from the Florida Hurricane Catastrophe Fund, reinsurance
1528 recoverables, or other rights, revenues, or other assets which
1529 are collected, or levied and collected, after the commencement of
1530 and during the pendency of or after any such proceeding shall
1531 continue unaffected by such proceeding.

1532 d. As used in this subsection, the term "financing
1533 documents" means any agreement, instrument, or other document now
1534 existing or hereafter created evidencing any bonds or other
1535 indebtedness of the association or pursuant to which any such
1536 bonds or other indebtedness has been or may be issued and
1537 pursuant to which any rights, revenues, or other assets of the

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1538 association are pledged or sold to secure the repayment of such
1539 bonds or indebtedness, together with the payment of interest on
1540 such bonds or such indebtedness, or the payment of any other
1541 obligation of the association related to such bonds or
1542 indebtedness.

1543 e. Any such pledge or sale of assessments, revenues,
1544 contract rights or other rights or assets of the association
1545 shall constitute a lien and security interest, or sale, as the
1546 case may be, that is immediately effective and attaches to such
1547 assessments, revenues, contract, or other rights or assets,
1548 whether or not imposed or collected at the time the pledge or
1549 sale is made. Any such pledge or sale is effective, valid,
1550 binding, and enforceable against the association or other entity
1551 making such pledge or sale, and valid and binding against and
1552 superior to any competing claims or obligations owed to any other
1553 person or entity, including policyholders in this state,
1554 asserting rights in any such assessments, revenues, contract, or
1555 other rights or assets to the extent set forth in and in
1556 accordance with the terms of the pledge or sale contained in the
1557 applicable financing documents, whether or not any such person or
1558 entity has notice of such pledge or sale and without the need for
1559 any physical delivery, recordation, filing, or other action.

1560 f. There shall be no liability on the part of, and no cause
1561 of action of any nature shall arise against, any member insurer
1562 or its agents or employees, agents or employees of the
1563 association, members of the board of directors of the
1564 association, or the department or its representatives, for any
1565 action taken by them in the performance of their duties or
1566 responsibilities under this subsection. Such immunity does not

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1567 | apply to actions for breach of any contract or agreement
1568 | pertaining to insurance, or any willful tort.

1569 | (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1570 | (a)1. It is the public purpose of this subsection to ensure
1571 | the existence of an orderly market for property insurance for
1572 | Floridians and Florida businesses. The Legislature finds that
1573 | private insurers are unwilling or unable to provide affordable
1574 | property insurance coverage in this state to the extent sought
1575 | and needed. The absence of affordable property insurance
1576 | threatens the public health, safety, and welfare and likewise
1577 | threatens the economic health of the state. The state therefore
1578 | has a compelling public interest and a public purpose to assist
1579 | in assuring that property in the state is insured and that it is
1580 | insured at affordable rates so as to facilitate the remediation,
1581 | reconstruction, and replacement of damaged or destroyed property
1582 | in order to reduce or avoid the negative effects otherwise
1583 | resulting to the public health, safety, and welfare, to the
1584 | economy of the state, and to the revenues of the state and local
1585 | governments which are needed to provide for the public welfare.
1586 | It is necessary, therefore, to provide affordable property
1587 | insurance to applicants who are in good faith entitled to procure
1588 | insurance through the voluntary market but are unable to do so.
1589 | The Legislature intends by this subsection that affordable
1590 | property insurance be provided and that it continue to be
1591 | provided, as long as necessary, through Citizens Property
1592 | Insurance Corporation, a government entity that is an integral
1593 | part of the state, and that is not a private insurance company.
1594 | To that end, Citizens Property Insurance Corporation shall strive
1595 | to increase the availability of affordable property insurance in

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1596 | this state, while achieving efficiencies and economies, and while
1597 | providing service to policyholders, applicants, and agents which
1598 | is no less than the quality generally provided in the voluntary
1599 | market, for the achievement of the foregoing public purposes.
1600 | Because it is essential for this government entity to have the
1601 | maximum financial resources to pay claims following a
1602 | catastrophic hurricane, it is the intent of the Legislature that
1603 | Citizens Property Insurance Corporation continue to be an
1604 | integral part of the state and that the income of the corporation
1605 | be exempt from federal income taxation and that interest on the
1606 | debt obligations issued by the corporation be exempt from federal
1607 | income taxation.

1608 | 2. The Residential Property and Casualty Joint Underwriting
1609 | Association originally created by this statute shall be known, as
1610 | of July 1, 2002, as the Citizens Property Insurance Corporation.
1611 | The corporation shall provide insurance for residential and
1612 | commercial property, for applicants who are in good faith
1613 | entitled, but are unable, to procure insurance through the
1614 | voluntary market. The corporation shall operate pursuant to a
1615 | plan of operation approved by order of the Financial Services
1616 | Commission. The plan is subject to continuous review by the
1617 | commission. The commission may, by order, withdraw approval of
1618 | all or part of a plan if the commission determines that
1619 | conditions have changed since approval was granted and that the
1620 | purposes of the plan require changes in the plan. The corporation
1621 | shall continue to operate pursuant to the plan of operation
1622 | approved by the Office of Insurance Regulation until October 1,
1623 | 2006. For the purposes of this subsection, residential coverage
1624 | includes both personal lines residential coverage, which consists

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1625 of the type of coverage provided by homeowner's, mobile home
1626 owner's, dwelling, tenant's, condominium unit owner's, and
1627 similar policies, and commercial lines residential coverage,
1628 which consists of the type of coverage provided by condominium
1629 association, apartment building, and similar policies.

1630 ~~3. For the purposes of this subsection, the term "homestead~~
1631 ~~property" means:~~

1632 ~~a. Property that has been granted a homestead exemption~~
1633 ~~under chapter 196;~~

1634 ~~b. Property for which the owner has a current, written~~
1635 ~~lease with a renter for a term of at least 7 months and for which~~
1636 ~~the dwelling is insured by the corporation for \$200,000 or less;~~

1637 ~~c. An owner-occupied mobile home or manufactured home, as~~
1638 ~~defined in s. 320.01, which is permanently affixed to real~~
1639 ~~property, is owned by a Florida resident, and has been granted a~~
1640 ~~homestead exemption under chapter 196 or, if the owner does not~~
1641 ~~own the real property, the owner certifies that the mobile home~~
1642 ~~or manufactured home is his or her principal place of residence;~~

1643 ~~d. Tenant's coverage;~~

1644 ~~e. Commercial lines residential property; or~~

1645 ~~f. Any county, district, or municipal hospital; a hospital~~
1646 ~~licensed by any not for profit corporation qualified under s.~~
1647 ~~501(c) (3) of the United States Internal Revenue Code; or a~~
1648 ~~continuing care retirement community that is certified under~~
1649 ~~chapter 651 and that receives an exemption from ad valorem taxes~~
1650 ~~under chapter 196.~~

1651 ~~4. For the purposes of this subsection, the term~~
1652 ~~"nonhomestead property" means property that is not homestead~~
1653 ~~property.~~

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1654 3.5. Effective January 1, 2009, a personal lines
1655 residential structure that has a dwelling replacement cost of \$2
1656 ~~\$1~~ million or more, or a single condominium unit that has a
1657 combined dwelling and content replacement cost of \$2 ~~\$1~~ million
1658 or more is not eligible for coverage by the corporation. Such
1659 dwellings insured by the corporation on December 31, 2008, may
1660 continue to be covered by the corporation until the end of the
1661 policy term. However, such dwellings that are insured by the
1662 corporation and become ineligible for coverage due to the
1663 provisions of this subparagraph may reapply and obtain coverage
1664 ~~in the high-risk account and be considered "nonhomestead~~
1665 ~~property"~~ if the property owner provides the corporation with a
1666 sworn affidavit from one or more insurance agents, on a form
1667 provided by the corporation, stating that the agents have made
1668 their best efforts to obtain coverage and that the property has
1669 been rejected for coverage by at least one authorized insurer and
1670 at least three surplus lines insurers. If such conditions are
1671 met, the dwelling may be insured by the corporation for up to 3
1672 years, after which time the dwelling is ineligible for coverage.
1673 The office shall approve the method used by the corporation for
1674 valuing the dwelling replacement cost for the purposes of this
1675 subparagraph. If a policyholder is insured by the corporation
1676 prior to being determined to be ineligible pursuant to this
1677 subparagraph and such policyholder files a lawsuit challenging
1678 the determination, the policyholder may remain insured by the
1679 corporation until the conclusion of the litigation.

1680 ~~6. For properties constructed on or after January 1, 2009,~~
1681 ~~the corporation may not insure any property located within 2,500~~
1682 ~~feet landward of the coastal construction control line created~~

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1683 ~~pursuant to s. 161.053 unless the property meets the requirements~~
1684 ~~of the code plus building standards developed by the Florida~~
1685 ~~Building Commission.~~

1686 4.7. It is the intent of the Legislature that
1687 policyholders, applicants, and agents of the corporation receive
1688 service and treatment of the highest possible level but never
1689 less than that generally provided in the voluntary market. It
1690 also is intended that the corporation be held to service
1691 standards no less than those applied to insurers in the voluntary
1692 market by the office with respect to responsiveness, timeliness,
1693 customer courtesy, and overall dealings with policyholders,
1694 applicants, or agents of the corporation.

1695 5.8. Effective January 1, 2009, a personal lines
1696 residential structure that is located in the "wind-borne debris
1697 region," as defined in s. 1609.2, International Building Code
1698 (2006), and that has an insured value on the structure of
1699 \$750,000 or more is not eligible for coverage by the corporation
1700 unless the structure has opening protections as required under
1701 the Florida Building Code for a newly constructed residential
1702 structure in that area. A residential structure shall be deemed
1703 to comply with the requirements of this subparagraph if it has
1704 shutters or opening protections on all openings and if such
1705 opening protections complied with the Florida Building Code at
1706 the time they were installed. Effective January 1, 2010, for
1707 personal lines residential property insured by the corporation
1708 that is located in the wind-borne debris region and has an
1709 insured value on the structure of \$500,000 or more, a prospective
1710 purchaser of any such residential property must be provided by
1711 the seller a written disclosure that contains the structure's

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1712 windstorm mitigation rating based on the uniform home grading
1713 scale adopted under s. 215.55865. Such rating shall be provided
1714 to the purchaser at or before the time the purchaser executes a
1715 contract for sale and purchase.

1716 (b)1. All insurers authorized to write one or more subject
1717 lines of business in this state are subject to assessment by the
1718 corporation and, for the purposes of this subsection, are
1719 referred to collectively as "assessable insurers." Insurers
1720 writing one or more subject lines of business in this state
1721 pursuant to part VIII of chapter 626 are not assessable insurers,
1722 but insureds who procure one or more subject lines of business in
1723 this state pursuant to part VIII of chapter 626 are subject to
1724 assessment by the corporation and are referred to collectively as
1725 "assessable insureds." An authorized insurer's assessment
1726 liability shall begin on the first day of the calendar year
1727 following the year in which the insurer was issued a certificate
1728 of authority to transact insurance for subject lines of business
1729 in this state and shall terminate 1 year after the end of the
1730 first calendar year during which the insurer no longer holds a
1731 certificate of authority to transact insurance for subject lines
1732 of business in this state.

