



Insurance & Banking Subcommittee

**Wednesday, March 16, 2011
8:00 AM - 11:00 AM
404 HOB**



The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon
Speaker

Bryan Nelson
Chair

AGENDA

March 16, 2011
404 House Office Building
8:00 a.m. – 11:00 a.m.

- I. Introductory Remarks
- II. PCS for HB 967 Personal Injury Protection Insurance
- III. Workshop on HB 803 Property and Casualty Insurance *by Rep. Wood*
- IV. Workshop on HB 1243 Citizens Property Insurance Corporation *by Rep. Boyd*
- V. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 967 Personal Injury Protection Insurance

SPONSOR(S): Insurance & Banking Subcommittee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Reilly <i>RR</i>	Cooper <i>CC</i>

SUMMARY ANALYSIS

The Florida Motor Vehicle No-Fault Law (No-Fault Law), ss. 627.730-627.7405, F.S., requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. PIP provides payment of medical, surgical, funeral and disability benefits to the named insured and persons injured while in, or struck by, the insured motor vehicle without regard to fault. In return for assurance of payment of these benefits, the No-Fault Law places limitations on lawsuits for non-economic damages (pain and suffering). PIP is designed to compensate individuals quickly and efficiently and reduce automobile insurance costs and litigation.

Proposed Committee Substitute for House Bill 967 makes various changes to Florida’s no-fault motor vehicle system, as follows:

- Authorizes PIP insurance policies that require or allow the use of arbitration to resolve disputes.
- Grants exclusive original jurisdiction to circuit courts to hear challenges to PIP arbitration decisions; provides for a trial de novo (new trial) in circuit court. Requires insurers to pay the costs of arbitration as well as attorney fees in certain situations.
- Caps attorney fee awards in disputes under the No-Fault Law at \$10,000 (\$50,000 in class actions) or three times the disputed amount recovered, whichever is less. Bars use of a contingency risk multiplier in determining fee awards in No-Fault cases.
- Permits insurers to use the schedule of maximum charges that is based on Medicare Part B when providing reimbursement for durable medical equipment and care and services rendered by clinical laboratories.
- Provides that reimbursement for care and services rendered in ambulatory surgical centers may be limited to 80 percent of the workers’ compensation fee schedule when not reimbursable under Medicare Part B.
- Establishes that when PIP reimbursement is made under a Medicare-based schedule of maximum charges, that the applicable Medicare schedule in effect on January 1st is to be used throughout the year in calculating reimbursement, regardless of any subsequent changes in Medicare rates.
- Requires insureds who are seeking PIP benefits to comply with all terms of the insurance policy, including submitting to an examination under oath (EUO). Makes compliance with policy terms a condition precedent to eligibility for policy benefits. Permits EUOs to be recorded.
- Requires assignees of PIP payment rights to comply with policy terms and cooperate with the insurer, including submitting to an EUO. If the assignee is a medical provider, the bill requires the insurer to make a written request for information sought before requesting an EUO. Entitles a medical provider to reasonable compensation for time spent participating in an EUO.
- Provides that it is an unfair and deceptive trade practice for an insurer, as a general business practice, to request EUOs without a reasonable basis.

The use of arbitration as an alternative to litigation should result in some savings to the courts. The impact on the private sector is indeterminate.

The bill provides for a July 1, 2011 effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

No-Fault Motor Vehicle Insurance

Florida is one of 12 states¹ with no-fault motor vehicle² insurance provisions. The purpose of the Florida Motor Vehicle No-Fault Law (No-Fault Law)³ is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of personal injury protection coverage (PIP) and \$10,000 of property damage liability coverage.^{4,5} PIP is no-fault automobile insurance.

History of the PIP System

In 1971, Florida became the second state in the country to adopt a no-fault automobile insurance plan, which took effect January 1, 1972. Under a no-fault system, medical and other benefits are provided without regard to fault in return for limitations on lawsuits for non-economic damages. Since its enactment, various changes have been made to the No-Fault Law.

In 2000, a Statewide Grand Jury found rampant fraud in the PIP system. Reform legislation was enacted in 2001,⁶ which adopted many of the Grand Jury's recommendations, including requiring certain health care clinics to register with the Department of Health and providing criteria for medical directors; applying fee schedules for certain procedures; limiting access to motor vehicle crash reports to curtail illegal solicitation; and providing that insurers/insureds are not required to pay claims of brokers.

Additional changes to the PIP system were enacted in 2003.⁷ These included strengthening health care clinic regulation; requiring agency licensure with the Agency for Health Care Administration; requiring all PIP claimants to send a pre-suit demand letter to insurers for unpaid benefits; specifying criteria as to "reasonable" charges for services; strengthening various criminal penalties for PIP fraud; and providing for the repeal of the No-Fault Law on October 1, 2007, unless reenacted by the Legislature during the 2006 Regular Session.

In 2006, CS/CS/ CS SB 2114, a bill that would have extended the sunset date of the No-Fault Law and made other changes, was passed by the Legislature and subsequently vetoed. The No-Fault Law then sunset on October 1, 2007.⁸

In Special Session C of 2007, the Legislature passed CS/HB 13C, which revived and reenacted the No-Fault Law effective January 1, 2008. The bill, signed into law as ch. 2007-324, L.O.F., limits medical reimbursement to services and care provided by specified health care providers and entities; authorizes insurers to use schedules of maximum charges in calculating reimbursement for medical services,

¹ Michigan, New Jersey, New York, Pennsylvania, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, North Dakota, and Utah also have no-fault automobile insurance systems. See the Insurance Information Institute's update on "No-Fault Auto Insurance." Available at: <http://www.iii.org/media/hottopics/insurance/nofault/> (last accessed: March 13, 2011).

² "Motor vehicle" is defined in s. 627.732, F.S., and includes private passenger motor vehicles and commercial motor vehicles.

³ Sections 627.730-627.7405, F.S.

⁴ Section 627.7275, F.S.

⁵ Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur.

⁶ Chapter 2001-271, L.O.F.

⁷ Chapter 2003-411, L.O.F.

⁸ The Motor Vehicle No-Fault Law was repealed pursuant to s. 19, ch. 2003-411, F.S.

supplies, and care; and provides that an insurer's failure to pay PIP claims as a general business practice is an unfair and deceptive trade practice.

Current PIP Provisions

Under current law, PIP provides \$10,000 of coverage (per person) for bodily injury sustained in a motor vehicle accident by the named insured, relatives residing in the same household as the named insured, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the motor vehicle. PIP benefits are payable as follows:

- 80 percent of reasonable medical expenses.
- 60 percent of loss of income.
- Death benefit of \$5,000 or the remainder of unused PIP benefits, whichever is less.

PIP provides the policyholder with immunity from liability for economic damages (medical expenses) up to the \$10,000 policy limits and for non-economic damages (pain and suffering) for most injuries. Specifically, the immunity provision protects the insured from tort actions by others (and conversely, the insured may not bring suit to recover damages) for pain, suffering, mental anguish, and inconvenience arising out of a vehicle accident, except in the following cases:⁹

- Significant and permanent loss of an important bodily function.
- Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- Significant and permanent scarring or disfigurement.
- Death.

Lawsuits for pain and suffering may commence only if the injuries meet these threshold levels.

Overdue PIP Benefits and Jurisdictional Issues

Pre-Suit Demand Letter

PIP insurance benefits are payable by the insurer within 30 days after receipt of a covered loss and the amount due. Benefits not paid within this time are overdue.¹⁰ Before filing a lawsuit for overdue PIP benefits, the aggrieved person must give the insurer written notice of intent to sue.¹¹ If the insurer pays the claim (with interest and penalty) within 30 days of receipt of the pre-suit demand letter, a lawsuit cannot be brought against the insurer.

Florida Courts

Under the Florida judicial system, the trial jurisdiction of county courts is established by statute, but extends to civil disputes involving \$15,000 or less.¹² As Florida does not have a separate system of "small claims courts," small claims are captured under the jurisdiction of county courts. The Florida Small Claims Rules apply to civil actions in county court in which the demand or value of the property involved is \$5,000 or less. These rules are designed to foster a simple, efficient, and inexpensive remedy at law for litigants.¹³ Many PIP disputes are heard under the small claims jurisdiction of county courts.

In contrast to county courts, circuit courts have general trial jurisdiction over matters not assigned by statute to the county courts and also hear appeals from county court cases. Thus, circuit courts are simultaneously the highest trial courts and the lowest appellate courts in Florida's judicial system. The

⁹ Section 627.737, F.S.

¹⁰ Section 627.736(4)(b), F.S.

¹¹ Section 627.736(10), F.S.

¹² http://www.floridasupremecourt.org/pub_info/system2.shtml (last accessed: March 13, 2011).

¹³ "Review of the Small Claims Process in Florida." Interim Report 2009-121 by staff of the Florida Senate Committee on the Judiciary (October 2008).

trial jurisdiction of circuit courts includes original jurisdiction over civil disputes involving more than \$15,000.¹⁴

Mandatory Arbitration with Limited Rights on Appeal under Former s. 627.736(5), F.S., Held Unconstitutional

In *Nationwide Mutual Fire Insurance Co. v. Pinnacle Medical, Inc.*,¹⁵ the Florida Supreme Court held s. 627.736(5), F.S., which required medical providers to submit PIP claims to binding arbitration and provided limited rights on appeal, an unconstitutional denial of medical providers' access to courts under s. 21, Art. I of the Florida Constitution. As the right of assignees to sue for breach of contract predates the Florida Constitution, the right could not be abolished by the Legislature without providing a reasonable alternative, absent a showing of overpowering public necessity and no alternative for meeting this necessity. The Court held that the challenged arbitration process, with the scope of appeal limited to that available under the Florida Arbitration Code, chapter 682, F.S., did not constitute a reasonable alternative and that the Legislature had not shown an overpowering necessity to abolish this right. In contrast to the statute at issue, the Court noted its decision in *Chrysler Corporation v. Pitsirelos*,¹⁶ in which it upheld a mandatory arbitration provision under the Motor Vehicle Warranty Act that entitled either party on appeal to a trial de novo on the grounds that it respected the parties' right of access to courts.

Attorney Fee Awards to "Prevailing" PIP Claimants

Lodestar Calculation

Pursuant to s. 627.428, F.S., parties that prevail against insurers in court, including PIP claimants, are entitled to an award of reasonable attorney fees. In determining a fee award, a court calculates the lodestar, which is the reasonable number of hours the attorney worked multiplied by a reasonable hourly rate.¹⁷

In determining a reasonable fee, courts should consider the following factors set forth by the Florida Bar:¹⁸

- Time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- The fee customarily charged.
- The amount involved and the results obtained.
- The time limitations imposed.
- The nature and length of the professional relationship with the client.
- The experience, reputation, and ability of the lawyer(s) performing the services.
- Whether the fee is fixed or contingent.

Contingency Risk Multiplier

In personal injury cases in which the prevailing claimant's attorney has worked on a contingency fee basis, it is within the court's discretion whether or not to use a contingency risk multiplier of up to 2.5 times the lodestar in determining the fee award.¹⁹ For example, if the lodestar were \$20,000 and the court determined it appropriate to apply a contingency risk multiplier of 2.5, the fee award would be \$50,000 (\$20,000 lodestar x 2.5).

¹⁴ http://www.floridasupremecourt.org/pub_info/system2.shtml (last accessed: March 13, 2011).

¹⁵ 753 So.2d 55 (Fla. 2000).

¹⁶ 721 So.2d 710 (Fla. 1998).

¹⁷ The federal lodestar approach to determining fee awards was adopted by the Florida Supreme Court in *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985).

¹⁸ See Rule 4-1.5(b) of the Rules Regulating the Florida Bar.

¹⁹ *Standard Guaranty Insurance Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990).

The Florida Supreme Court, in *Florida Patient's Compensation Fund v. Rowe*,²⁰ authorized the use of contingency risk multipliers in personal injury cases on two grounds:

- It provides personal injury claimants with increased access to courts.
- Since attorneys working on a contingency fee basis are not paid if they do not prevail, they must charge more for their services than an attorney who is guaranteed payment.

Subsequently, in *Standard Guaranty Insurance Co. v. Quanstrom*,²¹ the Court clarified that use of a contingency risk multiplier was not mandatory, but was within the trial court's discretion.

In federal cases, the use of a contingency risk multiplier in computing attorney fee awards under federal fee-shifting statutes was effectively eliminated in 1987.²²

Currently there is a split of authority between the First and Fifth District Courts of Appeal with respect to the evidence required to support the use of a contingency risk multiplier in calculating a fee award under s. 627.428, F.S. In *Progressive Express Insurance Co. v. Schultz*,²³ the 5th DCA held that use of a contingency risk multiplier in a PIP action was improper because the policyholder did not testify that he had any difficulty obtaining legal representation, there was no evidence presented on the issue, and the lawsuit was essentially a straightforward contract case involving \$1,315. In *Massie v. Progressive Express Insurance Co.*,²⁴ the issue before the 1st DCA was whether use of a contingency risk multiplier was proper when the PIP claimant did not testify that she had difficulty obtaining counsel, but expert testimony was offered that the claimant would have had such difficulty without the opportunity for a multiplier. On direct appeal, the 1st DCA, relying on *Schultz*, held that use of a multiplier was improper, and the claimant petitioned for certiorari review. Based on circuit precedent, the 1st DCA granted the petition, quashed the order on direct appeal, and affirmed the trial court's use of a contingency risk multiplier based on expert testimony.