1733 2.a. All revenues, assets, liabilities, losses, and
1734 expenses of the corporation shall be divided into three separate
1735 accounts as follows:

1736 (I) A personal lines account for personal residential
1737 policies issued by the corporation or issued by the Residential
1738 Property and Casualty Joint Underwriting Association and renewed
1739 by the corporation that provide comprehensive, multiperil
1740 coverage on risks that are not located in areas eligible for

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1741 coverage in the Florida Windstorm Underwriting Association as
1742 those areas were defined on January 1, 2002, and for such
1743 policies that do not provide coverage for the peril of wind on
1744 risks that are located in such areas;

1745 (II) A commercial lines account for commercial residential
1746 and commercial nonresidential policies issued by the corporation
1747 or issued by the Residential Property and Casualty Joint
1748 Underwriting Association and renewed by the corporation that
1749 provide coverage for basic property perils on risks that are not
1750 located in areas eligible for coverage in the Florida Windstorm
1751 Underwriting Association as those areas were defined on January
1752 1, 2002, and for such policies that do not provide coverage for
1753 the peril of wind on risks that are located in such areas; and

1754 (III) A high-risk account for personal residential policies
1755 and commercial residential and commercial nonresidential property
1756 policies issued by the corporation or transferred to the
1757 corporation that provide coverage for the peril of wind on risks
1758 that are located in areas eligible for coverage in the Florida
1759 Windstorm Underwriting Association as those areas were defined on
1760 January 1, 2002. ~~Subject to the approval of a business plan by
1761 the Financial Services Commission and Legislative Budget
1762 Commission as provided in this sub-sub-subparagraph, but no
1763 earlier than March 31, 2007,~~ The corporation may offer policies
1764 that provide multiperil coverage and the corporation shall
1765 continue to offer policies that provide coverage only for the
1766 peril of wind for risks located in areas eligible for coverage in
1767 the high-risk account. In issuing multiperil coverage, the
1768 corporation may use its approved policy forms and rates for the
1769 personal lines account. An applicant or insured who is eligible

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1770 | to purchase a multiperil policy from the corporation may purchase
1771 | a multiperil policy from an authorized insurer without prejudice
1772 | to the applicant's or insured's eligibility to prospectively
1773 | purchase a policy that provides coverage only for the peril of
1774 | wind from the corporation. An applicant or insured who is
1775 | eligible for a corporation policy that provides coverage only for
1776 | the peril of wind may elect to purchase or retain such policy and
1777 | also purchase or retain coverage excluding wind from an
1778 | authorized insurer without prejudice to the applicant's or
1779 | insured's eligibility to prospectively purchase a policy that
1780 | provides multiperil coverage from the corporation. It is the goal
1781 | of the Legislature that there would be an overall average savings
1782 | of 10 percent or more for a policyholder who currently has a
1783 | wind-only policy with the corporation, and an ex-wind policy with
1784 | a voluntary insurer or the corporation, and who then obtains a
1785 | multiperil policy from the corporation. It is the intent of the
1786 | Legislature that the offer of multiperil coverage in the high-
1787 | risk account be made and implemented in a manner that does not
1788 | adversely affect the tax-exempt status of the corporation or
1789 | creditworthiness of or security for currently outstanding
1790 | financing obligations or credit facilities of the high-risk
1791 | account, the personal lines account, or the commercial lines
1792 | account. ~~By March 1, 2007, the corporation shall prepare and~~
1793 | ~~submit for approval by the Financial Services Commission and~~
1794 | ~~Legislative Budget Commission a report detailing the~~
1795 | ~~corporation's business plan for issuing multiperil coverage in~~
1796 | ~~the high-risk account. The business plan shall be approved or~~
1797 | ~~disapproved within 30 days after receipt, as submitted or~~
1798 | ~~modified and resubmitted by the corporation. The business plan~~

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1799 ~~must include: the impact of such multiperil coverage on the~~
1800 ~~corporation's financial resources, the impact of such multiperil~~
1801 ~~coverage on the corporation's tax exempt status, the manner in~~
1802 ~~which the corporation plans to implement the processing of~~
1803 ~~applications and policy forms for new and existing policyholders,~~
1804 ~~the impact of such multiperil coverage on the corporation's~~
1805 ~~ability to deliver customer service at the high level required by~~
1806 ~~this subsection, the ability of the corporation to process~~
1807 ~~claims, the ability of the corporation to quote and issue~~
1808 ~~policies, the impact of such multiperil coverage on the~~
1809 ~~corporation's agents, the impact of such multiperil coverage on~~
1810 ~~the corporation's existing policyholders, and the impact of such~~
1811 ~~multiperil coverage on rates and premium. The high-risk account~~
1812 ~~must also include quota share primary insurance under~~
1813 ~~subparagraph (c)2. The area eligible for coverage under the high-~~
1814 ~~risk account also includes the area within Port Canaveral, which~~
1815 ~~is bordered on the south by the City of Cape Canaveral, bordered~~
1816 ~~on the west by the Banana River, and bordered on the north by~~
1817 ~~Federal Government property.~~

1818 b. The three separate accounts must be maintained as long
1819 as financing obligations entered into by the Florida Windstorm
1820 Underwriting Association or Residential Property and Casualty
1821 Joint Underwriting Association are outstanding, in accordance
1822 with the terms of the corresponding financing documents. When the
1823 financing obligations are no longer outstanding, in accordance
1824 with the terms of the corresponding financing documents, the
1825 corporation may use a single account for all revenues, assets,
1826 liabilities, losses, and expenses of the corporation. Consistent
1827 with the requirement of this subparagraph and prudent investment

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1828 | policies that minimize the cost of carrying debt, the board shall
1829 | exercise its best efforts to retire existing debt or to obtain
1830 | approval of necessary parties to amend the terms of existing
1831 | debt, so as to structure the most efficient plan to consolidate
1832 | the three separate accounts into a single account. By February 1,
1833 | 2007, the board shall submit a report to the Financial Services
1834 | Commission, the President of the Senate, and the Speaker of the
1835 | House of Representatives which includes an analysis of
1836 | consolidating the accounts, the actions the board has taken to
1837 | minimize the cost of carrying debt, and its recommendations for
1838 | executing the most efficient plan.

1839 | c. Creditors of the Residential Property and Casualty Joint
1840 | Underwriting Association and of the accounts specified in sub-
1841 | sub-subparagraphs a.(I) and (II) may have a claim against, and
1842 | recourse to, the accounts referred to in sub-sub-subparagraphs
1843 | a.(I) and (II) and shall have no claim against, or recourse to,
1844 | the account referred to in sub-sub-subparagraph a.(III).
1845 | Creditors of the Florida Windstorm Underwriting Association shall
1846 | have a claim against, and recourse to, the account referred to in
1847 | sub-sub-subparagraph a.(III) and shall have no claim against, or
1848 | recourse to, the accounts referred to in sub-sub-subparagraphs
1849 | a.(I) and (II).

1850 | d. Revenues, assets, liabilities, losses, and expenses not
1851 | attributable to particular accounts shall be prorated among the
1852 | accounts.

1853 | e. The Legislature finds that the revenues of the
1854 | corporation are revenues that are necessary to meet the
1855 | requirements set forth in documents authorizing the issuance of
1856 | bonds under this subsection.

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1857 f. No part of the income of the corporation may inure to
1858 the benefit of any private person.

1859 3. With respect to a deficit in an account:

1860 a. After accounting for the Citizens policyholder surcharge
1861 imposed under sub-subparagraph i., when the remaining projected
1862 deficit incurred in a particular calendar year is not greater
1863 than 6 ~~10~~ percent of the aggregate statewide direct written
1864 premium for the subject lines of business for the prior calendar
1865 year, the entire deficit shall be recovered through regular
1866 assessments of assessable insurers under paragraph (p) and
1867 assessable insureds.

1868 b. After accounting for the Citizens policyholder surcharge
1869 imposed under sub-subparagraph i., when the remaining projected
1870 deficit incurred in a particular calendar year exceeds 6 ~~10~~
1871 percent of the aggregate statewide direct written premium for the
1872 subject lines of business for the prior calendar year, the
1873 corporation shall levy regular assessments on assessable insurers
1874 under paragraph (p) and on assessable insureds in an amount equal
1875 to the greater of 6 ~~10~~ percent of the deficit or 6 ~~10~~ percent of
1876 the aggregate statewide direct written premium for the subject
1877 lines of business for the prior calendar year. Any remaining
1878 deficit shall be recovered through emergency assessments under
1879 sub-subparagraph d.

1880 c. Each assessable insurer's share of the amount being
1881 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1882 be in the proportion that the assessable insurer's direct written
1883 premium for the subject lines of business for the year preceding
1884 the assessment bears to the aggregate statewide direct written
1885 premium for the subject lines of business for that year. The

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1886 assessment percentage applicable to each assessable insured is
1887 the ratio of the amount being assessed under sub-subparagraph a.
1888 or sub-subparagraph b. to the aggregate statewide direct written
1889 premium for the subject lines of business for the prior year.
1890 Assessments levied by the corporation on assessable insurers
1891 under sub-subparagraphs a. and b. shall be paid as required by
1892 the corporation's plan of operation and paragraph (p).
1893 ~~notwithstanding any other provision of this subsection, the~~
1894 ~~aggregate amount of a regular assessment for a deficit incurred~~
1895 ~~in a particular calendar year shall be reduced by the estimated~~
1896 ~~amount to be received by the corporation from the Citizens~~
1897 ~~policyholder surcharge under subparagraph (c)10. and the amount~~
1898 ~~collected or estimated to be collected from the assessment on~~
1899 ~~Citizens policyholders pursuant to sub-subparagraph i.~~
1900 Assessments levied by the corporation on assessable insureds
1901 under sub-subparagraphs a. and b. shall be collected by the
1902 surplus lines agent at the time the surplus lines agent collects
1903 the surplus lines tax required by s. 626.932 and shall be paid to
1904 the Florida Surplus Lines Service Office at the time the surplus
1905 lines agent pays the surplus lines tax to the Florida Surplus
1906 Lines Service Office. Upon receipt of regular assessments from
1907 surplus lines agents, the Florida Surplus Lines Service Office
1908 shall transfer the assessments directly to the corporation as
1909 determined by the corporation.

1910 d. Upon a determination by the board of governors that a
1911 deficit in an account exceeds the amount that will be recovered
1912 through regular assessments under sub-subparagraph a. or sub-
1913 subparagraph b., plus the amount that is expected to be recovered
1914 through surcharges under sub-subparagraph i., as to the remaining

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1915 | projected deficit the board shall levy, after verification by the
1916 | office, emergency assessments, for as many years as necessary to
1917 | cover the deficits, to be collected by assessable insurers and
1918 | the corporation and collected from assessable insureds upon
1919 | issuance or renewal of policies for subject lines of business,
1920 | excluding National Flood Insurance policies. The amount of the
1921 | emergency assessment collected in a particular year shall be a
1922 | uniform percentage of that year's direct written premium for
1923 | subject lines of business and all accounts of the corporation,
1924 | excluding National Flood Insurance Program policy premiums, as
1925 | annually determined by the board and verified by the office. The
1926 | office shall verify the arithmetic calculations involved in the
1927 | board's determination within 30 days after receipt of the
1928 | information on which the determination was based. Notwithstanding
1929 | any other provision of law, the corporation and each assessable
1930 | insurer that writes subject lines of business shall collect
1931 | emergency assessments from its policyholders without such
1932 | obligation being affected by any credit, limitation, exemption,
1933 | or deferment. Emergency assessments levied by the corporation on
1934 | assessable insureds shall be collected by the surplus lines agent
1935 | at the time the surplus lines agent collects the surplus lines
1936 | tax required by s. 626.932 and shall be paid to the Florida
1937 | Surplus Lines Service Office at the time the surplus lines agent
1938 | pays the surplus lines tax to the Florida Surplus Lines Service
1939 | Office. The emergency assessments so collected shall be
1940 | transferred directly to the corporation on a periodic basis as
1941 | determined by the corporation and shall be held by the
1942 | corporation solely in the applicable account. The aggregate
1943 | amount of emergency assessments levied for an account under this

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1944 sub-subparagraph in any calendar year may, at the discretion of
1945 the board of governors, be less than but may not exceed the
1946 greater of 10 percent of the amount needed to cover the ~~original~~
1947 deficit, plus interest, fees, commissions, required reserves, and
1948 other costs associated with financing of the original deficit, or
1949 10 percent of the aggregate statewide direct written premium for
1950 subject lines of business and for all accounts of the corporation
1951 for the prior year, plus interest, fees, commissions, required
1952 reserves, and other costs associated with financing the ~~original~~
1953 deficit.