Examinations of Insureds and Examinations Under Oath

In *Custer Medical Center v. United Automobile Insurance Co.*,²⁵ a passenger injured in an automobile accident failed to appear for two medical examinations requested by the insurer. At the time the requests were made, the passenger had received all medical treatment and all bills had been submitted to the insurer. Due to the passenger's failure to attend the examinations, the insurer refused to pay the entity that provided treatment. The Florida Supreme Court remanded the case for reinstatement of a decision vacating a directed verdict for the insurer on the following grounds. Attendance at a medical examination is not a condition precedent to the existence of an automobile insurance policy. A dispute concerning attendance at a medical examination concerns an insured's right to receive "subsequent" PIP benefits pursuant to s. 627.736(7)(b), F.S., under an existing insurance policy, and is not a dispute about the policy's existence. Additionally, s. 627.737(7), F.S., provides that when a person "unreasonably refuses" to submit to an examination, the insurer is not liable for *subsequent* PIP benefits. Here, it was not shown that the injured passenger's failure to attend medical examinations constituted an "unreasonable refusal" to submit to examination. Further, the claim sought payment for medical services that had been provided before, and not after, the passenger failed to appear for examination.

²⁰ 472 So.2d 1145 (Fla. 1985).

²¹ 555 So.2d 828 (Fla. 1990).

²² See *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 483 U.S. 711 (1987).

²³ 948 So.2d 1027 (Fla. 5th DCA 2007).

²⁴ 25 So.3d 584 (Fla. 1st DCA 2009).

²⁵ 2010 WL 4344089 (Fla.).

Assignment of PIP Benefits

In *Shaw v. State Farm Fire and Casualty Co.*,²⁶ the 5th DCA held that policy language that required any person making a claim or seeking payment to submit to an examination under oath (EUO) did not require a health care provider who had been assigned PIP payment rights for services rendered to submit to an EUO. The 5th DCA based its decision on the following:

- The assignment of rights to the health care provider did not entail an assignment of duties.
- Section 627.736(6)(b), F.S., provides the mechanism for insurers to obtain information from health care providers concerning treatment and expenses.
- If there is a dispute regarding an insurer's right to discover facts from a health care provider, the insurer, under s. 627.736(6)(c), F.S., has the right to petition the court for a discovery order.

As the en banc decision was not unanimous and had a potential wide ranging impact, the 5th DCA certified the following question of great public importance to the Florida Supreme Court:

Whether a health care provider who accepts an assignment of no-fault insurance proceeds in payment of services provided to an insured can be required by a provision in the policy to submit to an examination under oath as a condition to the right of payment?

Effect of the Bill:

Arbitration of PIP Disputes

The bill authorizes insurers to offer motor vehicle insurance policies that require or allow the use of arbitration to resolve PIP disputes. A demand for arbitration, which can be made by the insurer or a claimant, must be in writing and sent by certified mail. Arbitration must be held within 60 days of receipt of the arbitration request, and the 60-day period will not be tolled for the discovery of documents. Claimants are required to make available for inspection and copying all records upon which they intend to rely at the arbitration within 15 days of receipt of the insurer's written request for information. Insurers are required to make available for inspection and copying all records it intends to rely on at arbitration within 10 days of receipt of such request. Discovery from an insurer is limited to documents, records, and information concerning insurance coverage, and does not extend to require the production of privileged information, underwriting files, documents that will not be relied on at arbitration, or documents relating to claims handling processes.

The arbitration will be conducted by a single arbitrator, selected by the chief judge of the judicial district in which the arbitration is to be held, and will take place in the county in Florida in which treatment was rendered. If treatment was in another state, the arbitration will take place in the county in which the claimant resides, unless the parties agree on another location. Insurers are responsible for reasonable costs directly associated with arbitration.

The arbitrator's written decision must be provided to the parties within 30 days of the arbitration and is binding on the parties, unless challenged within 20 days of receipt by filing a complaint in circuit court. The arbitration award cannot exceed the remaining coverage limits on the PIP policy. Claimants who prevail in arbitration will be reimbursed by the insurer for reasonable costs and attorney fees directly associated with the arbitration. The attorney fee award is limited to \$10,000 (\$50,000 in class actions) or three times any disputed amount recovered, whichever is less. The award of fees and costs must be set forth in the arbitration award.

If the insurer pays the arbitration award, but the claimant files a challenge in circuit court, the claimant is not eligible for a fee award relating to the court proceedings, and interest will not accrue on the amount in dispute during the course of the litigation. The circuit court will conduct a trial de novo (new trial) of the dispute.

²⁶ 37 So.3d 329 (Fla. 5th DCA 2010).

Attorney Fees

The use of contingency risk multipliers in calculating fee awards in disputes under the No-Fault Law is prohibited. As is the case in PIP arbitration proceedings, fee awards in no-fault litigation are capped at \$10,000 (\$50,000 in class actions) or three times the disputed amount recovered, whichever is less.

PIP Reimbursement under Schedules of Maximum Charges

PIP reimbursement for medical services, supplies, and care is under a schedule of maximum charges based upon the annual Medicare Part B²⁷ fee schedule developed by the Centers for Medicare and Medicaid Services (CMS). Currently, CMS develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.²⁸ The bill provides that the PIP schedule of maximum charges, which is reimbursement at 80 percent of 200 percent of Medicare Part B, may be used by insurers to provide reimbursement for durable medical equipment, and care and services rendered by clinical laboratories.

Reimbursement for care and services provided by ambulatory surgical centers, when not reimbursable under Medicare Part B, may be limited to 80 percent of the workers' compensation fee schedule.

For PIP schedules of maximum reimbursement that are based on Medicare, the applicable Medicare schedule in effect on January 1st is to be used throughout the year when calculating reimbursement for care, services, and supplies rendered in that year, regardless of subsequent changes to Medicare rates. However, the reimbursement amount may not be less than the allowable amount under the participating physicians schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

Examinations Under Oath and Compliance with Terms of PIP Policies

The bill legislatively addresses the *Shaw* and *Custer* decisions. Compliance with policy terms by any insured seeking benefits under a PIP policy is made a condition precedent to eligibility for policy benefits. Compliance includes, when the policy so provides, submitting to an examination under oath (EUO) when requested by the insurer. An EUO may be recorded. An insured's failure to appear for examination (mental or physical) is presumed to be an unreasonable refusal to submit to examination. The presumption, however, is rebuttable, and may be overcome by the claimant upon showing that the failure to attend was not an unreasonable refusal to submit to examination.

Assignees of PIP payment rights are also required to comply with policy terms and to cooperate with the insurer, including submitting to an EUO upon insurer request. If the assignee is a medical provider, the insurer is required to make a written request for information before requesting an EUO. When an insurer requests an EUO, the medical provider must produce those individuals with the most knowledge of the issues identified by the insurer. Medical providers are entitled to reasonable compensation for time spent participating in an EUO.

An insurer that, as a general business practice, requests EUOs without a reasonable basis commits an unfair and deceptive trade practice.

Miscellaneous

The bill also provides as follows:

- Requests for insurance-related information made to self-insured corporations must be sent by certified mail to the registered agent of the disclosing entity.

²⁷ Medicare Part B covers doctors' services (not routine physical exams), outpatient medical and surgical services and supplies, diagnostic tests, ambulatory surgery center facility fees for approved procedures, and durable medical equipment (such as wheelchairs, hospital beds, oxygen, and walkers). Also covers second surgical opinions, outpatient mental health care, outpatient physical and occupational therapy, including speech-language therapy.

²⁸ "Fee Schedules – General Information," The Centers for Medicare and Medicaid Services, <http://www.cms.gov/FeeScheduleGenInfo/> (Last visited on March 14, 2011)

- Insurers that deny reimbursement due to improperly completed medical statements or bills are required to notify the provider about the specific provisions that were not properly completed and to give the provider 15 days to submit a properly completed form.

B. SECTION DIRECTORY:

Section 1: Amends s. 26.012, F.S., to provide for circuit court jurisdiction to challenges to PIP arbitration awards.

Section 2: Amends s. 627.4137, F.S., to require that requests for insurance-related information made to self-insured corporations be sent by certified mail to the registered agent of the disclosing entity.

Section 3: Creates s. 627.7311, F.S., to express Legislative intent that the provisions, schedules, and procedures of the Florida Motor Vehicle No-Fault Law be incorporated by reference into all PIP insurance policies.

Section 4: Amends s. 627.736, F.S., as follows. Establishes that compliance by insureds with PIP policies is a condition precedent to eligibility for policy benefits. Makes changes to certain PIP reimbursement schedules of maximum charges. Requires insurers that deny reimbursement due to an improperly completed medical form or bill to inform the provider of the provisions that were improperly completed and to give the provider 15 days to resubmit a completed form. Requires insureds to comply with all terms of the PIP policy and makes compliance a condition precedent to eligibility for benefits. Requires assignees of rights under a PIP policy to comply with policy terms and cooperate with the insurer, including submitting to an examination under oath (EUO), which may be recorded. Entitles assignees to reasonable compensation for time spent in an EUO. Makes it an unfair and deceptive trade practice for an insurer to request EUOs, as a general business practice, without a reasonable basis. Creates rebuttable presumption that an insured's failure to appear for an examination is an "unreasonable refusal" to submit to examination. Permits PIP insurance policies that allow the insurer or claimant to demand arbitration of disputes. Caps attorney fee awards in PIP arbitration proceedings and legal proceedings; requires insurers to pay the reasonable costs directly associated with the arbitration; provides for challenges of PIP arbitration awards to the circuit court, which will conduct a trial de novo. Bars the use of contingency risk multipliers in calculating fee awards in disputes under the Motor Vehicle No-Fault Law.

Section 5. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent this bill helps reduce litigation and contain costs now associated with uncapped attorney fees, the cost of PIP insurance should be reduced.

To the extent that health care providers find the new requirements placed on them by this bill, including arbitration, burdensome, they may decline to accept assignment. Consequently, injured parties would have to pay for their treatment up front and seek reimbursement from their insurers.

D. FISCAL COMMENTS:

The costs to the public sector associated with the arbitration process delineated in the bill are unknown. As arbitration is currently used as an alternative to more expensive and time-consuming litigation costs, arbitration provided for in the bill should reduce costs to the courts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to personal injury protection insurance;
 3 amending s. 26.012, F.S.; providing that circuit courts
 4 have exclusive original jurisdiction of unresolved
 5 arbitration actions involving the Florida Motor Vehicle
 6 No-Fault Law; amending s. 627.4137, F.S.; requiring
 7 requests made to a self-insured corporation for disclosure
 8 of certain information to be by certified mail; creating
 9 s. 627.7311, F.S., providing the effect of statutory
 10 provisions on insurance policies; amending s. 627.736,
 11 F.S.; revising a reference to Medicare Part B payments as
 12 the schedule for an insurer's discretionary use when
 13 limiting reimbursement of certain medical services,
 14 supplies, and care; requiring notification to provider of
 15 improperly completed form with an opportunity to re-
 16 submit; specifying the Medicare fee schedule or payment
 17 limitation that is to be used by an insurer to limit
 18 reimbursements for certain medical services, supplies, and
 19 care; requiring both the insured and any assignee of
 20 benefits or payments to cooperate under the terms of the
 21 policy; requiring a provider who is assigned the benefits
 22 of an insured to submit to examination under oath under
 23 certain circumstances; requiring a provider to produce
 24 certain knowledgeable individuals for examination under
 25 oath under certain circumstances; requiring certain
 26 records be provided by claimants for inspection if
 27 requested by an insurer; authorizing methods for recording
 28 examinations under oath; providing that certain actions by

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29 an insurer constitute an unfair and deceptive trade
 30 practice; subjecting insurers to penalties for an unfair
 31 and deceptive trade practice; creating a presumption
 32 relating to failing to appear for an examination;
 33 specifying that submitting to an examination is a
 34 condition precedent to recovering benefits; providing for
 35 application relating to attorney's fees; limiting the
 36 amount of recoverable attorney's fees; prohibiting the use
 37 of a contingency risk multiplier when calculating
 38 attorney's fees; authorizing binding arbitration as a
 39 policy provision for dispute resolution; providing
 40 requirements and procedures relating to arbitration;
 41 providing for the recovery of specified attorney's fees
 42 and costs in arbitration; providing for judicial challenge
 43 of an arbitration award; providing for the scope of review
 44 regarding the challenge, limiting the application of s.
 45 627.428, F.S., under specified circumstances in
 46 arbitration; providing an effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Subsection (2) of section 26.012, Florida
 51 Statutes, is amended to read:

52 26.012 Jurisdiction of circuit court.—

53 (2) The circuit court ~~They~~ shall have exclusive original
 54 jurisdiction:

55 (a) In all actions at law not cognizable by the county
 56 courts.†

BILL

ORIGINAL

YEAR

57 (b) Of proceedings relating to the settlement of the
 58 estates of decedents and minors, the granting of letters
 59 testamentary, guardianship, involuntary hospitalization, the
 60 determination of incompetency, and other jurisdiction usually
 61 pertaining to courts of probate.~~†~~

62 (c) In all cases in equity including all cases relating to
 63 juveniles except traffic offenses as provided in chapters 316
 64 and 985.~~†~~

65 (d) Of all felonies and of all misdemeanors arising out of
 66 the same circumstances as a felony which is also charged.~~†~~

67 (e) In all cases involving legality of any tax assessment
 68 or toll or denial of refund, except as provided in s. 72.011.~~†~~

69 (f) In actions of ejection.~~†~~ ~~and~~

70 (g) In all actions involving the title and boundaries of
 71 real property.

72 (h) In all actions involving the Florida Motor Vehicle No-
 73 Fault Law, ss. 627.730-627.7405, where arbitration is initiated
 74 pursuant to s. 627.736(18) and the arbitration decision is
 75 challenged.

76 Section 2. Subsection (3) is added to section 627.4137,
 77 Florida Statutes, to read:

78 627.4137 Disclosure of certain information required.—

79 (3) Any request made to a self-insured corporation pursuant
 80 to this section shall be sent by certified mail to the
 81 registered agent of the disclosing entity.

82 Section 3. Section 627.7311, Florida Statutes, is created
 83 to read:

84 627.7311 Effect of law on policies—

BILL

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85 The provisions, schedules, and procedures authorized in ss.
 86 627.730-627.7405 shall be implemented by the insurers offering
 87 policies pursuant to the Florida Motor Vehicle No-Fault Law.
 88 These provisions, schedules, and procedures have full force and
 89 effect regardless of their express inclusion in an insurance
 90 policy, and an insurer is not required to amend its policy to
 91 implement and apply such provisions, schedules, or procedures.

92 Section 4. Paragraphs (a) and (d) of subsection (5),
 93 paragraph (b) of subsection (6), paragraph (b) of subsection
 94 (7), and subsection (8) of section 627.736, Florida Statutes,
 95 are amended and paragraph (i) to subsection (4), subsections
 96 (17) and (18) are added to that section, to read:

97 627.736 Required personal injury protection benefits;
 98 exclusions; priority; claims.—

99 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under
 100 ss. 627.730-627.7405 shall be primary, except that benefits
 101 received under any workers' compensation law shall be credited
 102 against the benefits provided by subsection (1) and shall be due
 103 and payable as loss accrues, upon receipt of reasonable proof of
 104 such loss and the amount of expenses and loss incurred which are
 105 covered by the policy issued under ss. 627.730-627.7405. When
 106 the Agency for Health Care Administration provides, pays, or
 107 becomes liable for medical assistance under the Medicaid program
 108 related to injury, sickness, disease, or death arising out of
 109 the ownership, maintenance, or use of a motor vehicle, benefits
 110 under ss. 627.730-627.7405 shall be subject to the provisions of
 111 the Medicaid program.

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112 (i) In all circumstances an insured seeking benefits under
 113 ss. 627.730-627.7405 must comply with the terms of the policy,
 114 which includes, but is not limited to, submitting to
 115 examinations under oath. Compliance with this paragraph is a
 116 condition precedent to benefits.

117 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

118 (a)~~1.~~ Any physician, hospital, clinic, or other person or
 119 institution lawfully rendering treatment to an injured person
 120 for a bodily injury covered by personal injury protection
 121 insurance may charge the insurer and injured party only a
 122 reasonable amount pursuant to this section for the services and
 123 supplies rendered, and the insurer providing such coverage may
 124 pay for such charges directly to such person or institution
 125 lawfully rendering such treatment, if the insured receiving such
 126 treatment or his or her guardian has countersigned the properly
 127 completed invoice, bill, or claim form approved by the office
 128 upon which such charges are to be paid for as having actually
 129 been rendered, to the best knowledge of the insured or his or
 130 her guardian. ~~In no event,~~ However, ~~may~~ such a charge may not
 131 exceed be in excess of the amount the person or institution
 132 customarily charges for like services or supplies. When
 133 determining ~~With respect to a determination of~~ whether a charge
 134 for a particular service, treatment, or otherwise is reasonable,
 135 consideration may be given to evidence of usual and customary
 136 charges and payments accepted by the provider involved in the
 137 dispute, ~~and~~ reimbursement levels in the community and various
 138 federal and state medical fee schedules applicable to automobile
 139 and other insurance coverages, and other information relevant to

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140 the reasonableness of the reimbursement for the service,
 141 treatment, or supply.

142 12. The insurer may limit reimbursement to 80 percent of
 143 the following schedule of maximum charges:

144 a. For emergency transport and treatment by providers
 145 licensed under chapter 401, 200 percent of Medicare.

146 b. For emergency services and care provided by a hospital
 147 licensed under chapter 395, 75 percent of the hospital's usual
 148 and customary charges.

149 c. For emergency services and care as defined by s.
 150 395.002(9) provided in a facility licensed under chapter 395
 151 rendered by a physician or dentist, and related hospital
 152 inpatient services rendered by a physician or dentist, the usual
 153 and customary charges in the community.

154 d. For hospital inpatient services, other than emergency
 155 services and care, 200 percent of the Medicare Part A
 156 prospective payment applicable to the specific hospital
 157 providing the inpatient services.

158 e. For hospital outpatient services, other than emergency
 159 services and care, 200 percent of the Medicare Part A Ambulatory
 160 Payment Classification for the specific hospital providing the
 161 outpatient services.

162 f. For all other medical services, supplies, and care,
 163 including durable medical equipment, care, and services rendered
 164 by a clinical laboratory, 200 percent of the allowable amount
 165 under the participating physicians schedule of Medicare Part B.
 166 However, if such services, supplies, or care is not reimbursable
 167 under Medicare Part B, or if the care and services are rendered

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168 in an ambulatory surgical center, the insurer may limit
 169 reimbursement to 80 percent of the maximum reimbursable
 170 allowance under workers' compensation, as determined under s.
 171 440.13 and rules adopted thereunder which are in effect at the
 172 time such services, supplies, or care is provided. Services,
 173 supplies, or care that is not reimbursable under Medicare or
 174 workers' compensation is not required to be reimbursed by the
 175 insurer.

176 23. For purposes of subparagraph 12., the applicable fee
 177 schedule or payment limitation under Medicare is the fee
 178 schedule or payment limitation in effect on January 1 of the
 179 year in which ~~at the time~~ the services, supplies, or care was
 180 rendered and for the area in which such services were rendered,
 181 and shall apply throughout the remainder of the year,
 182 notwithstanding any subsequent changes made to such fee schedule
 183 or payment limitation, except that it may not be less than the
 184 allowable amount under the participating physicians schedule of
 185 Medicare Part B for 2007 for medical services, supplies, and
 186 care subject to Medicare Part B.

187 34. Subparagraph 12. does not allow the insurer to apply
 188 any limitation on the number of treatments or other utilization
 189 limits that apply under Medicare or workers' compensation. An
 190 insurer that applies the allowable payment limitations of
 191 subparagraph 12. must reimburse a provider who lawfully provided
 192 care or treatment under the scope of his or her license,
 193 regardless of whether such provider is ~~would be~~ entitled to
 194 reimbursement under Medicare due to restrictions or limitations
 195 on the types or discipline of health care providers who may be

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196 reimbursed for particular procedures or procedure codes.

197 45. If an insurer limits payment as authorized by
 198 subparagraph 12., the person providing such services, supplies,
 199 or care may not bill or attempt to collect from the insured any
 200 amount in excess of such limits, except for amounts that are not
 201 covered by the insured's personal injury protection coverage due
 202 to the coinsurance amount or maximum policy limits.

203 (d) All statements and bills for medical services rendered
 204 by any physician, hospital, clinic, or other person or
 205 institution shall be submitted to the insurer on a properly
 206 completed Centers for Medicare and Medicaid Services (CMS) 1500
 207 form, UB 92 forms, or any other standard form approved by the
 208 office or adopted by the commission for purposes of this
 209 paragraph. All billings for such services rendered by providers
 210 shall, to the extent applicable, follow the Physicians' Current
 211 Procedural Terminology (CPT) or Healthcare Correct Procedural
 212 Coding System (HCPCS), or ICD-9 in effect for the year in which
 213 services are rendered and comply with the Centers for Medicare
 214 and Medicaid Services (CMS) 1500 form instructions and the
 215 American Medical Association Current Procedural Terminology
 216 (CPT) Editorial Panel and Healthcare Correct Procedural Coding
 217 System (HCPCS). All providers other than hospitals shall include
 218 on the applicable claim form the professional license number of
 219 the provider in the line or space provided for "Signature of
 220 Physician or Supplier, Including Degrees or Credentials." In
 221 determining compliance with applicable CPT and HCPCS coding,
 222 guidance shall be provided by the Physicians' Current Procedural
 223 Terminology (CPT) or the Healthcare Correct Procedural Coding

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224 System (HCPCS) in effect for the year in which services were
 225 rendered, the Office of the Inspector General (OIG), Physicians
 226 Compliance Guidelines, and other authoritative treatises
 227 designated by rule by the Agency for Health Care Administration.
 228 No statement of medical services may include charges for medical
 229 services of a person or entity that performed such services
 230 without possessing the valid licenses required to perform such
 231 services. For purposes of paragraph (4)(b), an insurer shall not
 232 be considered to have been furnished with notice of the amount
 233 of covered loss or medical bills due unless the statements or
 234 bills comply with this paragraph, and unless the statements or
 235 bills are properly completed in their entirety as to all
 236 material provisions, with all relevant information being
 237 provided therein. If an insurer denies a claim under this
 238 section due to the failure to provide a properly completed form
 239 required by this paragraph, the insurer shall notify the
 240 provider as to the provisions that were improperly completed and
 241 shall give the provider 15 days to submit a completed form.

242 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

243 (b) Every physician, hospital, clinic, or other medical
 244 institution providing, before or after bodily injury upon which
 245 a claim for personal injury protection insurance benefits is
 246 based, any products, services, or accommodations in relation to
 247 that or any other injury, or in relation to a condition claimed
 248 to be connected with that or any other injury, shall, if
 249 requested to do so by the insurer against whom the claim has
 250 been made, furnish ~~forthwith~~ a written report of the history,
 251 condition, treatment, dates, and costs of such treatment of the

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252 | injured person and why the items identified by the insurer were
 253 | reasonable in amount and medically necessary, together with a
 254 | sworn statement that the treatment or services rendered were
 255 | reasonable and necessary with respect to the bodily injury
 256 | sustained and identifying which portion of the expenses for such
 257 | treatment or services was incurred as a result of such bodily
 258 | injury, and produce forthwith, and permit the inspection and
 259 | copying of, his or her or its records regarding such history,
 260 | condition, treatment, dates, and costs of treatment if, ~~provided~~
 261 | ~~that~~ that ~~this~~ does ~~shall~~ not limit the introduction of evidence at
 262 | trial. Such sworn statement must ~~shall~~ read as follows: "Under
 263 | penalty of perjury, I declare that I have read the foregoing,
 264 | and the facts alleged are true, to the best of my knowledge and
 265 | belief." A ~~No~~ cause of action for violation of the physician-
 266 | patient privilege or invasion of the right of privacy may not be
 267 | brought ~~shall be permitted~~ against any physician, hospital,
 268 | clinic, or other medical institution complying with ~~the~~
 269 | ~~provisions of~~ this section. The person requesting such records
 270 | and such sworn statement shall pay all reasonable costs
 271 | connected therewith. If an insurer makes a written request for
 272 | documentation or information under this paragraph within 30 days
 273 | after having received notice of the amount of a covered loss
 274 | under paragraph (4) (a), the amount or the partial amount that
 275 | ~~which~~ is the subject of the insurer's inquiry is ~~shall become~~
 276 | overdue if the insurer does not pay in accordance with paragraph
 277 | (4) (b) or within 10 days after the insurer's receipt of the
 278 | requested documentation or information, whichever occurs later.
 279 | For purposes of this paragraph, the term "receipt" includes, but

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280 is not limited to, inspection and copying pursuant to this
 281 paragraph. ~~An~~ Any insurer that requests documentation or
 282 information pertaining to reasonableness of charges or medical
 283 necessity under this paragraph without a reasonable basis for
 284 such requests as a general business practice is engaging in an
 285 unfair trade practice under the insurance code.

286 1. If an insured seeking to recover benefits under ss.
 287 627.730-627.7405 assigns the contractual right to those benefits
 288 or the payment of those benefits to any person or entity, the
 289 assignee shall comply with the terms of the policy. In all
 290 circumstances, the assignee shall be obligated to cooperate
 291 under the policy, which includes, but is not limited to,
 292 participation in an examination under oath. For time spent in an
 293 examination under oath, the assignee is entitled to reasonable
 294 compensation from the insurer. Compliance with this paragraph is
 295 a condition precedent to the recovery of benefits under ss.
 296 627.730-627.7405. If an insurer requests an examination under
 297 oath of a medical provider, the provider must produce those
 298 individuals with the most knowledge of the issues identified by
 299 the insurer in the request for examination under oath. All
 300 claimants must produce and provide for inspection all documents
 301 requested by the insurer that are reasonably obtainable by the
 302 claimant. Examinations under oath may be recorded by audio,
 303 video, court reporter, or any combination thereof.

304 2. Prior to requesting that an assignee participate in an
 305 examination under oath, the insurer must provide a written
 306 request of the assignee for all information that the insurer
 307 believes is necessary to the processing of the claim, including

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308 the information contemplated in subparagraph 1. An assignee is
 309 not relieved from the provisions of subparagraph 2. simply by
 310 providing the information contemplated in subparagraph 1.

311 3. Any insurer that, as a general practice, requests
 312 examinations under oath without a reasonable basis is engaging
 313 in an unfair and deceptive trade practice.

314 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
 315 REPORTS.—

316 (b) If requested by the person examined, a party causing
 317 an examination to be made shall deliver to him or her a copy of
 318 every written report concerning the examination rendered by an
 319 examining physician, at least one of which reports must set out
 320 the examining physician's findings and conclusions in detail.
 321 After such request and delivery, the party causing the
 322 examination to be made is entitled, upon request, to receive
 323 from the person examined every written report available to him
 324 or her or his or her representative concerning any examination,
 325 previously or thereafter made, of the same mental or physical
 326 condition. By requesting and obtaining a report of the
 327 examination so ordered, or by taking the deposition of the
 328 examiner, the person examined waives any privilege he or she may
 329 have, in relation to the claim for benefits, regarding the
 330 testimony of every other person who has examined, or may
 331 thereafter examine, him or her in respect to the same mental or
 332 physical condition. If a person unreasonably refuses to submit
 333 to an examination, the personal injury protection carrier is no
 334 longer liable for ~~subsequent~~ personal injury protection benefits
 335 incurred after the date of the requested examination. Failure to

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336 appear for an examination raises a rebuttable presumption that
 337 such failure was unreasonable. Submission to an examination is a
 338 condition precedent to benefits.