1954 e. The corporation may pledge the proceeds of assessments,
1955 projected recoveries from the Florida Hurricane Catastrophe Fund,
1956 other insurance and reinsurance recoverables, policyholder
1957 surcharges and other surcharges, and other funds available to the
1958 corporation as the source of revenue for and to secure bonds
1959 issued under paragraph (p), bonds or other indebtedness issued
1960 under subparagraph (c)3., or lines of credit or other financing
1961 mechanisms issued or created under this subsection, or to retire
1962 any other debt incurred as a result of deficits or events giving
1963 rise to deficits, or in any other way that the board determines
1964 will efficiently recover such deficits. The purpose of the lines
1965 of credit or other financing mechanisms is to provide additional
1966 resources to assist the corporation in covering claims and
1967 expenses attributable to a catastrophe. As used in this
1968 subsection, the term "assessments" includes regular assessments
1969 under sub-subparagraph a., sub-subparagraph b., or subparagraph
1970 (p)1. and emergency assessments under sub-subparagraph d.
1971 Emergency assessments collected under sub-subparagraph d. are not
1972 part of an insurer's rates, are not premium, and are not subject

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1973 | to premium tax, fees, or commissions; however, failure to pay the
1974 | emergency assessment shall be treated as failure to pay premium.
1975 | The emergency assessments under sub-subparagraph d. shall
1976 | continue as long as any bonds issued or other indebtedness
1977 | incurred with respect to a deficit for which the assessment was
1978 | imposed remain outstanding, unless adequate provision has been
1979 | made for the payment of such bonds or other indebtedness pursuant
1980 | to the documents governing such bonds or other indebtedness.

1981 | f. As used in this subsection for purposes of any deficit
1982 | incurred on or after January 25, 2007, the term "subject lines of
1983 | business" means insurance written by assessable insurers or
1984 | procured by assessable insureds for all property and casualty
1985 | lines of business in this state, but not including workers'
1986 | compensation or medical malpractice. As used in the sub-
1987 | subparagraph, the term "property and casualty lines of business"
1988 | includes all lines of business identified on Form 2, Exhibit of
1989 | Premiums and Losses, in the annual statement required of
1990 | authorized insurers by s. 624.424 and any rule adopted under this
1991 | section, except for those lines identified as accident and health
1992 | insurance and except for policies written under the National
1993 | Flood Insurance Program or the Federal Crop Insurance Program.
1994 | For purposes of this sub-subparagraph, the term "workers'
1995 | compensation" includes both workers' compensation insurance and
1996 | excess workers' compensation insurance.

1997 | g. The Florida Surplus Lines Service Office shall determine
1998 | annually the aggregate statewide written premium in subject lines
1999 | of business procured by assessable insureds and shall report that
2000 | information to the corporation in a form and at a time the
2001 | corporation specifies to ensure that the corporation can meet the

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2002 requirements of this subsection and the corporation's financing
2003 obligations.

2004 h. The Florida Surplus Lines Service Office shall verify
2005 the proper application by surplus lines agents of assessment
2006 percentages for regular assessments and emergency assessments
2007 levied under this subparagraph on assessable insureds and shall
2008 assist the corporation in ensuring the accurate, timely
2009 collection and payment of assessments by surplus lines agents as
2010 required by the corporation.

2011 i. If a deficit is incurred in any account in 2008 or
2012 thereafter, the board of governors shall levy a Citizens
2013 policyholder surcharge ~~an immediate assessment against the~~
2014 ~~premium of each nonhomestead property policyholder in all~~
2015 ~~accounts of the corporation, as a uniform percentage of the~~
2016 ~~premium of the policy of up to 10 percent of such premium, which~~
2017 ~~funds shall be used to offset the deficit. If this assessment is~~
2018 ~~insufficient to eliminate the deficit, the board of governors~~
2019 ~~shall levy an additional assessment against all policyholders of~~
2020 ~~the corporation for a 12-month period, which shall be collected~~
2021 ~~at the time of issuance or renewal of a policy, as a uniform~~
2022 ~~percentage of the premium for the policy of up to 15 10 percent~~
2023 ~~of such premium, which funds shall be used to further offset the~~
2024 ~~deficit. Citizens policyholder surcharges under this sub-~~
2025 ~~subparagraph are not considered premium and are not subject to~~
2026 ~~commissions, fees, or premium taxes. However, failure to pay such~~
2027 ~~surcharges shall be treated as failure to pay premium.~~

2028 j. If the amount of any assessments or surcharges collected
2029 from corporation policyholders, assessable insurers or their
2030 policyholders, or assessable insureds exceeds the amount of the

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2031 deficits, such excess amounts shall be remitted to and retained
2032 by the corporation in a reserve to be used by the corporation, as
2033 determined by the board of governors and approved by the office,
2034 to pay claims or reduce any past, present, or future plan-year
2035 deficits or to reduce outstanding debt. The board of governors
2036 shall maintain separate accounting records that consolidate data
2037 for nonhomestead properties, including, but not limited to,
2038 number of policies, insured values, premiums written, and losses.
2039 ~~The board of governors shall annually report to the office and~~
2040 ~~the Legislature a summary of such data.~~

2041 (c) The plan of operation of the corporation:

2042 1. Must provide for adoption of residential property and
2043 casualty insurance policy forms and commercial residential and
2044 nonresidential property insurance forms, which forms must be
2045 approved by the office prior to use. The corporation shall adopt
2046 the following policy forms:

2047 a. Standard personal lines policy forms that are
2048 comprehensive multiperil policies providing full coverage of a
2049 residential property equivalent to the coverage provided in the
2050 private insurance market under an HO-3, HO-4, or HO-6 policy.

2051 b. Basic personal lines policy forms that are policies
2052 similar to an HO-8 policy or a dwelling fire policy that provide
2053 coverage meeting the requirements of the secondary mortgage
2054 market, but which coverage is more limited than the coverage
2055 under a standard policy.

2056 c. Commercial lines residential and nonresidential policy
2057 forms that are generally similar to the basic perils of full
2058 coverage obtainable for commercial residential structures and
2059 commercial nonresidential structures in the admitted voluntary

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2060 market.

2061 d. Personal lines and commercial lines residential property
2062 insurance forms that cover the peril of wind only. The forms are
2063 applicable only to residential properties located in areas
2064 eligible for coverage under the high-risk account referred to in
2065 sub-subparagraph (b)2.a.

2066 e. Commercial lines nonresidential property insurance forms
2067 that cover the peril of wind only. The forms are applicable only
2068 to nonresidential properties located in areas eligible for
2069 coverage under the high-risk account referred to in sub-
2070 subparagraph (b)2.a.

2071 f. The corporation may adopt variations of the policy forms
2072 listed in sub-subparagraphs a.-e. that contain more restrictive
2073 coverage.

2074 2.a. Must provide that the corporation adopt a program in
2075 which the corporation and authorized insurers enter into quota
2076 share primary insurance agreements for hurricane coverage, as
2077 defined in s. 627.4025(2)(a), for eligible risks, and adopt
2078 property insurance forms for eligible risks which cover the peril
2079 of wind only. As used in this subsection, the term:

2080 (I) "Quota share primary insurance" means an arrangement in
2081 which the primary hurricane coverage of an eligible risk is
2082 provided in specified percentages by the corporation and an
2083 authorized insurer. The corporation and authorized insurer are
2084 each solely responsible for a specified percentage of hurricane
2085 coverage of an eligible risk as set forth in a quota share
2086 primary insurance agreement between the corporation and an
2087 authorized insurer and the insurance contract. The responsibility
2088 of the corporation or authorized insurer to pay its specified

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2089 | percentage of hurricane losses of an eligible risk, as set forth
2090 | in the quota share primary insurance agreement, may not be
2091 | altered by the inability of the other party to the agreement to
2092 | pay its specified percentage of hurricane losses. Eligible risks
2093 | that are provided hurricane coverage through a quota share
2094 | primary insurance arrangement must be provided policy forms that
2095 | set forth the obligations of the corporation and authorized
2096 | insurer under the arrangement, clearly specify the percentages of
2097 | quota share primary insurance provided by the corporation and
2098 | authorized insurer, and conspicuously and clearly state that
2099 | neither the authorized insurer nor the corporation may be held
2100 | responsible beyond its specified percentage of coverage of
2101 | hurricane losses.

2102 | (II) "Eligible risks" means personal lines residential and
2103 | commercial lines residential risks that meet the underwriting
2104 | criteria of the corporation and are located in areas that were
2105 | eligible for coverage by the Florida Windstorm Underwriting
2106 | Association on January 1, 2002.

2107 | b. The corporation may enter into quota share primary
2108 | insurance agreements with authorized insurers at corporation
2109 | coverage levels of 90 percent and 50 percent.

2110 | c. If the corporation determines that additional coverage
2111 | levels are necessary to maximize participation in quota share
2112 | primary insurance agreements by authorized insurers, the
2113 | corporation may establish additional coverage levels. However,
2114 | the corporation's quota share primary insurance coverage level
2115 | may not exceed 90 percent.

2116 | d. Any quota share primary insurance agreement entered into
2117 | between an authorized insurer and the corporation must provide

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2118 | for a uniform specified percentage of coverage of hurricane
2119 | losses, by county or territory as set forth by the corporation
2120 | board, for all eligible risks of the authorized insurer covered
2121 | under the quota share primary insurance agreement.

2122 | e. Any quota share primary insurance agreement entered into
2123 | between an authorized insurer and the corporation is subject to
2124 | review and approval by the office. However, such agreement shall
2125 | be authorized only as to insurance contracts entered into between
2126 | an authorized insurer and an insured who is already insured by
2127 | the corporation for wind coverage.

2128 | f. For all eligible risks covered under quota share primary
2129 | insurance agreements, the exposure and coverage levels for both
2130 | the corporation and authorized insurers shall be reported by the
2131 | corporation to the Florida Hurricane Catastrophe Fund. For all
2132 | policies of eligible risks covered under quota share primary
2133 | insurance agreements, the corporation and the authorized insurer
2134 | shall maintain complete and accurate records for the purpose of
2135 | exposure and loss reimbursement audits as required by Florida
2136 | Hurricane Catastrophe Fund rules. The corporation and the
2137 | authorized insurer shall each maintain duplicate copies of policy
2138 | declaration pages and supporting claims documents.

2139 | g. The corporation board shall establish in its plan of
2140 | operation standards for quota share agreements which ensure that
2141 | there is no discriminatory application among insurers as to the
2142 | terms of quota share agreements, pricing of quota share
2143 | agreements, incentive provisions if any, and consideration paid
2144 | for servicing policies or adjusting claims.

2145 | h. The quota share primary insurance agreement between the
2146 | corporation and an authorized insurer must set forth the specific

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2147 | terms under which coverage is provided, including, but not
2148 | limited to, the sale and servicing of policies issued under the
2149 | agreement by the insurance agent of the authorized insurer
2150 | producing the business, the reporting of information concerning
2151 | eligible risks, the payment of premium to the corporation, and
2152 | arrangements for the adjustment and payment of hurricane claims
2153 | incurred on eligible risks by the claims adjuster and personnel
2154 | of the authorized insurer. Entering into a quota sharing
2155 | insurance agreement between the corporation and an authorized
2156 | insurer shall be voluntary and at the discretion of the
2157 | authorized insurer.