339 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S
 340 FEES.—With respect to any dispute under the provisions of ss.
 341 627.730–627.7405 between the insured and the insurer, or between
 342 an assignee of an insured's rights and the insurer, the
 343 provisions of s. 627.428 shall apply, except as provided in
 344 subsections (10) and (15), and except that any attorney's fees
 345 recovered are limited to the lesser of \$10,000 or three times
 346 any disputed amount recovered by the attorney under ss. 627.730–
 347 627.7405. Attorney's fees in a class action under ss. 627.730–
 348 627.7405 are limited to the lesser of \$50,000 or three times the
 349 total of any disputed amount recovered in the class action
 350 proceeding.

351 (17) ATTORNEY'S FEES.—Notwithstanding s. 627.428, the
 352 attorney's fees recovered under ss. 627.730–627.7405, shall be
 353 calculated without regard to a contingency risk multiplier.

354 (18) ARBITRATION. – In order to provide for an expedited,
 355 cost-effective and fair resolution of disputes arising from
 356 contracts for personal injury protection benefits, an insurer
 357 may offer a policy that requires or allows the insurer or
 358 claimant to demand arbitration of any claims dispute involving
 359 personal injury protection benefits prior to filing a lawsuit
 360 and in lieu of litigation. Arbitration is subject to the Florida
 361 Arbitration Code, except as otherwise provided in this section.

362 In addition:

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363 (a) A demand for arbitration must be made in writing by
 364 certified mail, and the arbitration must be held within 60 days
 365 of the receipt of a request for arbitration. The 60 day period
 366 shall not be tolled for discovery of documents pursuant to
 367 paragraph (d).

368 (b) Arbitration shall take place in the county in which the
 369 treatment was rendered. If treatment was rendered outside the
 370 state, arbitration shall take place in the county in which the
 371 insured resides unless the parties agree to another location.

372 (c) The arbitration shall be conducted by a single
 373 arbitrator selected by the chief judge of the judicial circuit
 374 in which the arbitration is being held.

375 (d)1. The claimant shall make available for inspection or
 376 copying the medical and other records on which the claimant
 377 intends to rely at arbitration upon written request by the
 378 insurer or his or her attorney within 15 days of receipt of such
 379 request.

380 2. The insurer shall make available for inspection or
 381 copying all documents, records or information upon which it is
 382 relying in adjusting or rejecting the claim upon written request
 383 by the claimant or his or her attorney within 10 days of receipt
 384 of such request.

385 3. Discovery of insurer documents, records or information
 386 shall be limited to those relating to insurance coverage. The
 387 insurer is not required to produce claims privileged items,
 388 underwriting files, or documents that it does not intend to rely
 389 on at arbitration.

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390 4. There shall be no discovery relating to general claims
 391 handling practices.

392 (e) The decision of the arbitrator shall be in set forth in
 393 writing and furnished to each party within 30 days of the
 394 arbitration. The decision shall be binding on each party unless
 395 challenged pursuant to paragraph (g). An arbitration award may
 396 not exceed the applicable limits of coverage remaining on the
 397 policy.

398 (f) The claimant is entitled to reimbursement of attorneys'
 399 fees directly associated with the arbitration, subject to
 400 subsection (8). The award of fees must be set forth in the
 401 arbitration decision. The insurer shall bear all reasonable
 402 costs directly associated with the arbitration process.

403 (g)1. A party may challenge the arbitration decision by
 404 filing a complaint in circuit court within 20 days of the
 405 receipt of the arbitration decision.

406 2. Review of the arbitration shall be de novo.

407 3. Section 627.428 does not apply, and no interest on the
 408 amount in dispute shall accrue during the course of litigation,
 409 if the insurer has tendered payment of the amount of the
 410 arbitration award to the claimant.

411 Section 5. This act shall take effect July 1, 2011.

1 A bill to be entitled
 2 An act relating to property and casualty insurance;
 3 amending s. 624.407, F.S.; revising the amount of surplus
 4 funds required for domestic insurers applying for a
 5 certificate of authority after a certain date; amending s.
 6 624.408, F.S.; revising the minimum surplus that must be
 7 maintained by certain insurers; authorizing the Office of
 8 Insurance Regulation to reduce the surplus requirement
 9 under specified circumstances; amending s. 624.4095, F.S.;
 10 excluding certain premiums for federal multiple-peril crop
 11 insurance from calculations for an insurer's gross writing
 12 ratio; requiring insurers to disclose the gross written
 13 premiums for federal multiple-peril crop insurance in a
 14 financial statement; amending s. 624.424; revising the
 15 frequency that an insurer may use the same accountant or
 16 partner to prepare an annual audited financial report;
 17 amending s. 626.854, F.S.; providing limitations on the
 18 amount of compensation that may be received by a public
 19 adjuster for a reopened or supplemental claim; providing
 20 statements that may be considered deceptive or misleading
 21 if made in any public adjuster's advertisement or
 22 solicitation; providing a definition for the term "written
 23 advertisement"; requiring that a disclaimer be included in
 24 any public adjuster's written advertisement; providing
 25 requirements for such disclaimer; requiring certain
 26 persons who act on behalf of an insurer to provide notice
 27 to the insurer, claimant, public adjuster, or legal
 28 representative for an onsite inspection of the insured

29 property; authorizing the insured or claimant to deny
 30 access to the property if notice is not provided;
 31 requiring the public adjuster to ensure prompt notice of
 32 certain property loss claims; providing that an insurer be
 33 allowed to interview the insured directly about the loss
 34 claim; prohibiting the insurer from obstructing or
 35 preventing the public adjuster from communicating with the
 36 insured; requiring that the insurer communicate with the
 37 public adjuster in an effort to reach an agreement as to
 38 the scope of the covered loss under the insurance policy;
 39 prohibiting a public adjuster from restricting or
 40 preventing persons acting on behalf of the insured from
 41 having reasonable access to the insured or the insured's
 42 property; prohibiting a public adjuster from restricting
 43 or preventing the insured's adjuster from having
 44 reasonable access to or inspecting the insured's property;
 45 authorizing the insured's adjuster to be present for the
 46 inspection; prohibiting a licensed contractor or
 47 subcontractor from adjusting a claim on behalf of an
 48 insured if such contractor or subcontractor is not a
 49 licensed public adjuster; providing an exception; amending
 50 s. 626.8651, F.S.; requiring that a public adjuster
 51 apprentice complete a minimum number of hours of
 52 continuing education to qualify for licensure; amending s.
 53 626.8796, F.S.; providing requirements for a public
 54 adjuster contract; creating s. 626.70132, F.S.; requiring
 55 that notice of a claim, supplemental claim, or reopened
 56 claim be given to the insurer within a specified period

57 | after a windstorm or hurricane occurs; providing a
 58 | definition for the terms "supplemental claim" or "reopened
 59 | claim"; providing applicability; amending s. 627.0613,
 60 | F.S.; deleting the duty of the consumer advocate to
 61 | prepare an annual report card for each authorized personal
 62 | residential property insurer; amending s. 627.062, F.S.;
 63 | requiring that the office issue an approval rather than a
 64 | notice of intent to approve following its approval of a
 65 | file and use filing; deleting an obsolete provision;
 66 | prohibiting the Office of Insurance Regulation from,
 67 | directly or indirectly, impeding the right of an insurer
 68 | to acquire policyholders, advertise or appoint agents, or
 69 | regulate agent commissions; revising the information that
 70 | must be included in a rate filing relating to certain
 71 | reinsurance or financing products; deleting a provision
 72 | that prohibited an insurer from making certain rate
 73 | filings within a certain period of time after a rate
 74 | increase; deleting a provision prohibiting an insurer from
 75 | filing for a rate increase within 6 months after it makes
 76 | certain rate filings; deleting obsolete provisions
 77 | relating to legislation enacted during the 2003 Special
 78 | Session D of the Legislature; amending s. 627.0629, F.S.;
 79 | providing legislative intent that insurers provide
 80 | consumers with accurate pricing signals for alterations in
 81 | order to minimize losses, but that mitigation discounts
 82 | not result in a loss of income for the insurer; requiring
 83 | rate filings for residential property insurance to include
 84 | actuarially reasonable debits that provide proper pricing;

85 providing for an increase in base rates if mitigation
 86 discounts exceed the aggregate reduction in expected
 87 losses; deleting obsolete provisions; deleting a
 88 requirement that the Office of Insurance Regulation
 89 propose a method for establishing discounts, debits,
 90 credits, and other rate differentials for hurricane
 91 mitigation by a certain date; requiring the Financial
 92 Services Commission to adopt rules relating to such debits
 93 by a certain date; deleting a provision that prohibits an
 94 insurer from including an expense or profit load in the
 95 cost of reinsurance to replace the Temporary Increase in
 96 Coverage Limits; conforming provisions to changes made by
 97 the act; amending s. 627.351, F.S.; renaming the "high-
 98 risk account" as the "coastal account"; revising the
 99 conditions under which the Citizens policyholder surcharge
 100 may be imposed; providing that members of the Citizens
 101 Property Insurance Corporation Board of Governors are not
 102 prohibited from practicing in a certain profession if not
 103 prohibited by law or ordinance; prohibiting board members
 104 from voting on certain measures; changing the date on
 105 which the boundaries of high-risk areas eligible for
 106 certain wind-only coverages will be reduced if certain
 107 circumstances exist; amending s. 627.3511, F.S.;
 108 conforming provisions to changes made by the act; amending
 109 s. 627.4133, F.S.; reducing the amount of time before a
 110 policy nonrenewal, cancellation, or termination is allowed
 111 to take effect after notification of an insured; deleting
 112 a prior notification period applicable to the nonrenewal,

113 | cancellation, or termination of certain policies in effect
 114 | for a specified duration; authorizing an insurer to cancel
 115 | policies after 45 days' notice if the Office of Insurance
 116 | Regulation determines that the cancellation of policies is
 117 | necessary to protect the interests of the public or
 118 | policyholders; authorizing the Office of Insurance
 119 | Regulation to place an insurer under administrative
 120 | supervision or appoint a receiver upon the consent of the
 121 | insurer under certain circumstances; creating s.
 122 | 627.43141, F.S.; providing definitions; requiring the
 123 | delivery of a "Notice of Change in Policy Terms" under
 124 | certain circumstances; specifying requirements for such
 125 | notice; specifying actions constituting proof of notice;
 126 | authorizing policy renewals to contain a change in policy
 127 | terms; providing that receipt of payment by an insurer is
 128 | deemed acceptance of new policy terms by an insured;
 129 | providing that the original policy remains in effect until
 130 | the occurrence of specified events if an insurer fails to
 131 | provide notice; providing intent; amending s. 627.7011,
 132 | F.S.; requiring that an insurer pay the actual cash value
 133 | of an insured loss for a dwelling, less any applicable
 134 | deductible, under certain circumstances; requiring that a
 135 | policyholder enter into a contract for the performance of
 136 | building and structural repairs in order to receive
 137 | payment; requiring that an insurer pay certain remaining
 138 | amounts; restricting insurers and contractors from
 139 | requiring advance payments for certain repairs and
 140 | expenses; providing an exception to requiring advance

141 payments; requiring an insurer to pay the replacement
 142 costs if a total loss occurs; allowing an insurer to limit
 143 its initial payment for losses to personal property;
 144 authorizing an insurer to require an insured to provide
 145 receipts for the purchase of property financed with
 146 certain actual cash value payments; requiring an insurer
 147 to use the receipts in a specified manner and as part of a
 148 continuing process; requiring notice of the process in the
 149 insurance contract; amending s. 627.70131, F.S.;

150 specifying application of certain time periods to initial
 151 or supplemental property insurance claim notices and
 152 payments; providing legislative findings with respect to
 153 2005 statutory changes relating to sinkhole insurance
 154 coverage and statutory changes in this act; amending s.
 155 627.706, F.S.; authorizing an insurer to limit coverage
 156 for catastrophic ground cover collapse to the principal
 157 building and to have discretion to provide additional
 158 coverage; allowing the deductible to include costs
 159 relating to an investigation of whether sinkhole activity
 160 is present; revising definitions; defining the term
 161 "structural damage"; placing a 2-year statute of repose on
 162 claims for sinkhole coverage; amending s. 627.7061, F.S.;

163 conforming provisions to changes made by the act;
 164 repealing s. 627.7065, F.S., relating to the establishment
 165 of a sinkhole database; amending s. 627.707, F.S.;

166 revising provisions relating to the investigation of
 167 sinkholes by insurers; deleting a requirement that the
 168 insurer provide a policyholder with a statement regarding

169 testing for sinkhole activity; providing a time limitation
 170 for demanding sinkhole testing by a policyholder and
 171 entering into a contract for repairs; requiring all
 172 repairs to be completed within a certain time; providing
 173 exceptions; prohibiting rebates to policyholders from
 174 persons performing repairs; voiding coverage if a rebate
 175 is received; requiring policyholders to refund rebates
 176 from persons performing repairs to insurers; providing a
 177 criminal penalty on a policyholder for accepting rebates
 178 from persons performing repairs; limiting a policyholder's
 179 liability for reimbursement of the costs related to
 180 certain analyses and services; amending s. 627.7073, F.S.;
 181 revising provisions relating to inspection reports;
 182 providing that the presumption that the report is correct
 183 shifts the burden of proof; requiring an insurer to file a
 184 neutral evaluator's report and other specific information;
 185 requiring the policyholder to file certain reports as a
 186 precondition to accepting payment; requiring certain
 187 filing and recording costs to be borne by a policyholder;
 188 specifying that a policyholder's recording of a report
 189 does not legally affect title or create certain causes of
 190 action relating to real property; requiring a seller of
 191 real property to provide a buyer with a copy of any
 192 inspection reports and certifications; amending s.
 193 627.7074, F.S.; revising provisions relating to neutral
 194 evaluation; requiring evaluation in order to make certain
 195 determinations; requiring that the neutral evaluator be
 196 allowed access to structures being evaluated; providing

197 grounds for disqualifying an evaluator; allowing the
 198 Department of Financial Services to appoint an evaluator
 199 if the parties cannot come to agreement; revising the
 200 timeframes for scheduling a neutral evaluation conference;
 201 authorizing an evaluator to enlist another evaluator or
 202 other professionals; providing a time certain for issuing
 203 a report; providing that certain information is
 204 confidential; revising provisions relating to compliance
 205 with the evaluator's recommendations; providing that the
 206 evaluator is an agent of the department for the purposes
 207 of immunity from suit; requiring the department to adopt
 208 rules; amending s. 627.712, F.S.; conforming provisions to
 209 changes made by the act; providing legislative intent;
 210 providing severability; providing effective dates.

211

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

213

214 Section 1. Section 624.407, Florida Statutes, is amended
 215 to read:

216 624.407 Surplus ~~Capital~~ funds required; new insurers.-

217 (1) To receive authority to transact any one kind or
 218 combinations of kinds of insurance, as defined in part V of this
 219 chapter, an insurer applying for its original certificate of
 220 authority in this state after November 10, 1993, ~~the effective~~
 221 ~~date of this section~~ shall possess surplus funds as to
 222 policyholders at least ~~not less than~~ the greater of:

223 (a) ~~Five million dollars~~ For a property and casualty
 224 insurer, \$5 million, or \$2.5 million for any other insurer;

225 (b) For life insurers, 4 percent of the insurer's total
 226 liabilities;

227 (c) For life and health insurers, 4 percent of the
 228 insurer's total liabilities, plus 6 percent of the insurer's
 229 liabilities relative to health insurance; ~~or~~

230 (d) For all insurers other than life insurers and life and
 231 health insurers, 10 percent of the insurer's total liabilities;
 232 or

233 (e) Notwithstanding paragraph (a) or paragraph (d), for a
 234 domestic insurer that transacts residential property insurance
 235 and is:

236 1. Not a wholly owned subsidiary of an insurer domiciled
 237 in any other state on or before July 1, 2011, and until June 30,
 238 2016, \$5 million; on or after July 1, 2016, and until June 30,
 239 2021, \$10 million; and on or after July 1, 2021, \$15 million.

240 2. ~~however, a domestic insurer that transacts residential~~
 241 ~~property insurance and is~~ A wholly owned subsidiary of an
 242 insurer domiciled in any other state, ~~shall possess surplus as~~
 243 ~~to policyholders of at least \$50 million.~~

244 (3) Notwithstanding subsections (1) and (2), a new insurer
 245 may not be required, ~~but no insurer shall be required under this~~
 246 ~~subsection~~ to have surplus as to policyholders greater than \$100
 247 million.

248 (4)-(2) The requirements of this section shall be based
 249 upon all the kinds of insurance actually transacted or to be
 250 transacted by the insurer in any and all areas in which it
 251 operates, whether or not only a portion of such kinds of
 252 insurance are ~~to be~~ transacted in this state.

253 ~~(5)(3)~~ As to surplus funds as to policyholders required
 254 for qualification to transact one or more kinds of insurance,
 255 domestic mutual insurers are governed by chapter 628, and
 256 domestic reciprocal insurers are governed by chapter 629.

257 ~~(6)(4)~~ For the purposes of this section, liabilities do
 258 ~~shall~~ not include liabilities required under s. 625.041(4). For
 259 purposes of computing minimum surplus funds as to policyholders
 260 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities
 261 required under s. 625.041(4).

262 ~~(7)(5)~~ The provisions of this section, as amended by
 263 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to
 264 insurers applying for a certificate of authority on or after
 265 October 1, 1989 ~~the effective date of this act~~.

266 Section 2. Section 624.408, Florida Statutes, is amended
 267 to read:

268 624.408 Surplus funds ~~as to policyholders~~ required;
 269 current new and existing insurers.-

270 (1) ~~(a)~~ To maintain a certificate of authority to transact
 271 any one kind or combinations of kinds of insurance, as defined
 272 in part V of this chapter, an insurer in this state must ~~shall~~
 273 at all times maintain surplus funds as to policyholders at least
 274 ~~not less than~~ the greater of:

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

277 ~~(b)2.~~ For life insurers, 4 percent of the insurer's total
 278 liabilities.†

279 ~~(c)3.~~ For life and health insurers, 4 percent of the
 280 insurer's total liabilities plus 6 percent of the insurer's

281 liabilities relative to health insurance. ~~7-07~~

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

285 (e)5. For property and casualty insurers, \$4 million,
 286 except for property and casualty insurers authorized to
 287 underwrite any line of residential property insurance.

288 (f)(b) For residential any property insurers not and
 289 easualty insurer holding a certificate of authority before July
 290 1, 2011 on December 1, 1993, \$15 million. the

291 (g) For residential property insurers holding a
 292 certificate of authority before July 1, 2011, and until June 30,
 293 2016, \$5 million; on or after July 1, 2016, and until June 30,
 294 2021, \$10 million; on or after July 1, 2021, \$15 million. The
 295 office may reduce this surplus requirement if the insurer is not
 296 writing new business, has premiums in force of less than \$1
 297 million per year in residential property insurance, or is a
 298 mutual insurance company. following amounts apply instead of the
 299 \$4 million required by subparagraph (a)5.:

300 1. On December 31, 2001, and until December 30, 2002, \$3
 301 million.

302 2. On December 31, 2002, and until December 30, 2003,
 303 \$3.25 million.

304 3. On December 31, 2003, and until December 30, 2004, \$3.6
 305 million.

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

307 (2) For purposes of this section, liabilities do shall not
 308 include liabilities required under s. 625.041(4). For purposes

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309 of computing minimum surplus as to policyholders pursuant to s.
 310 625.305(1), liabilities ~~shall~~ include liabilities required under
 311 s. 625.041(4).

312 (3) This section does not require an ~~No~~ insurer ~~shall be~~
 313 ~~required under this section~~ to have surplus as to policyholders
 314 greater than \$100 million.

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

317 Section 3. Subsection (7) is added to section 624.4095,
 318 Florida Statutes, to read:

319 624.4095 Premiums written; restrictions.—

320 (7) For the purposes of this section and ss. 624.407 and
 321 624.408, with respect to capital and surplus requirements, gross
 322 written premiums for federal multiple-peril crop insurance which
 323 are ceded to the Federal Crop Insurance Corporation or
 324 authorized reinsurers may not be included in the calculation of
 325 an insurer's gross writing ratio. The liabilities for ceded
 326 reinsurance premiums payable for federal multiple-peril crop
 327 insurance ceded to the Federal Crop Insurance Corporation and
 328 authorized reinsurers shall be netted against the asset for
 329 amounts recoverable from reinsurers. Each insurer that writes
 330 other insurance products together with federal multiple-peril
 331 crop insurance must disclose in the notes to its annual and
 332 quarterly financial statements, or in a supplement to those
 333 statements, the gross written premiums for federal multiple-
 334 peril crop insurance.

335 Section 4. Paragraph (d) of subsection (8) of section
 336 624.424, Florida Statutes, is amended to read:

337 | 624.424 Annual statement and other information.-

338 | (8)

339 | (d) An insurer may not use the same accountant or partner
 340 | of an accounting firm responsible for preparing the report
 341 | required by this subsection for more than 5 ~~7~~ consecutive years.
 342 | Following this period, the insurer may not use such accountant
 343 | or partner for a period of 5 ~~2~~ years, but may use another
 344 | accountant or partner of the same firm. An insurer may request
 345 | the office to waive this prohibition based upon an unusual
 346 | hardship to the insurer and a determination that the accountant
 347 | is exercising independent judgment that is not unduly influenced
 348 | by the insurer considering such factors as the number of
 349 | partners, expertise of the partners or the number of insurance
 350 | clients of the accounting firm; the premium volume of the
 351 | insurer; and the number of jurisdictions in which the insurer
 352 | transacts business.

353 | Section 5. Effective June 1, 2011, subsection (11) of
 354 | section 626.854, Florida Statutes, is amended to read:

355 | 626.854 "Public adjuster" defined; prohibitions.-The
 356 | Legislature finds that it is necessary for the protection of the
 357 | public to regulate public insurance adjusters and to prevent the
 358 | unauthorized practice of law.

359 | (11) (a) If a public adjuster enters into a contract with
 360 | an insured or claimant to reopen a claim or ~~to~~ file a
 361 | supplemental claim that seeks additional payments for a claim
 362 | that has been previously paid in part or in full or settled by
 363 | the insurer, the public adjuster may not charge, agree to, or
 364 | accept any compensation, payment, commission, fee, or other

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365 | thing of value based on a previous settlement or previous claim
 366 | payments by the insurer for the same cause of loss. The charge,
 367 | compensation, payment, commission, fee, or other thing of value
 368 | must ~~may~~ be based only on the claim payments or settlement
 369 | obtained through the work of the public adjuster after entering
 370 | into the contract with the insured or claimant. Compensation for
 371 | the reopened or supplemental claim may not exceed 20 percent of
 372 | the reopened or supplemental claim payment. The contracts
 373 | described in this paragraph are not subject to the limitations
 374 | in paragraph (b).

375 | (b) A public adjuster may not charge, agree to, or accept
 376 | any compensation, payment, commission, fee, or other thing of
 377 | value in excess of:

378 | 1. Ten percent of the amount of insurance claim payments
 379 | made by the insurer for claims based on events that are the
 380 | subject of a declaration of a state of emergency by the
 381 | Governor. This provision applies to claims made during the
 382 | ~~period of 1~~ year after the declaration of emergency. After that
 383 | year, the limitations in subparagraph 2. apply.

384 | 2. Twenty percent of the amount of ~~all other~~ insurance
 385 | claim payments made by the insurer for claims that are not based
 386 | on events that are the subject of a declaration of a state of
 387 | emergency by the Governor.

388 |
 389 | The provisions of subsections (5)-(13) apply only to residential
 390 | property insurance policies and condominium association policies
 391 | as defined in s. 718.111(11).

392 | Section 6. Effective January 1, 2012, section 626.854,

393 Florida Statutes, as amended by this act, is amended to read:

394 626.854 "Public adjuster" defined; prohibitions.—The
 395 Legislature finds that it is necessary for the protection of the
 396 public to regulate public insurance adjusters and to prevent the
 397 unauthorized practice of law.

398 (1) A "public adjuster" is any person, except a duly
 399 licensed attorney at law as exempted under hereinafter in s.
 400 626.860 ~~provided~~, who, for money, commission, or any other thing
 401 of value, prepares, completes, or files an insurance claim form
 402 for an insured or third-party claimant or who, for money,
 403 commission, or any other thing of value, acts ~~or aids in any~~
 404 manner on behalf of, or aids an insured or third-party claimant
 405 in negotiating for or effecting the settlement of a claim or
 406 claims for loss or damage covered by an insurance contract or
 407 who advertises for employment as an adjuster of such claims. The
 408 term, ~~and~~ also includes any person who, for money, commission,
 409 or any other thing of value, solicits, investigates, or adjusts
 410 such claims on behalf of a ~~any such~~ public adjuster.

411 (2) This definition does not apply to:

412 (a) A licensed health care provider or employee thereof
 413 who prepares or files a health insurance claim form on behalf of
 414 a patient.

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

417 (3) A public adjuster may not give legal advice or. ~~A~~
 418 ~~public adjuster may not~~ act on behalf of or aid any person in
 419 negotiating or settling a claim relating to bodily injury,
 420 death, or noneconomic damages.

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

424 (5) A public adjuster may not directly or indirectly
 425 through any other person or entity solicit an insured or
 426 claimant by any means except on Monday through Saturday of each
 427 week and only between the hours of 8 a.m. and 8 p.m. on those
 428 days.

429 (6) A public adjuster may not directly or indirectly
 430 through any other person or entity initiate contact or engage in
 431 face-to-face or telephonic solicitation or enter into a contract
 432 with any insured or claimant under an insurance policy until at
 433 least 48 hours after the occurrence of an event that may be the
 434 subject of a claim under the insurance policy unless contact is
 435 initiated by the insured or claimant.

436 (7) An insured or claimant may cancel a public adjuster's
 437 contract to adjust a claim without penalty or obligation within
 438 3 business days after the date on which the contract is executed
 439 or within 3 business days after the date on which the insured or
 440 claimant has notified the insurer of the claim, by phone or in
 441 writing, whichever is later. The public adjuster's contract must
 442 ~~shall~~ disclose to the insured or claimant his or her right to
 443 cancel the contract and advise the insured or claimant that
 444 notice of cancellation must be submitted in writing and sent by
 445 certified mail, return receipt requested, or other form of
 446 mailing that ~~which~~ provides proof thereof, to the public
 447 adjuster at the address specified in the contract; provided,
 448 during any state of emergency as declared by the Governor and

449 | for ~~a period of~~ 1 year after the date of loss, the insured or
 450 | claimant has ~~shall have~~ 5 business days after the date on which
 451 | the contract is executed to cancel a public adjuster's contract.

452 | (8) It is an unfair and deceptive insurance trade practice
 453 | pursuant to s. 626.9541 for a public adjuster or any other
 454 | person to circulate or disseminate any advertisement,
 455 | announcement, or statement containing any assertion,
 456 | representation, or statement with respect to the business of
 457 | insurance which is untrue, deceptive, or misleading.