2158 | 3. May provide that the corporation may employ or otherwise
2159 | contract with individuals or other entities to provide
2160 | administrative or professional services that may be appropriate
2161 | to effectuate the plan. The corporation shall have the power to
2162 | borrow funds, by issuing bonds or by incurring other
2163 | indebtedness, and shall have other powers reasonably necessary to
2164 | effectuate the requirements of this subsection, including,
2165 | without limitation, the power to issue bonds and incur other
2166 | indebtedness in order to refinance outstanding bonds or other
2167 | indebtedness. The corporation may, but is not required to, seek
2168 | judicial validation of its bonds or other indebtedness under
2169 | chapter 75. The corporation may issue bonds or incur other
2170 | indebtedness, or have bonds issued on its behalf by a unit of
2171 | local government pursuant to subparagraph (p)2., in the absence
2172 | of a hurricane or other weather-related event, upon a
2173 | determination by the corporation, subject to approval by the
2174 | office, that such action would enable it to efficiently meet the
2175 | financial obligations of the corporation and that such financings

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2176 are reasonably necessary to effectuate the requirements of this
2177 subsection. The corporation is authorized to take all actions
2178 needed to facilitate tax-free status for any such bonds or
2179 indebtedness, including formation of trusts or other affiliated
2180 entities. The corporation shall have the authority to pledge
2181 assessments, projected recoveries from the Florida Hurricane
2182 Catastrophe Fund, other reinsurance recoverables, market
2183 equalization and other surcharges, and other funds available to
2184 the corporation as security for bonds or other indebtedness. In
2185 recognition of s. 10, Art. I of the State Constitution,
2186 prohibiting the impairment of obligations of contracts, it is the
2187 intent of the Legislature that no action be taken whose purpose
2188 is to impair any bond indenture or financing agreement or any
2189 revenue source committed by contract to such bond or other
2190 indebtedness.

2191 4.a. Must require that the corporation operate subject to
2192 the supervision and approval of a board of governors consisting
2193 of eight individuals who are residents of this state, from
2194 different geographical areas of this state. The Governor, the
2195 Chief Financial Officer, the President of the Senate, and the
2196 Speaker of the House of Representatives shall each appoint two
2197 members of the board. At least one of the two members appointed
2198 by each appointing officer must have demonstrated expertise in
2199 insurance. The Chief Financial Officer shall designate one of the
2200 appointees as chair. All board members serve at the pleasure of
2201 the appointing officer. All members of the board of governors are
2202 subject to removal at will by the officers who appointed them.
2203 All board members, including the chair, must be appointed to
2204 serve for 3-year terms beginning annually on a date designated by

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2205 | the plan. Any board vacancy shall be filled for the unexpired
2206 | term by the appointing officer. The Chief Financial Officer shall
2207 | appoint a technical advisory group to provide information and
2208 | advice to the board of governors in connection with the board's
2209 | duties under this subsection. The executive director and senior
2210 | managers of the corporation shall be engaged by the board and
2211 | serve at the pleasure of the board. Any executive director
2212 | appointed on or after July 1, 2006, is subject to confirmation by
2213 | the Senate. The executive director is responsible for employing
2214 | other staff as the corporation may require, subject to review and
2215 | concurrence by the board.

2216 | b. The board shall create a Market Accountability Advisory
2217 | Committee to assist the corporation in developing awareness of
2218 | its rates and its customer and agent service levels in
2219 | relationship to the voluntary market insurers writing similar
2220 | coverage. The members of the advisory committee shall consist of
2221 | the following 11 persons, one of whom must be elected chair by
2222 | the members of the committee: four representatives, one appointed
2223 | by the Florida Association of Insurance Agents, one by the
2224 | Florida Association of Insurance and Financial Advisors, one by
2225 | the Professional Insurance Agents of Florida, and one by the
2226 | Latin American Association of Insurance Agencies; three
2227 | representatives appointed by the insurers with the three highest
2228 | voluntary market share of residential property insurance business
2229 | in the state; one representative from the Office of Insurance
2230 | Regulation; one consumer appointed by the board who is insured by
2231 | the corporation at the time of appointment to the committee; one
2232 | representative appointed by the Florida Association of Realtors;
2233 | and one representative appointed by the Florida Bankers

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2234 Association. All members must serve for 3-year terms and may
2235 serve for consecutive terms. The committee shall report to the
2236 corporation at each board meeting on insurance market issues
2237 which may include rates and rate competition with the voluntary
2238 market; service, including policy issuance, claims processing,
2239 and general responsiveness to policyholders, applicants, and
2240 agents; and matters relating to depopulation.

2241 5. Must provide a procedure for determining the eligibility
2242 of a risk for coverage, as follows:

2243 a. Subject to the provisions of s. 627.3517, with respect
2244 to personal lines residential risks, if the risk is offered
2245 coverage from an authorized insurer at the insurer's approved
2246 rate under either a standard policy including wind coverage or,
2247 if consistent with the insurer's underwriting rules as filed with
2248 the office, a basic policy including wind coverage, for a new
2249 application to the corporation for coverage, the risk is not
2250 eligible for any policy issued by the corporation unless the
2251 premium for coverage from the authorized insurer is more than 15
2252 percent greater than the premium for comparable coverage from the
2253 corporation. If the risk is not able to obtain any such offer,
2254 the risk is eligible for either a standard policy including wind
2255 coverage or a basic policy including wind coverage issued by the
2256 corporation; however, if the risk could not be insured under a
2257 standard policy including wind coverage regardless of market
2258 conditions, the risk shall be eligible for a basic policy
2259 including wind coverage unless rejected under subparagraph 9.
2260 However, with regard to a policyholder of the corporation or a
2261 policyholder removed from the corporation through an assumption
2262 agreement until the end of the assumption period, the

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2263 | policyholder remains eligible for coverage from the corporation
2264 | regardless of any offer of coverage from an authorized insurer or
2265 | surplus lines insurer. The corporation shall determine the type
2266 | of policy to be provided on the basis of objective standards
2267 | specified in the underwriting manual and based on generally
2268 | accepted underwriting practices.

2269 | (I) If the risk accepts an offer of coverage through the
2270 | market assistance plan or an offer of coverage through a
2271 | mechanism established by the corporation before a policy is
2272 | issued to the risk by the corporation or during the first 30 days
2273 | of coverage by the corporation, and the producing agent who
2274 | submitted the application to the plan or to the corporation is
2275 | not currently appointed by the insurer, the insurer shall:

2276 | (A) Pay to the producing agent of record of the policy, for
2277 | the first year, an amount that is the greater of the insurer's
2278 | usual and customary commission for the type of policy written or
2279 | a fee equal to the usual and customary commission of the
2280 | corporation; or

2281 | (B) Offer to allow the producing agent of record of the
2282 | policy to continue servicing the policy for a period of not less
2283 | than 1 year and offer to pay the agent the greater of the
2284 | insurer's or the corporation's usual and customary commission for
2285 | the type of policy written.

2286 |
2287 | If the producing agent is unwilling or unable to accept
2288 | appointment, the new insurer shall pay the agent in accordance
2289 | with sub-sub-sub-subparagraph (A).

2290 | (II) When the corporation enters into a contractual
2291 | agreement for a take-out plan, the producing agent of record of

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2292 the corporation policy is entitled to retain any unearned
2293 commission on the policy, and the insurer shall:

2294 (A) Pay to the producing agent of record of the corporation
2295 policy, for the first year, an amount that is the greater of the
2296 insurer's usual and customary commission for the type of policy
2297 written or a fee equal to the usual and customary commission of
2298 the corporation; or

2299 (B) Offer to allow the producing agent of record of the
2300 corporation policy to continue servicing the policy for a period
2301 of not less than 1 year and offer to pay the agent the greater of
2302 the insurer's or the corporation's usual and customary commission
2303 for the type of policy written.

2304
2305 If the producing agent is unwilling or unable to accept
2306 appointment, the new insurer shall pay the agent in accordance
2307 with sub-sub-sub-subparagraph (A).

2308 b. With respect to commercial lines residential risks, for
2309 a new application to the corporation for coverage, if the risk is
2310 offered coverage under a policy including wind coverage from an
2311 authorized insurer at its approved rate, the risk is not eligible
2312 for any policy issued by the corporation unless the premium for
2313 coverage from the authorized insurer is more than 15 percent
2314 greater than the premium for comparable coverage from the
2315 corporation. If the risk is not able to obtain any such offer,
2316 the risk is eligible for a policy including wind coverage issued
2317 by the corporation. However, with regard to a policyholder of the
2318 corporation or a policyholder removed from the corporation
2319 through an assumption agreement until the end of the assumption
2320 period, the policyholder remains eligible for coverage from the

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2321 corporation regardless of any offer of coverage from an
2322 authorized insurer or surplus lines insurer.

2323 (I) If the risk accepts an offer of coverage through the
2324 market assistance plan or an offer of coverage through a
2325 mechanism established by the corporation before a policy is
2326 issued to the risk by the corporation or during the first 30 days
2327 of coverage by the corporation, and the producing agent who
2328 submitted the application to the plan or the corporation is not
2329 currently appointed by the insurer, the insurer shall:

2330 (A) Pay to the producing agent of record of the policy, for
2331 the first year, an amount that is the greater of the insurer's
2332 usual and customary commission for the type of policy written or
2333 a fee equal to the usual and customary commission of the
2334 corporation; or

2335 (B) Offer to allow the producing agent of record of the
2336 policy to continue servicing the policy for a period of not less
2337 than 1 year and offer to pay the agent the greater of the
2338 insurer's or the corporation's usual and customary commission for
2339 the type of policy written.

2340
2341 If the producing agent is unwilling or unable to accept
2342 appointment, the new insurer shall pay the agent in accordance
2343 with sub-sub-sub-subparagraph (A).

2344 (II) When the corporation enters into a contractual
2345 agreement for a take-out plan, the producing agent of record of
2346 the corporation policy is entitled to retain any unearned
2347 commission on the policy, and the insurer shall:

2348 (A) Pay to the producing agent of record of the corporation
2349 policy, for the first year, an amount that is the greater of the

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2350 insurer's usual and customary commission for the type of policy
2351 written or a fee equal to the usual and customary commission of
2352 the corporation; or

2353 (B) Offer to allow the producing agent of record of the
2354 corporation policy to continue servicing the policy for a period
2355 of not less than 1 year and offer to pay the agent the greater of
2356 the insurer's or the corporation's usual and customary commission
2357 for the type of policy written.

2358

2359 If the producing agent is unwilling or unable to accept
2360 appointment, the new insurer shall pay the agent in accordance
2361 with sub-sub-sub-subparagraph (A).

2362 c. For purposes of determining comparable coverage under
2363 sub-subparagraphs a. and b., the comparison shall be based on
2364 those forms and coverages that are reasonably comparable. The
2365 corporation may rely on a determination of comparable coverage
2366 and premium made by the producing agent who submits the
2367 application to the corporation, made in the agent's capacity as
2368 the corporation's agent. A comparison may be made solely of the
2369 premium with respect to the main building or structure only on
2370 the following basis: the same coverage A or other building
2371 limits; the same percentage hurricane deductible that applies on
2372 an annual basis or that applies to each hurricane for commercial
2373 residential property; the same percentage of ordinance and law
2374 coverage, if the same limit is offered by both the corporation
2375 and the authorized insurer; the same mitigation credits, to the
2376 extent the same types of credits are offered both by the
2377 corporation and the authorized insurer; the same method for loss
2378 payment, such as replacement cost or actual cash value, if the

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2379 | same method is offered both by the corporation and the authorized
2380 | insurer in accordance with underwriting rules; and any other form
2381 | or coverage that is reasonably comparable as determined by the
2382 | board. If an application is submitted to the corporation for
2383 | wind-only coverage in the high-risk account, the premium for the
2384 | corporation's wind-only policy plus the premium for the ex-wind
2385 | policy that is offered by an authorized insurer to the applicant
2386 | shall be compared to the premium for multiperil coverage offered
2387 | by an authorized insurer, subject to the standards for comparison
2388 | specified in this subparagraph. If the corporation or the
2389 | applicant requests from the authorized insurer a breakdown of the
2390 | premium of the offer by types of coverage so that a comparison
2391 | may be made by the corporation or its agent and the authorized
2392 | insurer refuses or is unable to provide such information, the
2393 | corporation may treat the offer as not being an offer of coverage
2394 | from an authorized insurer at the insurer's approved rate.