458 | (a) The following statements, made in any public
 459 | adjuster's advertisement or solicitation, are considered
 460 | deceptive or misleading:

461 | 1. A statement or representation that invites an insured
 462 | policyholder to submit a claim when the policyholder does not
 463 | have covered damage to insured property.

464 | 2. A statement or representation that invites an insured
 465 | policyholder to submit a claim by offering monetary or other
 466 | valuable inducement.

467 | 3. A statement or representation that invites an insured
 468 | policyholder to submit a claim by stating that there is "no
 469 | risk" to the policyholder by submitting such claim.

470 | 4. A statement or representation, or use of a logo or
 471 | shield, that implies or could mistakenly be construed to imply
 472 | that the solicitation was issued or distributed by a
 473 | governmental agency or is sanctioned or endorsed by a
 474 | governmental agency.

475 | (b) For purposes of this paragraph, the term "written
 476 | advertisement" includes only newspapers, magazines, flyers, and

477 bulk mailers. The following disclaimer, which is not required to
 478 be printed on standard size business cards, must be added in
 479 bold print and capital letters in typeface no smaller than the
 480 typeface of the body of the text to all written advertisements
 481 by a public adjuster:

482 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
 483 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
 484 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
 485 MAY DISREGARD THIS ADVERTISEMENT."

486
 487 (9) A public adjuster, a public adjuster apprentice, or
 488 any person or entity acting on behalf of a public adjuster or
 489 public adjuster apprentice may not give or offer to give a
 490 monetary loan or advance to a client or prospective client.

491 (10) A public adjuster, public adjuster apprentice, or any
 492 individual or entity acting on behalf of a public adjuster or
 493 public adjuster apprentice may not give or offer to give,
 494 directly or indirectly, any article of merchandise having a
 495 value in excess of \$25 to any individual for the purpose of
 496 advertising or as an inducement to entering into a contract with
 497 a public adjuster.

498 (11) (a) If a public adjuster enters into a contract with
 499 an insured or claimant to reopen a claim or file a supplemental
 500 claim that seeks additional payments for a claim that has been
 501 previously paid in part or in full or settled by the insurer,
 502 the public adjuster may not charge, agree to, or accept any
 503 compensation, payment, commission, fee, or other thing of value
 504 based on a previous settlement or previous claim payments by the

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505 insurer for the same cause of loss. The charge, compensation,
 506 payment, commission, fee, or other thing of value must be based
 507 only on the claim payments or settlement obtained through the
 508 work of the public adjuster after entering into the contract
 509 with the insured or claimant. Compensation for the reopened or
 510 supplemental claim may not exceed 20 percent of the reopened or
 511 supplemental claim payment. The contracts described in this
 512 paragraph are not subject to the limitations in paragraph (b).

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

516 1. Ten percent of the amount of insurance claim payments
 517 made by the insurer for claims based on events that are the
 518 subject of a declaration of a state of emergency by the
 519 Governor. This provision applies to claims made during the year
 520 after the declaration of emergency. After that year, the
 521 limitations in subparagraph 2. apply.

522 2. Twenty percent of the amount of insurance claim
 523 payments made by the insurer for claims that are not based on
 524 events that are the subject of a declaration of a state of
 525 emergency by the Governor.

526 (12) Each public adjuster must ~~shall~~ provide to the
 527 claimant or insured a written estimate of the loss to assist in
 528 the submission of a proof of loss or any other claim for payment
 529 of insurance proceeds. The public adjuster shall retain such
 530 written estimate for at least 5 years and shall make the ~~such~~
 531 estimate available to the claimant or insured and the department
 532 upon request.

533 (13) A public adjuster, public adjuster apprentice, or any
 534 person acting on behalf of a public adjuster or apprentice may
 535 not accept referrals of business from any person with whom the
 536 public adjuster conducts business if there is any form or manner
 537 of agreement to compensate the person, ~~whether~~ directly or
 538 indirectly, for referring business to the public adjuster. A
 539 public adjuster may not compensate any person, except for
 540 another public adjuster, ~~whether~~ directly or indirectly, for the
 541 principal purpose of referring business to the public adjuster.

542 (14) A company employee adjuster, independent adjuster,
 543 attorney, investigator, or other persons acting on behalf of an
 544 insurer that needs access to an insured or claimant or to the
 545 insured property that is the subject of a claim must provide at
 546 least 48 hours' notice to the insured or claimant, public
 547 adjuster, or legal representative before scheduling a meeting
 548 with the claimant or an onsite inspection of the insured
 549 property. The insured or claimant may deny access to the
 550 property if the notice has not been provided. The insured or
 551 claimant may waive the 48-hour notice.

552 (15) A public adjuster must ensure prompt notice of
 553 property loss claims submitted to an insurer by or through a
 554 public adjuster or on which a public adjuster represents the
 555 insured at the time the claim or notice of loss is submitted to
 556 the insurer. The public adjuster must ensure that notice is
 557 given to the insurer, the public adjuster's contract is provided
 558 to the insurer, the property is available for inspection of the
 559 loss or damage by the insurer, and the insurer is given an
 560 opportunity to interview the insured directly about the loss and

561 claim. The insurer must be allowed to obtain necessary
 562 information to investigate and respond to the claim.

563 (a) The insurer may not exclude the public adjuster from
 564 its in-person meetings with the insured. The insurer shall meet
 565 or communicate with the public adjuster in an effort to reach
 566 agreement as to the scope of the covered loss under the
 567 insurance policy. This section does not impair the terms and
 568 conditions of the insurance policy in effect at the time the
 569 claim is filed.

570 (b) A public adjuster may not restrict or prevent an
 571 insurer, company employee adjuster, independent adjuster,
 572 attorney, investigator, or other person acting on behalf of the
 573 insurer from having reasonable access at reasonable times to an
 574 insured or claimant or to the insured property that is the
 575 subject of a claim.

576 (c) A public adjuster may not act or fail to reasonably
 577 act in any manner that obstructs or prevents an insurer or
 578 insurer's adjuster from timely conducting an inspection of any
 579 part of the insured property for which there is a claim for loss
 580 or damage. The public adjuster representing the insured may be
 581 present for the insurer's inspection, but if the unavailability
 582 of the public adjuster otherwise delays the insurer's timely
 583 inspection of the property, the public adjuster or the insured
 584 must allow the insurer to have access to the property without
 585 the participation or presence of the public adjuster or insured
 586 in order to facilitate the insurer's prompt inspection of the
 587 loss or damage.

588 (16) A licensed contractor under part I of chapter 489, or

589 a subcontractor, may not adjust a claim on behalf of an insured
 590 unless licensed and compliant as a public adjuster under this
 591 chapter. However, the contractor may discuss or explain a bid
 592 for construction or repair of covered property with the
 593 residential property owner who has suffered loss or damage
 594 covered by a property insurance policy, or the insurer of such
 595 property, if the contractor is doing so for the usual and
 596 customary fees applicable to the work to be performed as stated
 597 in the contract between the contractor and the insured.

598 (17) The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply
 599 only to residential property insurance policies and condominium
 600 unit owner association policies as defined in s. 718.111(11).

601 Section 7. Effective January 1, 2012, subsection (6) of
 602 section 626.8651, Florida Statutes, is amended to read:

603 626.8651 Public adjuster apprentice license;
 604 qualifications.—

605 (6) To qualify for licensure as a public adjuster, a
 606 public adjuster apprentice must shall complete: at

607 (a) A minimum of 100 hours of employment per month for 12
 608 months of employment under the supervision of a licensed and
 609 appointed all-lines public adjuster in order to qualify for
 610 licensure as a public adjuster. The department may adopt rules
 611 that establish standards for such employment requirements.

612 (b) A minimum of 8 hours of continuing education specific
 613 to the practice of a public adjuster, 2 hours of which must
 614 relate to ethics. The continuing education must be designed to
 615 inform the licensee about the current insurance laws of this
 616 state for the purpose of enabling him or her to engage in

617 business as an insurance adjuster fairly and without injury to
 618 the public and to adjust all claims in accordance with the
 619 insurance contract and the laws of this state.

620 Section 8. Effective January 1, 2012, section 626.8796,
 621 Florida Statutes, is amended to read:

622 626.8796 Public adjuster contracts; fraud statement.—

623 (1) All contracts for public adjuster services must be in
 624 writing and ~~must~~ prominently display the following statement on
 625 the contract: "Pursuant to s. 817.234, Florida Statutes, any
 626 person who, with the intent to injure, defraud, or deceive an
 627 ~~any~~ insurer or insured, prepares, presents, or causes to be
 628 presented a proof of loss or estimate of cost or repair of
 629 damaged property in support of a claim under an insurance policy
 630 knowing that the proof of loss or estimate of claim or repairs
 631 contains ~~any~~ false, incomplete, or misleading information
 632 concerning any fact or thing material to the claim commits a
 633 felony of the third degree, punishable as provided in s.
 634 775.082, s. 775.083, or s. 775.084, Florida Statutes."

635 (2) A public adjuster contract must contain the full name,
 636 permanent business address, and license number of the public
 637 adjuster; the full name of the public adjusting firm; and the
 638 insured's full name and street address, together with a brief
 639 description of the loss. The contract must state the percentage
 640 of compensation for the public adjuster's services; the type of
 641 claim, including an emergency claim, nonemergency claim, or
 642 supplemental claim; the signatures of the public adjuster and
 643 all named insureds; and the signature date. If all of the named
 644 insureds' signatures are not available, the public adjuster must

645 submit an affidavit signed by the available named insureds
 646 attesting that they have authority to enter into the contract
 647 and settle all claim issues on behalf of the named insureds. An
 648 unaltered copy of the executed contract must be remitted to the
 649 insurer within 30 days after execution.

650 Section 9. Effective June 1, 2011, section 626.70132,
 651 Florida Statutes, is created to read:

652 626.70132 Notice of windstorm or hurricane claim.—A claim,
 653 supplemental claim, or reopened claim under an insurance policy
 654 that provides personal lines residential coverage, as defined in
 655 s. 627.4025, for loss or damage caused by the peril of windstorm
 656 or hurricane is barred unless notice of the claim, supplemental
 657 claim, or reopened claim was given to the insurer in accordance
 658 with the terms of the policy within 3 years after the hurricane
 659 first made landfall or the windstorm caused the covered damage.
 660 For purposes of this section, the term "supplemental claim" or
 661 "reopened claim" means any additional claim for recovery from
 662 the insurer for losses from the same hurricane or windstorm
 663 which the insurer has previously adjusted pursuant to the
 664 initial claim. This section does not affect any applicable
 665 limitation on civil actions provided in s. 95.11 for claims,
 666 supplemental claims, or reopened claims timely filed under this
 667 section.

668 Section 10. Subsections (4) and (5) of section 627.0613,
 669 Florida Statutes, are amended to read:

670 627.0613 Consumer advocate.—The Chief Financial Officer
 671 must appoint a consumer advocate who must represent the general
 672 public of the state before the department and the office. The

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673 consumer advocate must report directly to the Chief Financial
 674 Officer, but is not otherwise under the authority of the
 675 department or of any employee of the department. The consumer
 676 advocate has such powers as are necessary to carry out the
 677 duties of the office of consumer advocate, including, but not
 678 limited to, the powers to:

679 ~~(4) Prepare an annual report card for each authorized~~
 680 ~~personal residential property insurer, on a form and using a~~
 681 ~~letter grade scale developed by the commission by rule, which~~
 682 ~~grades each insurer based on the following factors:~~

683 ~~(a) The number and nature of consumer complaints, as a~~
 684 ~~market share ratio, received by the department against the~~
 685 ~~insurer.~~

686 ~~(b) The disposition of all complaints received by the~~
 687 ~~department.~~

688 ~~(c) The average length of time for payment of claims by~~
 689 ~~the insurer.~~

690 ~~(d) Any other factors the commission identifies as~~
 691 ~~assisting policyholders in making informed choices about~~
 692 ~~homeowner's insurance.~~

693 ~~(5) Prepare an annual budget for presentation to the~~
 694 ~~Legislature by the department, which budget must be adequate to~~
 695 ~~carry out the duties of the office of consumer advocate.~~

696 Section 11. Section 627.062, Florida Statutes, is amended
 697 to read:

698 627.062 Rate standards.—

699 (1) The rates for all classes of insurance to which the
 700 provisions of this part are applicable may ~~shall~~ not be

701 excessive, inadequate, or unfairly discriminatory.

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

703 (a) Insurers or rating organizations shall establish and
 704 use rates, rating schedules, or rating manuals that ~~to~~ allow the
 705 insurer a reasonable rate of return on the ~~such~~ classes of
 706 insurance written in this state. A copy of rates, rating
 707 schedules, rating manuals, premium credits or discount
 708 schedules, and surcharge schedules, and changes thereto, must
 709 ~~shall~~ be filed with the office under one of the following
 710 procedures ~~except as provided in subparagraph 3.~~:

711 1. If the filing is made at least 90 days before the
 712 proposed effective date and ~~the filing~~ is not implemented during
 713 the office's review of the filing and any proceeding and
 714 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file
 715 and use" filing. In such case, the office shall finalize its
 716 review by issuance of an approval ~~a notice of intent to approve~~
 717 or a notice of intent to disapprove within 90 days after receipt
 718 of the filing. The approval ~~notice of intent to approve~~ and the
 719 notice of intent to disapprove constitute agency action for
 720 purposes of the Administrative Procedure Act. Requests for
 721 supporting information, requests for mathematical or mechanical
 722 corrections, or notification to the insurer by the office of its
 723 preliminary findings does ~~shall~~ not toll the 90-day period
 724 during any such proceedings and subsequent judicial review. The
 725 rate shall be deemed approved if the office does not issue an
 726 approval ~~a notice of intent to approve~~ or a notice of intent to
 727 disapprove within 90 days after receipt of the filing.

728 2. If the filing is not made in accordance with ~~the~~

729 ~~provisions~~ of subparagraph 1., such filing must ~~shall~~ be made as
 730 soon as practicable, but within ~~no later than~~ 30 days after the
 731 effective date, and is ~~shall~~ be considered a "use and file"
 732 filing. An insurer making a "use and file" filing is potentially
 733 subject to an order by the office to return to policyholders
 734 those portions of rates found to be excessive, as provided in
 735 paragraph (h).

736 ~~3. For all property insurance filings made or submitted~~
 737 ~~after January 25, 2007, but before December 31, 2010, an insurer~~
 738 ~~seeking a rate that is greater than the rate most recently~~
 739 ~~approved by the office shall make a "file and use" filing. For~~
 740 ~~purposes of this subparagraph, motor vehicle collision and~~
 741 ~~comprehensive coverages are not considered to be property~~
 742 ~~coverages.~~

743 (b) Upon receiving a rate filing, the office shall review
 744 the ~~rate~~ filing to determine if a rate is excessive, inadequate,
 745 or unfairly discriminatory. In making that determination, the
 746 office shall, in accordance with generally accepted and
 747 reasonable actuarial techniques, consider the following factors:

- 748 1. Past and prospective loss experience within and without
- 749 this state.
- 750 2. Past and prospective expenses.
- 751 3. The degree of competition among insurers for the risk
- 752 insured.
- 753 4. Investment income reasonably expected by the insurer,
- 754 consistent with the insurer's investment practices, from
- 755 investable premiums anticipated in the filing, plus any other
- 756 expected income from currently invested assets representing the

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757 amount expected on unearned premium reserves and loss reserves.
 758 The commission may adopt rules using reasonable techniques of
 759 actuarial science and economics to specify the manner in which
 760 insurers ~~shall~~ calculate investment income attributable to ~~such~~
 761 classes of insurance written in this state and the manner in
 762 which ~~such~~ investment income is ~~shall be~~ used to calculate
 763 insurance rates. Such manner must ~~shall~~ contemplate allowances
 764 for an underwriting profit factor and full consideration of
 765 investment income which produce a reasonable rate of return;
 766 however, investment income from invested surplus may not be
 767 considered.

768 5. The reasonableness of the judgment reflected in the
 769 filing.

770 6. Dividends, savings, or unabsorbed premium deposits
 771 allowed or returned to Florida policyholders, members, or
 772 subscribers.

773 7. The adequacy of loss reserves.

774 8. The cost of reinsurance. The office may ~~shall~~ not
 775 disapprove a rate as excessive solely due to the insurer having
 776 obtained catastrophic reinsurance to cover the insurer's
 777 estimated 250-year probable maximum loss or any lower level of
 778 loss.

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

781 10. Conflagration and catastrophe hazards, if applicable.

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

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

786 12. A reasonable margin for underwriting profit and
787 contingencies.

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

789 14. Other relevant factors that affect ~~which impact upon~~
790 the frequency or severity of claims or ~~upon~~ expenses.

791 (c) In the case of fire insurance rates, consideration
792 must ~~shall~~ be given to the availability of water supplies and
793 the experience of the fire insurance business during a period of
794 not less than the most recent 5-year period for which such
795 experience is available.

796 (d) If conflagration or catastrophe hazards are considered
797 ~~given consideration~~ by an insurer in its rates or rating plan,
798 including surcharges and discounts, the insurer shall establish
799 a reserve for that portion of the premium allocated to such
800 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
801 ~~Any~~ Removal of such premiums from the reserve for purposes other
802 than paying claims associated with a catastrophe or purchasing
803 reinsurance for catastrophes must be approved by ~~shall be~~
804 ~~subject to approval of~~ the office. Any ceding commission
805 received by an insurer purchasing reinsurance for catastrophes
806 must ~~shall~~ be placed in the catastrophe reserve.

807 (e) After consideration of the rate factors provided in
808 paragraphs (b), (c), and (d), the office may find a rate ~~may be~~
809 ~~found by the office~~ to be excessive, inadequate, or unfairly
810 discriminatory based upon the following standards:

811 1. Rates shall be deemed excessive if they are likely to
812 produce a profit from Florida business which ~~that~~ is

813 | unreasonably high in relation to the risk involved in the class
 814 | of business or if expenses are unreasonably high in relation to
 815 | services rendered.

816 | 2. Rates shall be deemed excessive if, among other things,
 817 | the rate structure established by a stock insurance company
 818 | provides for replenishment of surpluses from premiums, if ~~when~~
 819 | the replenishment is attributable to investment losses.

820 | 3. Rates shall be deemed inadequate if they are clearly
 821 | insufficient, together with the investment income attributable
 822 | to them, to sustain projected losses and expenses in the class
 823 | of business to which they apply.

824 | 4. A rating plan, including discounts, credits, or
 825 | surcharges, shall be deemed unfairly discriminatory if it fails
 826 | to clearly and equitably reflect consideration of the
 827 | policyholder's participation in a risk management program
 828 | adopted pursuant to s. 627.0625.

829 | 5. A rate shall be deemed inadequate as to the premium
 830 | charged to a risk or group of risks if discounts or credits are
 831 | allowed which exceed a reasonable reflection of expense savings
 832 | and reasonably expected loss experience from the risk or group
 833 | of risks.

834 | 6. A rate shall be deemed unfairly discriminatory as to a
 835 | risk or group of risks if the application of premium discounts,
 836 | credits, or surcharges among such risks does not bear a
 837 | reasonable relationship to the expected loss and expense
 838 | experience among the various risks.

839 | (f) In reviewing a rate filing, the office may require the
 840 | insurer to provide, at the insurer's expense, all information

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841 necessary to evaluate the condition of the company and the
 842 reasonableness of the filing according to the criteria
 843 enumerated in this section.

844 (g) The office may at any time review a rate, rating
 845 schedule, rating manual, or rate change; the pertinent records
 846 of the insurer; and market conditions. If the office finds on a
 847 preliminary basis that a rate may be excessive, inadequate, or
 848 unfairly discriminatory, the office shall initiate proceedings
 849 to disapprove the rate and shall so notify the insurer. However,
 850 the office may not disapprove as excessive any rate for which it
 851 has given final approval or which has been deemed approved for a
 852 ~~period of~~ 1 year after the effective date of the filing unless
 853 the office finds that a material misrepresentation or material
 854 error was made by the insurer or was contained in the filing.
 855 Upon being ~~so~~ notified, the insurer or rating organization
 856 shall, within 60 days, file with the office all information that
 857 ~~which~~, in the belief of the insurer or organization, proves the
 858 reasonableness, adequacy, and fairness of the rate or rate
 859 change. The office shall issue an approval ~~a notice of intent to~~
 860 ~~approve~~ or a notice of intent to disapprove pursuant to ~~the~~
 861 ~~procedures of~~ paragraph (a) within 90 days after receipt of the
 862 insurer's initial response. In such instances and in any
 863 administrative proceeding relating to the legality of the rate,
 864 the insurer or rating organization shall carry the burden of
 865 proof by a preponderance of the evidence to show that the rate
 866 is not excessive, inadequate, or unfairly discriminatory. After
 867 the office notifies an insurer that a rate may be excessive,
 868 inadequate, or unfairly discriminatory, unless the office

869 withdraws the notification, the insurer may ~~shall~~ not alter the
 870 rate except to conform to ~~with~~ the office's notice until the
 871 earlier of 120 days after the date the notification was provided
 872 or 180 days after the date of implementing ~~the implementation of~~
 873 the rate. The office ~~may~~, subject to chapter 120, may disapprove
 874 without the 60-day notification any rate increase filed by an
 875 insurer within the prohibited time period or during the time
 876 that the legality of the increased rate is being contested.

877 (h) ~~If In the event~~ the office finds that a rate or rate
 878 change is excessive, inadequate, or unfairly discriminatory, the
 879 office shall issue an order of disapproval specifying that a new
 880 rate or rate schedule, which responds to the findings of the
 881 office, be filed by the insurer. The office shall further order,
 882 for any "use and file" filing made in accordance with
 883 subparagraph (a)2., that premiums charged each policyholder
 884 constituting the portion of the rate above that which was
 885 actuarially justified be returned to the ~~such~~ policyholder in
 886 the form of a credit or refund. If the office finds that an
 887 insurer's rate or rate change is inadequate, the new rate or
 888 rate schedule filed with the office in response to such a
 889 finding is ~~shall be~~ applicable only to new or renewal business
 890 of the insurer written on or after the effective date of the
 891 responsive filing.

892 (i) Except as otherwise specifically provided in this
 893 chapter, the office may ~~shall~~ not, directly or indirectly:

894 1. Prohibit any insurer, including any residual market
 895 plan or joint underwriting association, from paying acquisition
 896 costs based on the full amount of premium, as defined in s.

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897 | 627.403, applicable to any policy, or prohibit any such insurer
 898 | from including the full amount of acquisition costs in a rate
 899 | filing; ~~or-~~

900 | 2. Impede, abridge, or otherwise compromise an insurer's
 901 | right to acquire policyholders, advertise, or appoint agents,
 902 | including the calculation, manner, or amount of such agent
 903 | commissions, if any.

904 | (j) With respect to residential property insurance rate
 905 | filings, the rate filing must account for mitigation measures
 906 | undertaken by policyholders to reduce hurricane losses.

907 | (k)1. An insurer may make a separate filing limited solely
 908 | to an adjustment of its rates for reinsurance or financing costs
 909 | incurred in the purchase of reinsurance or financing products to
 910 | replace or finance the payment of the amount covered by the
 911 | Temporary Increase in Coverage Limits (TICL) portion of the
 912 | Florida Hurricane Catastrophe Fund including replacement
 913 | reinsurance for the TICL reductions made pursuant to s.
 914 | 215.555(17)(e); the actual cost paid due to the application of
 915 | the TICL premium factor pursuant to s. 215.555(17)(f); and the
 916 | actual cost paid due to the application of the cash build-up
 917 | factor pursuant to s. 215.555(5)(b) if the insurer:

918 | a. Elects to purchase financing products such as a
 919 | liquidity instrument or line of credit, in which case the cost
 920 | included in ~~the~~ filing for the liquidity instrument or line of
 921 | credit may not result in a premium increase exceeding 3 percent
 922 | for any individual policyholder. All costs contained in the
 923 | filing may not result in an overall premium increase of more
 924 | than 10 percent for any individual policyholder.

925 b. An insurer that makes a separate filing relating to
 926 reinsurance or financing products must include ~~Includes in the~~
 927 ~~filing~~ a copy of all of its reinsurance, liquidity instrument,
 928 or line of credit contracts; proof of the billing or payment for
 929 the contracts; and the calculation upon which the proposed rate
 930 change is based demonstrating ~~demonstrates~~ that the costs meet
 931 the criteria of this section and ~~are not loaded for expenses or~~
 932 ~~profit for the insurer making the filing.~~

933 ~~e. Includes no other changes to its rates in the filing.~~

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

936 ~~e. Does not file for a rate increase under any other~~
 937 ~~paragraph within 6 months after making a filing under this~~
 938 ~~paragraph.~~

939 ~~c.f.~~ An insurer that purchases reinsurance or financing
 940 products from an affiliated company may make a separate filing
 941 ~~in compliance with this paragraph does so~~ only if the costs for
 942 such reinsurance or financing products are charged at or below
 943 charges made for comparable coverage by nonaffiliated reinsurers
 944 or financial entities making such coverage or financing products
 945 available in this state.

946 2. An insurer may ~~only~~ make only one filing per ~~in any~~ 12-
 947 month period under this paragraph.

948 3. An insurer that elects to implement a rate change under
 949 this paragraph must file its rate filing with the office at
 950 least 45 days before the effective date of the rate change.
 951 After an insurer submits a complete filing that meets all of the
 952 requirements of this paragraph, the office has 45 days after the

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953 | date of the filing to review the rate filing and determine if
 954 | the rate is excessive, inadequate, or unfairly discriminatory.

955 |

956 | The provisions of this subsection do ~~shall~~ not apply to workers'
 957 | compensation, and employer's liability insurance, and ~~to~~ motor
 958 | vehicle insurance.

959 | (3) (a) For individual risks that are not rated in
 960 | accordance with the insurer's rates, rating schedules, rating
 961 | manuals, and underwriting rules filed with the office and that
 962 | ~~which~~ have been submitted to the insurer for individual rating,
 963 | the insurer must maintain documentation on each risk subject to
 964 | individual risk rating. The documentation must identify the
 965 | named insured and specify the characteristics and classification
 966 | of the risk supporting the reason for the risk being
 967 | individually risk rated, including any modifications to existing
 968 | approved forms to be used on the risk. The insurer must maintain
 969 | these records for ~~a period of~~ at least 5 years after the
 970 | effective date of the policy.

971 | (b) Individual risk rates and modifications to existing
 972 | approved forms are not subject to this part or part II, except
 973 | for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
 974 | 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
 975 | 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
 976 | 627.4265, 627.427, and 627.428, but are subject to all other
 977 | applicable provisions of this code and rules adopted thereunder.

978 | (c) This subsection does not apply to private passenger
 979 | motor vehicle insurance.