2395 | 6. Must include rules for classifications of risks and
2396 | rates therefor.

2397 | 7. Must provide that if premium and investment income for
2398 | an account attributable to a particular calendar year are in
2399 | excess of projected losses and expenses for the account
2400 | attributable to that year, such excess shall be held in surplus
2401 | in the account. Such surplus shall be available to defray
2402 | deficits in that account as to future years and shall be used for
2403 | that purpose prior to assessing assessable insurers and
2404 | assessable insureds as to any calendar year.

2405 | 8. Must provide objective criteria and procedures to be
2406 | uniformly applied for all applicants in determining whether an
2407 | individual risk is so hazardous as to be uninsurable. In making

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2408 | this determination and in establishing the criteria and
2409 | procedures, the following shall be considered:

2410 | a. Whether the likelihood of a loss for the individual risk
2411 | is substantially higher than for other risks of the same class;
2412 | and

2413 | b. Whether the uncertainty associated with the individual
2414 | risk is such that an appropriate premium cannot be determined.

2415 |

2416 | The acceptance or rejection of a risk by the corporation shall be
2417 | construed as the private placement of insurance, and the
2418 | provisions of chapter 120 shall not apply.

2419 | 9. Must provide that the corporation shall make its best
2420 | efforts to procure catastrophe reinsurance at reasonable rates,
2421 | to cover its projected 100-year probable maximum loss as
2422 | determined by the board of governors.

2423 | ~~10. Must provide that in the event of regular deficit~~
2424 | ~~assessments under sub-subparagraph (b)3.a. or sub-subparagraph~~
2425 | ~~(b)3.b., in the personal lines account, the commercial lines~~
2426 | ~~residential account, or the high-risk account, the corporation~~
2427 | ~~shall levy upon corporation policyholders in its next rate~~
2428 | ~~filing, or by a separate rate filing solely for this purpose, a~~
2429 | ~~Citizens policyholder surcharge arising from a regular assessment~~
2430 | ~~in such account in a percentage equal to the total amount of such~~
2431 | ~~regular assessments divided by the aggregate statewide direct~~
2432 | ~~written premium for subject lines of business for the prior~~
2433 | ~~calendar year. For purposes of calculating the Citizens~~
2434 | ~~policyholder surcharge to be levied under this subparagraph, the~~
2435 | ~~total amount of the regular assessment to which this surcharge is~~
2436 | ~~related shall be determined as set forth in subparagraph (b)3.,~~

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2437 ~~without deducting the estimated Citizens policyholder surcharge.~~
2438 ~~Citizens policyholder surcharges under this subparagraph are not~~
2439 ~~considered premium and are not subject to commissions, fees, or~~
2440 ~~premium taxes; however, failure to pay a market equalization~~
2441 ~~surcharge shall be treated as failure to pay premium.~~

2442 10.11. The policies issued by the corporation must provide
2443 that, if the corporation or the market assistance plan obtains an
2444 offer from an authorized insurer to cover the risk at its
2445 approved rates, the risk is no longer eligible for renewal
2446 through the corporation, except as otherwise provided in this
2447 subsection.

2448 11.12. Corporation policies and applications must include a
2449 notice that the corporation policy could, under this section, be
2450 replaced with a policy issued by an authorized insurer that does
2451 not provide coverage identical to the coverage provided by the
2452 corporation. The notice shall also specify that acceptance of
2453 corporation coverage creates a conclusive presumption that the
2454 applicant or policyholder is aware of this potential.

2455 12.13. May establish, subject to approval by the office,
2456 different eligibility requirements and operational procedures for
2457 any line or type of coverage for any specified county or area if
2458 the board determines that such changes to the eligibility
2459 requirements and operational procedures are justified due to the
2460 voluntary market being sufficiently stable and competitive in
2461 such area or for such line or type of coverage and that consumers
2462 who, in good faith, are unable to obtain insurance through the
2463 voluntary market through ordinary methods would continue to have
2464 access to coverage from the corporation. When coverage is sought
2465 in connection with a real property transfer, such requirements

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2466 and procedures shall not provide for an effective date of
2467 coverage later than the date of the closing of the transfer as
2468 established by the transferor, the transferee, and, if
2469 applicable, the lender.

2470 ~~13.14.~~ Must provide that, with respect to the high-risk
2471 account, any assessable insurer with a surplus as to
2472 policyholders of \$25 million or less writing 25 percent or more
2473 of its total countrywide property insurance premiums in this
2474 state may petition the office, within the first 90 days of each
2475 calendar year, to qualify as a limited apportionment company. A
2476 regular assessment levied by the corporation on a limited
2477 apportionment company for a deficit incurred by the corporation
2478 for the high-risk account in 2006 or thereafter may be paid to
2479 the corporation on a monthly basis as the assessments are
2480 collected by the limited apportionment company from its insureds
2481 pursuant to s. 627.3512, but the regular assessment must be paid
2482 in full within 12 months after being levied by the corporation. A
2483 limited apportionment company shall collect from its
2484 policyholders any emergency assessment imposed under sub-
2485 subparagraph (b)3.d. The plan shall provide that, if the office
2486 determines that any regular assessment will result in an
2487 impairment of the surplus of a limited apportionment company, the
2488 office may direct that all or part of such assessment be deferred
2489 as provided in subparagraph (p)4. However, there shall be no
2490 limitation or deferment of an emergency assessment to be
2491 collected from policyholders under sub-subparagraph (b)3.d.

2492 ~~14.15.~~ Must provide that the corporation appoint as its
2493 licensed agents only those agents who also hold an appointment as
2494 defined in s. 626.015(3) with an insurer who at the time of the

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2495 agent's initial appointment by the corporation is authorized to
2496 write and is actually writing personal lines residential property
2497 coverage, commercial residential property coverage, or commercial
2498 nonresidential property coverage within the state.

2499 ~~15.16.~~ Must provide, by July 1, 2007, a premium payment
2500 plan option to its policyholders which allows at a minimum for
2501 quarterly and semiannual payment of premiums. A monthly payment
2502 plan may, but is not required to, be offered.

2503 ~~16.17.~~ Must limit coverage on mobile homes or manufactured
2504 homes built prior to 1994 to actual cash value of the dwelling
2505 rather than replacement costs of the dwelling.

2506 ~~17.18.~~ May provide such limits of coverage as the board
2507 determines, consistent with the requirements of this subsection.

2508 ~~18.19.~~ May require commercial property to meet specified
2509 hurricane mitigation construction features as a condition of
2510 eligibility for coverage.

2511 (m)1. Rates for coverage provided by the corporation shall
2512 be actuarially sound and subject to the requirements of s.
2513 627.062, except as otherwise provided in this paragraph. The
2514 corporation shall file its recommended rates with the office at
2515 least annually. The corporation shall provide any additional
2516 information regarding the rates which the office requires. The
2517 office shall consider the recommendations of the board and issue
2518 a final order establishing the rates for the corporation within
2519 45 days after the recommended rates are filed. The corporation
2520 may not pursue an administrative challenge or judicial review of
2521 the final order of the office.

2522 2. In addition to the rates otherwise determined pursuant
2523 to this paragraph, the corporation shall impose and collect an

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2524 amount equal to the premium tax provided for in s. 624.509 to
2525 augment the financial resources of the corporation.

2526 3. After the public hurricane loss-projection model under
2527 s. 627.06281 has been found to be accurate and reliable by the
2528 Florida Commission on Hurricane Loss Projection Methodology, that
2529 model shall serve as the minimum benchmark for determining the
2530 windstorm portion of the corporation's rates. This subparagraph
2531 does not require or allow the corporation to adopt rates lower
2532 than the rates otherwise required or allowed by this paragraph.

2533 4. The rate filings for the corporation which were approved
2534 by the office and which took effect January 1, 2007, are
2535 rescinded, except for those rates that were lowered. As soon as
2536 possible, the corporation shall begin using the lower rates that
2537 were in effect on December 31, 2006, and shall provide refunds to
2538 policyholders who have paid higher rates as a result of that rate
2539 filing. The rates in effect on December 31, 2006, shall remain in
2540 effect for the 2007 and 2008 calendar years except for any rate
2541 change that results in a lower rate. The next rate change that
2542 may increase rates shall take effect ~~January 1, 2009~~, pursuant to
2543 a new rate filing recommended by the corporation and established
2544 by the office, subject to the requirements of this paragraph.

2545 5. Beginning on July 15, 2009, and each year thereafter,
2546 the corporation must make a recommended actuarially sound rate
2547 filing for each personal and commercial line of business it
2548 writes, to be effective no earlier than January 1, 2010.

2549 (p)1. The corporation shall certify to the office its needs
2550 for annual assessments as to a particular calendar year, and for
2551 any interim assessments that it deems to be necessary to sustain
2552 operations as to a particular year pending the receipt of annual

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2553 assessments. Upon verification, the office shall approve such
2554 certification, and the corporation shall levy such annual or
2555 interim assessments. Such assessments shall be prorated as
2556 provided in paragraph (b). The corporation shall take all
2557 reasonable and prudent steps necessary to collect the amount of
2558 assessment due from each assessable insurer, including, if
2559 prudent, filing suit to collect such assessment. If the
2560 corporation is unable to collect an assessment from any
2561 assessable insurer, the uncollected assessments shall be levied
2562 as an additional assessment against the assessable insurers and
2563 any assessable insurer required to pay an additional assessment
2564 as a result of such failure to pay shall have a cause of action
2565 against such nonpaying assessable insurer. Assessments shall be
2566 included as an appropriate factor in the making of rates. The
2567 failure of a surplus lines agent to collect and remit any regular
2568 or emergency assessment levied by the corporation is considered
2569 to be a violation of s. 626.936 and subjects the surplus lines
2570 agent to the penalties provided in that section.

2571 2. The governing body of any unit of local government, any
2572 residents of which are insured by the corporation, may issue
2573 bonds as defined in s. 125.013 or s. 166.101 from time to time to
2574 fund an assistance program, in conjunction with the corporation,
2575 for the purpose of defraying deficits of the corporation. In
2576 order to avoid needless and indiscriminate proliferation,
2577 duplication, and fragmentation of such assistance programs, any
2578 unit of local government, any residents of which are insured by
2579 the corporation, may provide for the payment of losses,
2580 regardless of whether or not the losses occurred within or
2581 outside of the territorial jurisdiction of the local government.

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2582 Revenue bonds under this subparagraph may not be issued until
2583 validated pursuant to chapter 75, unless a state of emergency is
2584 declared by executive order or proclamation of the Governor
2585 pursuant to s. 252.36 making such findings as are necessary to
2586 determine that it is in the best interests of, and necessary for,
2587 the protection of the public health, safety, and general welfare
2588 of residents of this state and declaring it an essential public
2589 purpose to permit certain municipalities or counties to issue
2590 such bonds as will permit relief to claimants and policyholders
2591 of the corporation. Any such unit of local government may enter
2592 into such contracts with the corporation and with any other
2593 entity created pursuant to this subsection as are necessary to
2594 carry out this paragraph. Any bonds issued under this
2595 subparagraph shall be payable from and secured by moneys received
2596 by the corporation from emergency assessments under sub-
2597 subparagraph (b)3.d., and assigned and pledged to or on behalf of
2598 the unit of local government for the benefit of the holders of
2599 such bonds. The funds, credit, property, and taxing power of the
2600 state or of the unit of local government shall not be pledged for
2601 the payment of such bonds. ~~If any of the bonds remain unsold 60~~
2602 ~~days after issuance, the office shall require all insurers~~
2603 ~~subject to assessment to purchase the bonds, which shall be~~
2604 ~~treated as admitted assets; each insurer shall be required to~~
2605 ~~purchase that percentage of the unsold portion of the bond issue~~
2606 ~~that equals the insurer's relative share of assessment liability~~
2607 ~~under this subsection. An insurer shall not be required to~~
2608 ~~purchase the bonds to the extent that the office determines that~~
2609 ~~the purchase would endanger or impair the solvency of the~~
2610 ~~insurer.~~

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2611 3.a. The corporation shall adopt one or more programs
2612 subject to approval by the office for the reduction of both new
2613 and renewal writings in the corporation. Beginning January 1,
2614 2008, any program the corporation adopts for the payment of
2615 bonuses to an insurer for each risk the insurer removes from the
2616 corporation shall comply with s. 627.3511(2) and may not exceed
2617 the amount referenced in s. 627.3511(2) for each risk removed.
2618 The corporation may consider any prudent and not unfairly
2619 discriminatory approach to reducing corporation writings, and may
2620 adopt a credit against assessment liability or other liability
2621 that provides an incentive for insurers to take risks out of the
2622 corporation and to keep risks out of the corporation by
2623 maintaining or increasing voluntary writings in counties or areas
2624 in which corporation risks are highly concentrated and a program
2625 to provide a formula under which an insurer voluntarily taking
2626 risks out of the corporation by maintaining or increasing
2627 voluntary writings will be relieved wholly or partially from
2628 assessments under sub-subparagraphs (b)3.a. and b. However, any
2629 "take-out bonus" or payment to an insurer must be conditioned on
2630 the property being insured for at least 5 years by the insurer,
2631 unless canceled or nonrenewed by the policyholder. If the policy
2632 is canceled or nonrenewed by the policyholder before the end of
2633 the 5-year period, the amount of the take-out bonus must be
2634 prorated for the time period the policy was insured. When the
2635 corporation enters into a contractual agreement for a take-out
2636 plan, the producing agent of record of the corporation policy is
2637 entitled to retain any unearned commission on such policy, and
2638 the insurer shall either:

2639 (I) Pay to the producing agent of record of the policy, for

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2640 the first year, an amount which is the greater of the insurer's
2641 usual and customary commission for the type of policy written or
2642 a policy fee equal to the usual and customary commission of the
2643 corporation; or

2644 (II) Offer to allow the producing agent of record of the
2645 policy to continue servicing the policy for a period of not less
2646 than 1 year and offer to pay the agent the insurer's usual and
2647 customary commission for the type of policy written. If the
2648 producing agent is unwilling or unable to accept appointment by
2649 the new insurer, the new insurer shall pay the agent in
2650 accordance with sub-sub-subparagraph (I).

2651 b. Any credit or exemption from regular assessments adopted
2652 under this subparagraph shall last no longer than the 3 years
2653 following the cancellation or expiration of the policy by the
2654 corporation. With the approval of the office, the board may
2655 extend such credits for an additional year if the insurer
2656 guarantees an additional year of renewability for all policies
2657 removed from the corporation, or for 2 additional years if the
2658 insurer guarantees 2 additional years of renewability for all
2659 policies so removed.

2660 c. There shall be no credit, limitation, exemption, or
2661 deferment from emergency assessments to be collected from
2662 policyholders pursuant to sub-subparagraph (b)3.d.

2663 4. The plan shall provide for the deferment, in whole or in
2664 part, of the assessment of an assessable insurer, other than an
2665 emergency assessment collected from policyholders pursuant to
2666 sub-subparagraph (b)3.d., if the office finds that payment of the
2667 assessment would endanger or impair the solvency of the insurer.
2668 In the event an assessment against an assessable insurer is

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2669 | deferred in whole or in part, the amount by which such assessment
2670 | is deferred may be assessed against the other assessable insurers
2671 | in a manner consistent with the basis for assessments set forth
2672 | in paragraph (b).

2673 | 5. Effective July 1, 2007, in order to evaluate the costs
2674 | and benefits of approved take-out plans, if the corporation pays
2675 | a bonus or other payment to an insurer for an approved take-out
2676 | plan, it shall maintain a record of the address or such other
2677 | identifying information on the property or risk removed in order
2678 | to track if and when the property or risk is later insured by the
2679 | corporation.

2680 | 6. Any policy taken out, assumed, or removed from the
2681 | corporation is, as of the effective date of the take-out,
2682 | assumption, or removal, direct insurance issued by the insurer
2683 | and not by the corporation, even if the corporation continues to
2684 | service the policies. This subparagraph applies to policies of
2685 | the corporation and not policies taken out, assumed, or removed
2686 | from any other entity.

2687 | (w)1. The following records of the corporation are
2688 | confidential and exempt from the provisions of s. 119.07(1) and
2689 | s. 24(a), Art. I of the State Constitution:

2690 | a. Underwriting files, except that a policyholder or an
2691 | applicant shall have access to his or her own underwriting files.
2692 | Confidential and exempt underwriting file records may also be
2693 | released to other governmental agencies upon written request and
2694 | demonstration of need; such records held by the receiving agency
2695 | remain confidential and exempt as provided herein.

2696 | b. Claims files, until termination of all litigation and
2697 | settlement of all claims arising out of the same incident,

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2698 | although portions of the claims files may remain exempt, as
2699 | otherwise provided by law. Confidential and exempt claims file
2700 | records may be released to other governmental agencies upon
2701 | written request and demonstration of need; such records held by
2702 | the receiving agency remain confidential and exempt as provided
2703 | ~~for~~ herein.

2704 | c. Records obtained or generated by an internal auditor
2705 | pursuant to a routine audit, until the audit is completed, or if
2706 | the audit is conducted as part of an investigation, until the
2707 | investigation is closed or ceases to be active. An investigation
2708 | is considered "active" while the investigation is being conducted
2709 | with a reasonable, good faith belief that it could lead to the
2710 | filing of administrative, civil, or criminal proceedings.

2711 | d. Matters reasonably encompassed in privileged attorney-
2712 | client communications.

2713 | e. Proprietary information licensed to the corporation
2714 | under contract and the contract provides for the confidentiality
2715 | of such proprietary information.

2716 | f. All information relating to the medical condition or
2717 | medical status of a corporation employee which is not relevant to
2718 | the employee's capacity to perform his or her duties, except as
2719 | otherwise provided in this paragraph. Information that ~~which~~ is
2720 | exempt shall include, but is not limited to, information relating
2721 | to workers' compensation, insurance benefits, and retirement or
2722 | disability benefits.

2723 | g. Upon an employee's entrance into the employee assistance
2724 | program, a program to assist any employee who has a behavioral or
2725 | medical disorder, substance abuse problem, or emotional
2726 | difficulty which affects the employee's job performance, all

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2727 records relative to that participation shall be confidential and
2728 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
2729 of the State Constitution, except as otherwise provided in s.
2730 112.0455(11).

2731 h. Information relating to negotiations for financing,
2732 reinsurance, depopulation, or contractual services, until the
2733 conclusion of the negotiations.

2734 i. Minutes of closed meetings regarding underwriting files,
2735 and minutes of closed meetings regarding an open claims file
2736 until termination of all litigation and settlement of all claims
2737 with regard to that claim, except that information otherwise
2738 confidential or exempt by law shall ~~will~~ be redacted.

2739 2. If ~~When~~ an authorized insurer is considering
2740 underwriting a risk insured by the corporation, relevant
2741 underwriting files and confidential claims files may be released
2742 to the insurer provided the insurer agrees in writing, notarized
2743 and under oath, to maintain the confidentiality of such files. If
2744 ~~When~~ a file is transferred to an insurer that file is no longer a
2745 public record because it is not held by an agency subject to the
2746 provisions of the public records law. Underwriting files and
2747 confidential claims files may also be released to staff ~~of~~ and
2748 the board of governors of the market assistance plan established
2749 pursuant to s. 627.3515, who must retain the confidentiality of
2750 such files, except such files may be released to authorized
2751 insurers that are considering assuming the risks to which the
2752 files apply, provided the insurer agrees in writing, notarized
2753 and under oath, to maintain the confidentiality of such files.
2754 Finally, the corporation or the board or staff of the market
2755 assistance plan may make the following information obtained from

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2756 | underwriting files and confidential claims files available to
2757 | licensed general lines insurance agents: name, address, and
2758 | telephone number of the residential property owner or insured;
2759 | location of the risk; rating information; loss history; and
2760 | policy type. The receiving licensed general lines insurance agent
2761 | must retain the confidentiality of the information received.

2762 | 3. A policyholder who has filed suit against the
2763 | corporation has the right to discover the contents of his or her
2764 | own claims file to the same extent that discovery of such
2765 | contents would be available from a private insurer in litigation
2766 | as provided by the Florida Rules of Civil Procedure, the Florida
2767 | Evidence Code, and other applicable law. Pursuant to subpoena, a
2768 | third party has the right to discover the contents of an
2769 | insured's or applicant's underwriting or claims file to the same
2770 | extent that discovery of such contents would be available from a
2771 | private insurer by subpoena as provided by the Florida Rules of
2772 | Civil Procedure, the Florida Evidence Code, and other applicable
2773 | law, and subject to any confidentiality protections requested by
2774 | the corporation and agreed to by the seeking party or ordered by
2775 | the court. The corporation may release confidential underwriting
2776 | and claims file contents and information as it deems necessary
2777 | and appropriate to underwrite or service insurance policies and
2778 | claims, subject to any confidentiality protections deemed
2779 | necessary and appropriate by the corporation.

2780 | 4.2. Portions of meetings of the corporation are exempt
2781 | from the provisions of s. 286.011 and s. 24(b), Art. I of the
2782 | State Constitution wherein confidential underwriting files or
2783 | confidential open claims files are discussed. All portions of
2784 | corporation meetings which are closed to the public shall be

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2785 recorded by a court reporter. The court reporter shall record the
2786 times of commencement and termination of the meeting, all
2787 discussion and proceedings, the names of all persons present at
2788 any time, and the names of all persons speaking. No portion of
2789 any closed meeting shall be off the record. Subject to the
2790 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's
2791 notes of any closed meeting shall be retained by the corporation
2792 for a minimum of 5 years. A copy of the transcript, less any
2793 exempt matters, of any closed meeting wherein claims are
2794 discussed shall become public as to individual claims after
2795 settlement of the claim.

2796 ~~(dd)1. For policies subject to nonrenewal as a result of~~
2797 ~~the risk being no longer eligible for coverage due to being~~
2798 ~~valued at \$1 million or more, the corporation shall, directly or~~
2799 ~~through the market assistance plan, make information from~~
2800 ~~confidential underwriting and claims files of policyholders~~
2801 ~~available only to licensed general lines agents who register with~~
2802 ~~the corporation to receive such information according to the~~
2803 ~~following procedures:~~

2804 ~~2. By August 1, 2006, the corporation shall provide such~~
2805 ~~policyholders who are not eligible for renewal the opportunity to~~
2806 ~~request in writing, within 30 days after the notification is~~
2807 ~~sent, that information from their confidential underwriting and~~
2808 ~~claims files not be released to licensed general lines agents~~
2809 ~~registered pursuant to this paragraph.~~

2810 ~~3. By August 1, 2006, the corporation shall make available~~
2811 ~~to licensed general lines agents the registration procedures to~~
2812 ~~be used to obtain confidential information from underwriting and~~
2813 ~~claims files for such policies not eligible for renewal. As a~~

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2814 ~~condition of registration, the corporation shall require the~~
2815 ~~licensed general lines agent to attest that the agent has the~~
2816 ~~experience and relationships with authorized or surplus lines~~
2817 ~~carriers to attempt to offer replacement coverage for such~~
2818 ~~policies.~~

2819 ~~4. By September 1, 2006, the corporation shall make~~
2820 ~~available through a secured website to licensed general lines~~
2821 ~~agents registered pursuant to this paragraph application, rating,~~
2822 ~~loss history, mitigation, and policy type information relating to~~
2823 ~~such policies not eligible for renewal and for which the~~
2824 ~~policyholder has not requested the corporation withhold such~~
2825 ~~information. The registered licensed general lines agent may use~~
2826 ~~such information to contact and assist the policyholder in~~
2827 ~~securing replacement policies, and the agent may disclose to the~~
2828 ~~policyholder that such information was obtained from the~~
2829 ~~corporation.~~

2830 ~~(dd)-(ee)~~ The assets of the corporation may be invested and
2831 managed by the State Board of Administration.

2832 ~~(ee)-(ff)~~ The office may establish a pilot program to offer
2833 optional sinkhole coverage in one or more counties or other
2834 territories of the corporation for the purpose of implementing s.
2835 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.
2836 Under the pilot program, the corporation is not required to issue
2837 a notice of nonrenewal to exclude sinkhole coverage upon the
2838 renewal of existing policies, but may exclude such coverage using
2839 a notice of coverage change.

2840 Section 14. Paragraph (b) of subsection (2) of section
2841 627.4133, Florida Statutes, is amended to read:

2842 627.4133 Notice of cancellation, nonrenewal, or renewal

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2843 premium.--

2844 (2) With respect to any personal lines or commercial
2845 residential property insurance policy, including, but not limited
2846 to, any homeowner's, mobile home owner's, farmowner's,
2847 condominium association, condominium unit owner's, apartment
2848 building, or other policy covering a residential structure or its
2849 contents:

2850 (b) The insurer shall give the named insured written notice
2851 of nonrenewal, cancellation, or termination at least 100 days
2852 prior to the effective date of the nonrenewal, cancellation, or
2853 termination. However, the insurer shall give at least 100 days'
2854 written notice, or written notice by June 1, whichever is
2855 earlier, for any nonrenewal, cancellation, or termination that
2856 would be effective between June 1 and November 30. The notice
2857 must include the reason or reasons for the nonrenewal,
2858 cancellation, or termination, except that:

2859 1. The insurer shall give the named insured written notice
2860 of nonrenewal, cancellation, or termination at least 180 days
2861 prior to the effective date of the nonrenewal, cancellation, or
2862 termination for a named insured whose residential structure has
2863 been insured by that insurer or an affiliated insurer for at
2864 least a 5-year period immediately prior to date of the written
2865 notice.

2866 ~~2.1.~~ When cancellation is for nonpayment of premium, at
2867 least 10 days' written notice of cancellation accompanied by the
2868 reason therefor shall be given. As used in this subparagraph, the
2869 term "nonpayment of premium" means failure of the named insured
2870 to discharge when due any of her or his obligations in connection
2871 with the payment of premiums on a policy or any installment of

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2872 such premium, whether the premium is payable directly to the
2873 insurer or its agent or indirectly under any premium finance plan
2874 or extension of credit, or failure to maintain membership in an
2875 organization if such membership is a condition precedent to
2876 insurance coverage. "Nonpayment of premium" also means the
2877 failure of a financial institution to honor an insurance
2878 applicant's check after delivery to a licensed agent for payment
2879 of a premium, even if the agent has previously delivered or
2880 transferred the premium to the insurer. If a dishonored check
2881 represents the initial premium payment, the contract and all
2882 contractual obligations shall be void ab initio unless the
2883 nonpayment is cured within the earlier of 5 days after actual
2884 notice by certified mail is received by the applicant or 15 days
2885 after notice is sent to the applicant by certified mail or
2886 registered mail, and if the contract is void, any premium
2887 received by the insurer from a third party shall be refunded to
2888 that party in full.

2889 ~~3.2.~~ When such cancellation or termination occurs during
2890 the first 90 days during which the insurance is in force and the
2891 insurance is canceled or terminated for reasons other than
2892 nonpayment of premium, at least 20 days' written notice of
2893 cancellation or termination accompanied by the reason therefor
2894 shall be given except where there has been a material
2895 misstatement or misrepresentation or failure to comply with the
2896 underwriting requirements established by the insurer.

2897 ~~4.3.~~ The requirement for providing written notice of
2898 nonrenewal by June 1 of any nonrenewal that would be effective
2899 between June 1 and November 30 does not apply to the following
2900 situations, but the insurer remains subject to the requirement to

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2901 provide such notice at least 100 days prior to the effective date
2902 of nonrenewal:

2903 a. A policy that is nonrenewed due to a revision in the
2904 coverage for sinkhole losses and catastrophic ground cover
2905 collapse pursuant to s. 627.730, as amended by s. 30, chapter
2906 2007-1, Laws of Florida.

2907 b. A policy that is nonrenewed by Citizens Property
2908 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2909 that has been assumed by an authorized insurer offering
2910 replacement or renewal coverage to the policyholder.

2911
2912 After the policy has been in effect for 90 days, the policy shall
2913 not be canceled by the insurer except when there has been a
2914 material misstatement, a nonpayment of premium, a failure to
2915 comply with underwriting requirements established by the insurer
2916 within 90 days of the date of effectuation of coverage, or a
2917 substantial change in the risk covered by the policy or when the
2918 cancellation is for all insureds under such policies for a given
2919 class of insureds. This paragraph does not apply to individually
2920 rated risks having a policy term of less than 90 days.

2921 Section 15. Effective January 1, 2011, section 689.262,
2922 Florida Statutes, is created to read:

2923 689.262 Sale of residential property; disclosure of
2924 windstorm mitigation rating.--A purchaser of residential property
2925 that is located in the wind-borne debris region, as defined in s.
2926 1609.2 of the International Building Code(2006), must be
2927 informed of the windstorm mitigation rating of the structure,
2928 based on the uniform home grading scale adopted pursuant to s.
2929 215.55865. The rating must be included in the contract for sale

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2930 or as a separate document attached to the contract for sale. The
2931 Financial Services Commission may adopt rules, consistent with
2932 other state laws, to administer this section, including the form
2933 of the disclosure and the requirements for the windstorm
2934 mitigation inspection or report that is required for purposes of
2935 determining the rating.

2936 Section 16. (1) By December 15, 2008, Citizens Property
2937 Insurance Corporation shall transfer \$250 million to the General
2938 Revenue Fund, from the personal lines account and the commercial
2939 lines account only, if the combined surplus of the personal lines
2940 account and commercial lines account as defined in s. 627.351(6),
2941 Florida Statutes, exceeds \$1 billion. The board of governors of
2942 Citizens Property Insurance Corporation must make a reasonable
2943 estimate of such surplus on or after December 1, 2008, and no
2944 later than December 14, 2008, using generally accepted actuarial
2945 and accounting practices, recognizing that audited financial
2946 statements will not yet be available.

2947 (2) Beginning July 1, 2009, the board shall make quarterly
2948 transfers of any interest earned prior to the issuance of any
2949 surplus notes, interest paid, and principal repaid to the state
2950 for any surplus notes issued by the program after December 1,
2951 2008, to Citizens Property Insurance Corporation, provided such
2952 surplus notes were funded exclusively by an appropriation to the
2953 program by the Legislature for the 2008-2009 fiscal year. The
2954 corporation shall credit each account as defined in s. 627.351(6)
2955 in a pro rata manner for the funds removed from each account to
2956 make the transfer required by subsection (1).

2957 (3) On July 1, 2009, the State Board of Administration
2958 shall transfer to Citizens Property Insurance Corporation any

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2959 funds that have not been committed or reserved for insurers
2960 approved to receive such funds under the program from the funds
2961 that were appropriated from the corporation in 2008-2009 for such
2962 purposes.

2963 Section 17. Citizens Property Insurance Corporation may not
2964 use any amendments made to s. 215.5595, Florida Statutes, by this
2965 act or any transfer of funds authorized by this act as
2966 justification or cause in seeking any rate or assessment
2967 increase.

2968 Section 18. Subsection (3) is added to section 627.06281,
2969 Florida Statutes, to read:

2970 627.06281 Public hurricane loss projection model; reporting
2971 of data by insurers.--

2972 (3) (a) A residential property insurer may have access to
2973 and use the public hurricane loss projection model, including all
2974 assumptions and factors and all detailed loss results, for the
2975 purpose of calculating rate indications in a rate filing and for
2976 analytical purposes, including any analysis or evaluation of the
2977 model required under actuarial standards of practice.

2978 (b) By January 1, 2009, the office shall establish by rule
2979 a fee schedule for access to and the use of the model. The fee
2980 schedule must be reasonably calculated to cover only the actual
2981 costs of providing access to and the use of the model.

2982 Section 19. Section 627.0655, Florida Statutes, is amended
2983 to read:

2984 627.0655 Policyholder loss or expense-related premium
2985 discounts.--An insurer or person authorized to engage in the
2986 business of insurance in this state may include, in the premium
2987 charged an insured for any policy, contract, or certificate of

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2988 insurance, a discount based on the fact that another policy,
2989 contract, or certificate of any type has been purchased by the
2990 insured from the same insurer or insurer group, the Citizens
2991 Property Insurance Corporation created under s. 627.351(6) if the
2992 same insurance agent is servicing both policies, or an insurer
2993 that has removed the policy from the Citizens Property Insurance
2994 Corporation if the same insurance agent is servicing both
2995 policies.

2996 Section 20. (1) The Citizens Property Insurance
2997 Corporation Mission Review Task Force is created to analyze and
2998 compile available data and to develop a report setting forth the
2999 statutory and operational changes needed to return Citizens
3000 Property Insurance Corporation to its former role as a state-
3001 created, noncompetitive residual market mechanism that provides
3002 property insurance coverage to risks that are otherwise entitled
3003 but unable to obtain such coverage in the private insurance
3004 market. The task force shall submit a report to the Governor, the
3005 President of the Senate, and the Speaker of the House of
3006 Representatives by January 31, 2009. At a minimum, the task force
3007 shall analyze and evaluate relevant and applicable information
3008 and data and develop recommendations concerning:

3009 (a) The nature of Citizens Property Insurance Corporation's
3010 role in providing property insurance coverage only if such
3011 coverage is not available from private insurers.

3012 (b) The ability of the admitted market to offer policies to
3013 those consumers formerly insured through Citizens Property
3014 Insurance Corporation. This consideration shall include, but not
3015 be limited to, the availability of private market reinsurance and
3016 coverage through the Florida Hurricane Catastrophe Fund and the

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3017 capacity of the industry to offer policies to former Citizens
3018 Property Insurance Corporation policyholders within existing
3019 writing ratio limitations.

3020 (c) The relationship of rates charged by Citizens Property
3021 Insurance Corporation to rates charged by private insurers, with
3022 due consideration for the corporation's role as a noncompetitive
3023 residual market mechanism.

3024 (d) The relationships between the exposure of Citizens
3025 Property Insurance Corporation to catastrophic hurricane losses,
3026 the corporation's history of purchasing any reinsurance coverage,
3027 and the corporation's capital capacity to meet its potential
3028 claim obligations without incurring large deficits.

3029 (e) The projected assessments on all policies required to
3030 offset the lack of capitol to pay claims.

3031 (f) The projections under paragraph (e) shall be specific
3032 to losses of \$3 billion, \$12 billion, and \$23 billion caused by a
3033 storm or a group of storms in any given year.

3034 (g) The operational implications of the variation in the
3035 number of policies in force over time in Citizens Property
3036 Insurance Corporation and the merits of outsourcing some or all
3037 of its operational responsibilities.

3038 (h) Changes in the mission and operations of Citizens
3039 Property Insurance Corporation to reduce or eliminate any adverse
3040 effect such mission and operations may be having on the promotion
3041 of sound and economic growth and development of the coastal areas
3042 of this state.

3043 (i) Appropriate and consistent geographic boundaries of the
3044 high-risk account.

3045 (j) The rankings, by county, of the average approved rates

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3046 in Citizens Property Insurance Corporation and any savings
3047 associated with policyholder choice in selecting Citizens.

3048 (2) The task force shall be composed of 11 members as
3049 follows:

3050 (a) Two members appointed by the Speaker of the House of
3051 Representatives.

3052 1. One member representing a property and casualty
3053 residential insurer that provides at least 150,000 homeowner's
3054 insurance policies in this state at the time of the creation of
3055 the task force.

3056 2. One member representing a surplus lines insurance
3057 company.

3058 (b) Two members appointed by the President of the
3059 Senate.

3060 1. One member representing a property and casualty
3061 commercial non-residential insurer.

3062 2. One member representing a property and casualty
3063 residential insurer with fewer than 150,000 homeowner's policies
3064 in this state at the time of the creation of the task force.

3065 (c) Three members appointed by the Governor who are not
3066 employed by or professionally affiliated with an insurance
3067 company or a subsidiary of an insurance company, at least one of
3068 whom must be consumer advocates or members of a consumer advocacy
3069 organization or agency.

3070 (d) Two members appointed by the Chief Financial Officer
3071 representing insurance agents in this state.

3072 (e) One member representing Citizens Property Insurance
3073 Corporation selected by Citizens Chairman of the Board.

3074 (f) The Commissioner of Insurance Regulation or his or her

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3075 designee.

3076 (3) The task force shall conduct research, hold public
3077 meetings, receive testimony, employ consultants and
3078 administrative staff, and undertake other activities determined
3079 by its members to be necessary to complete its responsibilities.
3080 Citizens Property Insurance Corporation shall have appropriate
3081 senior staff attend task force meetings, shall respond to
3082 requests for testimony and data by the task force, shall
3083 otherwise cooperate with the task force, and shall provide
3084 funding for the necessary costs of implementing the provisions of
3085 this section.

3086 (4) A member of the task force may not delegate his or her
3087 attendance or voting power to a designee.

3088 (5) Members of the task force shall serve without
3089 compensation but are entitled to receive reimbursement for travel
3090 and per diem as provided in s. 112.061, Florida Statutes.

3091 (6) The appointments to the task force must be completed
3092 within 30 calendar days after the effective date of this act, and
3093 the task force must hold its initial meeting within 1 month after
3094 appointment of all members. The task force shall expire no later
3095 than 60 calendar days after submission of the report required in
3096 subsection (1).

3097 Section 21. The Chief Financial Officer shall provide a
3098 report on the economic impact on the state of a 1-in-100-year
3099 hurricane to the Governor, the President of the Senate, and the
3100 Speaker of the House of Representatives by March 1 of each year.
3101 The report shall include an estimate of the short-term and long-
3102 term fiscal impacts of such a storm on Citizens Property
3103 Insurance Corporation, the Florida Hurricane Catastrophe Fund,

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3104 the private insurance and reinsurance markets, the state economy,
3105 and the state debt. The report shall also include an analysis of
3106 the average premium increase to fund a 1-in-100-year hurricane
3107 event and list the average cost, in both a percentage and dollar
3108 amount, impact to consumers on a county-level basis. The report
3109 may also include recommendations by the Chief Financial Officer
3110 for preparing for such a hurricane and reducing the economic
3111 impact of such a hurricane on the state. In preparing the
3112 analysis, the Chief Financial Officer shall coordinate with and
3113 obtain data from the Office of Insurance Regulation, Citizens
3114 Property Insurance Corporation, the Florida Hurricane Catastrophe
3115 Fund, the Florida Commission on Hurricane Loss Projection
3116 Methodology, the State Board of Administration, the Office of
3117 Economic and Demographic Research, and other state agencies.

3118 Section 22. Section 627.0621, Florida Statutes, is created
3119 to read:

3120 627.0621 Transparency in rate regulation.--

3121 (1) DEFINITIONS.--As used in this section, the term:

3122 (a) "Rate filing" means any original or amended rate
3123 residential property insurance filing.

3124 (b) "Recommendation" means any proposed, preliminary, or
3125 final recommendation from an office actuary reviewing a rate
3126 filing with respect to the issue of approval or disapproval of
3127 the rate filing or with respect to rate indications that the
3128 office would consider acceptable.

3129 (2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING

3130 INFORMATION.--With respect to any rate filing made on after July
3131 1, 2008, the office shall provide the following information on a
3132 publicly accessible Internet website:

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- 3133 (a) The overall rate change requested by the insurer.
- 3134 (b) All assumptions made by the office's actuaries.
- 3135 (c) A statement describing any assumptions or methods that
3136 deviate from the actuarial standards of practice of the Casualty
3137 Actuarial Society or the American Academy of Actuaries, including
3138 an explanation of the nature, rationale, and effect of the
3139 deviation.
- 3140 (d) All recommendations made by any office actuary who
3141 reviewed the rate filing.
- 3142 (e) Certification by the office's actuary that, based on
3143 the actuary's knowledge, his or her recommendations are
3144 consistent with accepted actuarial principles.
- 3145 (f) The overall rate change approved by the office.
- 3146 (3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT.--It is the
3147 intent of the Legislature that the principles of the public
3148 records and open meetings laws apply to the assertion of
3149 attorney-client privilege and work product confidentiality by the
3150 office in connection with a challenge to its actions on a rate
3151 filing. Therefore, in any administrative or judicial proceeding
3152 relating to a rate filing, attorney-client privilege and work
3153 product exemptions from disclosure do not apply to communications
3154 with office attorneys or records prepared by or at the direction
3155 of an office attorney, except when the conditions of paragraphs
3156 (a) and (b) have been met:
- 3157 (a) The communication or record reflects a mental
3158 impression, conclusion, litigation strategy, or legal theory of
3159 the attorney or office that was prepared exclusively for civil or
3160 criminal litigation or adversarial administrative proceedings.
- 3161 (b) The communication occurred or the record was prepared

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3162 after the initiation of an action in a court of competent
3163 jurisdiction, after the issuance of a notice of intent to deny a
3164 rate filing, or after the filing of a request for a proceeding
3165 under ss. 120.569 and 120.57.

3166 Section 23. Paragraph (b) of subsection (4) of section
3167 215.555, Florida Statutes, is amended to read:

3168 215.555 Florida Hurricane Catastrophe Fund.--

3169 (4) REIMBURSEMENT CONTRACTS.--

3170 (b)1. The contract shall contain a promise by the board to
3171 reimburse the insurer for 45 percent, 75 percent, or 90 percent
3172 of its losses from each covered event in excess of the insurer's
3173 retention, plus 5 percent of the reimbursed losses to cover loss
3174 adjustment expenses.

3175 2. The insurer must elect one of the percentage coverage
3176 levels specified in this paragraph and may, upon renewal of a
3177 reimbursement contract, elect a lower percentage coverage level
3178 if no revenue bonds issued under subsection (6) after a covered
3179 event are outstanding, or elect a higher percentage coverage
3180 level, regardless of whether or not revenue bonds are
3181 outstanding. All members of an insurer group must elect the same
3182 percentage coverage level. Any joint underwriting association,
3183 risk apportionment plan, or other entity created under s. 627.351
3184 must elect the 90-percent coverage level.

3185 3. The contract shall provide that reimbursement amounts
3186 shall not be reduced by reinsurance paid or payable to the
3187 insurer from other sources.

3188 4. Notwithstanding any other provision contained in this
3189 section, the board shall make available to insurers that
3190 purchased coverage provided by this subparagraph in 2007 ~~2006~~,

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3191 insurers qualifying as limited apportionment companies under s.
3192 627.351(6)(c), and insurers that have been ~~were~~ approved to
3193 participate in ~~2006 or that are approved in 2007~~ for the
3194 Insurance Capital Build-Up Incentive Program pursuant to s.
3195 215.5595~~7~~, a contract or contract addendum that provides an
3196 additional amount of reimbursement coverage of up to \$10 million.
3197 The premium to be charged for this additional reimbursement
3198 coverage shall be 50 percent of the additional reimbursement
3199 coverage provided, which shall include one prepaid reinstatement.
3200 The minimum retention level that an eligible participating
3201 insurer must retain associated with this additional coverage
3202 layer is 30 percent of the insurer's surplus as of December 31,
3203 2007 ~~2006~~. This coverage shall be in addition to all other
3204 coverage that may be provided under this section. The coverage
3205 provided by the fund under this subparagraph shall be in addition
3206 to the claims-paying capacity as defined in subparagraph (c)1.,
3207 but only with respect to those insurers that select the
3208 additional coverage option and meet the requirements of this
3209 subparagraph. The claims-paying capacity with respect to all
3210 other participating insurers and limited apportionment companies
3211 that do not select the additional coverage option shall be
3212 limited to their reimbursement premium's proportionate share of
3213 the actual claims-paying capacity otherwise defined in
3214 subparagraph (c)1. and as provided for under the terms of the
3215 reimbursement contract. Coverage provided in the reimbursement
3216 contract shall ~~will~~ not be affected by the additional premiums
3217 paid by participating insurers exercising the additional coverage
3218 option allowed in this subparagraph. This subparagraph expires on
3219 May 31, 2009 ~~2008~~.

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3220 Section 24. Subsection (1) of section 627.0613, Florida
3221 Statutes, is amended to read:

3222 627.0613 Consumer advocate.--The Chief Financial Officer
3223 must appoint a consumer advocate who must represent the general
3224 public of the state before the department and the office. The
3225 consumer advocate must report directly to the Chief Financial
3226 Officer, but is not otherwise under the authority of the
3227 department or of any employee of the department. The consumer
3228 advocate has such powers as are necessary to carry out the duties
3229 of the office of consumer advocate, including, but not limited
3230 to, the powers to:

3231 (1) Recommend to the department or office, by petition, the
3232 commencement of any proceeding or action; appear in any
3233 proceeding or action before the department or office; or appear
3234 in any proceeding before the Division of Administrative Hearings
3235 ~~or arbitration panel specified in s. 627.062(6)~~ relating to
3236 subject matter under the jurisdiction of the department or
3237 office.

3238 Section 25. Subsections (1) and (2) of section 627.712,
3239 Florida Statutes, are amended to read:

3240 627.712 Residential windstorm coverage required;
3241 availability of exclusions for windstorm or contents.--

3242 (1) An insurer issuing a residential property insurance
3243 policy must provide windstorm coverage. Except as provided in
3244 paragraph (2)(c), this section subsection does not apply with
3245 respect to risks that are eligible for wind-only coverage from
3246 Citizens Property Insurance Corporation under s. 627.351(6).

3247 (2) A property insurer must make available, at the option
3248 of the policyholder, an exclusion of windstorm coverage.

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3249 (a) The coverage may be excluded only if:

3250 ~~(a)~~1. When the policyholder is a natural person, the
3251 policyholder personally writes and provides to the insurer the
3252 following statement in his or her own handwriting and signs his
3253 or her name, which must also be signed by every other named
3254 insured on the policy, and dated: "I do not want the insurance on
3255 my (home/mobile home/condominium unit) to pay for damage from
3256 windstorms. I will pay those costs. My insurance will not."

3257 2. When the policyholder is other than a natural person,
3258 the policyholder provides to the insurer on the policyholder's
3259 letterhead the following statement that must be signed by the
3260 policyholder's authorized representative and dated: " (Name of
3261 entity) does not want the insurance on its (type of
3262 structure) to pay for damage from windstorms. (Name of
3263 entity) will be responsible for these costs. (Name of
3264 entity's) insurance will not."

3265 (b) If the structure insured by the policy is subject to a
3266 mortgage or lien, the policyholder must provide the insurer with
3267 a written statement from the mortgageholder or lienholder
3268 indicating that the mortgageholder or lienholder approves the
3269 policyholder electing to exclude windstorm coverage or hurricane
3270 coverage from his or her or its property insurance policy.

3271 (c) If the residential structure is eligible for wind-only
3272 coverage from Citizens Property Insurance Corporation, an insurer
3273 nonrenewing a policy and issuing a replacement policy, or issuing
3274 a new policy, that does not provide wind coverage shall provide a
3275 notice to the mortgageholder or lienholder indicating the
3276 policyholder has elected coverage that does not cover wind.

3277 Section 26. The provisions of this act shall supersede and

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3278 | control over any conflicting provisions adopted in House Bill
3279 | 5057, 2008 Regular Session, to the extent of such conflict, if
3280 | that bill becomes a law.

3281 | Section 27. Except as otherwise expressly provided in this
3282 | act, this act shall take effect July 1, 2008.