980 | (d)1. The following categories or kinds of insurance and

981 types of commercial lines risks are not subject to paragraph
 982 (2) (a) or paragraph (2) (f):

- 983 a. Excess or umbrella.
- 984 b. Surety and fidelity.
- 985 c. Boiler and machinery and leakage and fire extinguishing
 986 equipment.
- 987 d. Errors and omissions.
- 988 e. Directors and officers, employment practices, and
 989 management liability.
- 990 f. Intellectual property and patent infringement
 991 liability.
- 992 g. Advertising injury and Internet liability insurance.
- 993 h. Property risks rated under a highly protected risks
 994 rating plan.
- 995 i. Any other commercial lines categories or kinds of
 996 insurance or types of commercial lines risks that the office
 997 determines should not be subject to paragraph (2) (a) or
 998 paragraph (2) (f) because of the existence of a competitive
 999 market for such insurance, similarity of such insurance to other
 1000 categories or kinds of insurance not subject to paragraph (2) (a)
 1001 or paragraph (2) (f), or to improve the general operational
 1002 efficiency of the office.

1003 2. Insurers or rating organizations shall establish and
 1004 use rates, rating schedules, or rating manuals to allow the
 1005 insurer a reasonable rate of return on insurance and risks
 1006 described in subparagraph 1. which are written in this state.

1007 3. An insurer must notify the office of any changes to
 1008 rates for insurance and risks described in subparagraph 1.

1009 | within ~~no later than~~ 30 days after the effective date of the
 1010 | change. The notice must include the name of the insurer, the
 1011 | type or kind of insurance subject to rate change, total premium
 1012 | written during the immediately preceding year by the insurer for
 1013 | the type or kind of insurance subject to the rate change, and
 1014 | the average statewide percentage change in rates. Underwriting
 1015 | files, premiums, losses, and expense statistics with regard to
 1016 | such insurance and risks ~~described in subparagraph 1.~~ written by
 1017 | an insurer must ~~shall~~ be maintained by the insurer and subject
 1018 | to examination by the office. Upon examination, the office
 1019 | ~~shall~~, in accordance with generally accepted and reasonable
 1020 | actuarial techniques, shall consider the rate factors in
 1021 | paragraphs (2) (b), (c), and (d) and the standards in paragraph
 1022 | (2) (e) to determine if the rate is excessive, inadequate, or
 1023 | unfairly discriminatory.

1024 | 4. A rating organization must notify the office of any
 1025 | changes to loss cost for insurance and risks described in
 1026 | subparagraph 1. within ~~no later than~~ 30 days after the effective
 1027 | date of the change. The notice must include the name of the
 1028 | rating organization, the type or kind of insurance subject to a
 1029 | loss cost change, loss costs during the immediately preceding
 1030 | year for the type or kind of insurance subject to the loss cost
 1031 | change, and the average statewide percentage change in loss
 1032 | cost. Loss and exposure statistics with regard to risks
 1033 | applicable to loss costs for a rating organization not subject
 1034 | to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained
 1035 | by the rating organization and are subject to examination by the
 1036 | office. Upon examination, the office ~~shall~~, in accordance with

1037 generally accepted and reasonable actuarial techniques, shall
 1038 consider the rate factors in paragraphs (2) (b)-(d) and the
 1039 standards in paragraph (2) (e) to determine if the rate is
 1040 excessive, inadequate, or unfairly discriminatory.

1041 5. In reviewing a rate, the office may require the insurer
 1042 to provide, at the insurer's expense, all information necessary
 1043 to evaluate the condition of the company and the reasonableness
 1044 of the rate according to the applicable criteria described in
 1045 this section.

1046 (4) The establishment of any rate, rating classification,
 1047 rating plan or schedule, or variation thereof in violation of
 1048 part IX of chapter 626 is also in violation of this section. ~~In~~
 1049 ~~order to enhance the ability of consumers to compare premiums~~
 1050 ~~and to increase the accuracy and usefulness of rate comparison~~
 1051 ~~information provided by the office to the public, the office~~
 1052 ~~shall develop a proposed standard rating territory plan to be~~
 1053 ~~used by all authorized property and casualty insurers for~~
 1054 ~~residential property insurance. In adopting the proposed plan,~~
 1055 ~~the office may consider geographical characteristics relevant to~~
 1056 ~~risk, county lines, major roadways, existing rating territories~~
 1057 ~~used by a significant segment of the market, and other relevant~~
 1058 ~~factors. Such plan shall be submitted to the President of the~~
 1059 ~~Senate and the Speaker of the House of Representatives by~~
 1060 ~~January 15, 2006. The plan may not be implemented unless~~
 1061 ~~authorized by further act of the Legislature.~~

1062 (5) With respect to a rate filing involving coverage of
 1063 the type for which the insurer is required to pay a
 1064 reimbursement premium to the Florida Hurricane Catastrophe Fund,

1065 the insurer may fully recoup in its property insurance premiums
 1066 any reimbursement premiums paid to the ~~Florida Hurricane~~
 1067 ~~Catastrophe~~ fund, together with reasonable costs of other
 1068 reinsurance; however, ~~but~~ except as otherwise provided in this
 1069 section, the insurer may not recoup reinsurance costs that
 1070 duplicate coverage provided by the ~~Florida Hurricane Catastrophe~~
 1071 fund. An insurer may not recoup more than 1 year of
 1072 reimbursement premium at a time. Any under-recoupment from the
 1073 prior year may be added to the following year's reimbursement
 1074 premium, and any over-recoupment must ~~shall~~ be subtracted from
 1075 the following year's reimbursement premium.

1076 (6) (a) If an insurer requests an administrative hearing
 1077 pursuant to s. 120.57 related to a rate filing under this
 1078 section, the director of the Division of Administrative Hearings
 1079 shall expedite the hearing and assign an administrative law
 1080 judge who shall commence the hearing within 30 days after the
 1081 receipt of the formal request and ~~shall~~ enter a recommended
 1082 order within 30 days after the hearing or within 30 days after
 1083 receipt of the hearing transcript by the administrative law
 1084 judge, whichever is later. Each party shall have ~~be allowed~~ 10
 1085 days in which to submit written exceptions to the recommended
 1086 order. The office shall enter a final order within 30 days after
 1087 the entry of the recommended order. The provisions of this
 1088 paragraph may be waived upon stipulation of all parties.

1089 (b) Upon entry of a final order, the insurer may request a
 1090 expedited appellate review pursuant to the Florida Rules of
 1091 Appellate Procedure. It is the intent of the Legislature that
 1092 the First District Court of Appeal grant an insurer's request

1093 for an expedited appellate review.

1094 (7)(a) The provisions of this subsection apply only ~~with~~
 1095 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
 1096 control to the extent of any conflict with other provisions of
 1097 this section.

1098 (a)~~(b)~~ Any portion of a judgment entered or settlement
 1099 paid as a result of a statutory or common-law bad faith action
 1100 and any portion of a judgment entered which awards punitive
 1101 damages against an insurer may not be included in the insurer's
 1102 rate base, and ~~shall not be~~ used to justify a rate or rate
 1103 change. Any common-law bad faith action identified as such, any
 1104 portion of a settlement entered as a result of a statutory or
 1105 common-law action, or any portion of a settlement wherein an
 1106 insurer agrees to pay specific punitive damages may not be used
 1107 to justify a rate or rate change. The portion of the taxable
 1108 costs and attorney's fees which is identified as being related
 1109 to the bad faith and punitive damages ~~in these judgments and~~
 1110 ~~settlements~~ may not be included in the insurer's rate base and
 1111 used ~~may not be utilized~~ to justify a rate or rate change.

1112 (b)~~(c)~~ Upon reviewing a rate filing and determining
 1113 whether the rate is excessive, inadequate, or unfairly
 1114 discriminatory, the office shall consider, in accordance with
 1115 generally accepted and reasonable actuarial techniques, past and
 1116 present prospective loss experience, ~~either~~ using loss
 1117 experience solely for this state or giving greater credibility
 1118 to this state's loss data after applying actuarially sound
 1119 methods of assigning credibility to such data.

1120 (c)~~(d)~~ Rates shall be deemed excessive if, among other

1121 standards established by this section, the rate structure
 1122 provides for replenishment of reserves or surpluses from
 1123 premiums when the replenishment is attributable to investment
 1124 losses.

1125 (d)~~(e)~~ The insurer must apply a discount or surcharge
 1126 based on the health care provider's loss experience or ~~shall~~
 1127 establish an alternative method giving due consideration to the
 1128 provider's loss experience. The insurer must include in the
 1129 filing a copy of the surcharge or discount schedule or a
 1130 description of the alternative method used, and ~~must~~ provide a
 1131 copy ~~of such schedule or description~~, as approved by the office,
 1132 to policyholders at the time of renewal and to prospective
 1133 policyholders at the time of application for coverage.

1134 (e)~~(f)~~ Each medical malpractice insurer must make a rate
 1135 filing under this section, sworn to by at least two executive
 1136 officers of the insurer, at least once each calendar year.

1137 ~~(8)(a)1. No later than 60 days after the effective date of~~
 1138 ~~medical malpractice legislation enacted during the 2003 Special~~
 1139 ~~Session D of the Florida Legislature, the office shall calculate~~
 1140 ~~a presumed factor that reflects the impact that the changes~~
 1141 ~~contained in such legislation will have on rates for medical~~
 1142 ~~malpractice insurance and shall issue a notice informing all~~
 1143 ~~insurers writing medical malpractice coverage of such presumed~~
 1144 ~~factor. In determining the presumed factor, the office shall use~~
 1145 ~~generally accepted actuarial techniques and standards provided~~
 1146 ~~in this section in determining the expected impact on losses,~~
 1147 ~~expenses, and investment income of the insurer. To the extent~~
 1148 ~~that the operation of a provision of medical malpractice~~

1149 ~~legislation enacted during the 2003 Special Session D of the~~
 1150 ~~Florida Legislature is stayed pending a constitutional~~
 1151 ~~challenge, the impact of that provision shall not be included in~~
 1152 ~~the calculation of a presumed factor under this subparagraph.~~

1153 ~~2. No later than 60 days after the office issues its~~
 1154 ~~notice of the presumed rate change factor under subparagraph 1.,~~
 1155 ~~each insurer writing medical malpractice coverage in this state~~
 1156 ~~shall submit to the office a rate filing for medical malpractice~~
 1157 ~~insurance, which will take effect no later than January 1, 2004,~~
 1158 ~~and apply retroactively to policies issued or renewed on or~~
 1159 ~~after the effective date of medical malpractice legislation~~
 1160 ~~enacted during the 2003 Special Session D of the Florida~~
 1161 ~~Legislature. Except as authorized under paragraph (b), the~~
 1162 ~~filing shall reflect an overall rate reduction at least as great~~
 1163 ~~as the presumed factor determined under subparagraph 1. With~~
 1164 ~~respect to policies issued on or after the effective date of~~
 1165 ~~such legislation and prior to the effective date of the rate~~
 1166 ~~filing required by this subsection, the office shall order the~~
 1167 ~~insurer to make a refund of the amount that was charged in~~
 1168 ~~excess of the rate that is approved.~~

1169 ~~(b) Any insurer or rating organization that contends that~~
 1170 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
 1171 ~~or unfairly discriminatory shall separately state in its filing~~
 1172 ~~the rate it contends is appropriate and shall state with~~
 1173 ~~specificity the factors or data that it contends should be~~
 1174 ~~considered in order to produce such appropriate rate. The~~
 1175 ~~insurer or rating organization shall be permitted to use all of~~
 1176 ~~the generally accepted actuarial techniques provided in this~~

1177 ~~section in making any filing pursuant to this subsection. The~~
 1178 ~~office shall review each such exception and approve or~~
 1179 ~~disapprove it prior to use. It shall be the insurer's burden to~~
 1180 ~~actuarially justify any deviations from the rates required to be~~
 1181 ~~filed under paragraph (a). The insurer making a filing under~~
 1182 ~~this paragraph shall include in the filing the expected impact~~
 1183 ~~of medical malpractice legislation enacted during the 2003~~
 1184 ~~Special Session D of the Florida Legislature on losses,~~
 1185 ~~expenses, and rates.~~

1186 ~~(c) If any provision of medical malpractice legislation~~
 1187 ~~enacted during the 2003 Special Session D of the Florida~~
 1188 ~~Legislature is held invalid by a court of competent~~
 1189 ~~jurisdiction, the office shall permit an adjustment of all~~
 1190 ~~medical malpractice rates filed under this section to reflect~~
 1191 ~~the impact of such holding on such rates so as to ensure that~~
 1192 ~~the rates are not excessive, inadequate, or unfairly~~
 1193 ~~discriminatory.~~

1194 ~~(d) Rates approved on or before July 1, 2003, for medical~~
 1195 ~~malpractice insurance shall remain in effect until the effective~~
 1196 ~~date of a new rate filing approved under this subsection.~~

1197 ~~(e) The calculation and notice by the office of the~~
 1198 ~~presumed factor pursuant to paragraph (a) is not an order or~~
 1199 ~~rule that is subject to chapter 120. If the office enters into a~~
 1200 ~~contract with an independent consultant to assist the office in~~
 1201 ~~calculating the presumed factor, such contract shall not be~~
 1202 ~~subject to the competitive solicitation requirements of s.~~
 1203 ~~287.057.~~

1204 (8) ~~(9)~~ (a) The chief executive officer or chief financial

1205 officer of a property insurer and the chief actuary of a
 1206 property insurer must certify under oath and subject to the
 1207 penalty of perjury, on a form approved by the commission, the
 1208 following information, which must accompany a rate filing:

1209 1. The signing officer and actuary have reviewed the rate
 1210 filing;

1211 2. Based on the signing officer's and actuary's knowledge,
 1212 the rate filing does not contain any untrue statement of a
 1213 material fact or omit to state a material fact necessary ~~in~~
 1214 ~~order~~ to make the statements made, in light of the circumstances
 1215 under which such statements were made, not misleading;

1216 3. Based on the signing officer's and actuary's knowledge,
 1217 the information and other factors described in paragraph (2) (b),
 1218 including, but not limited to, investment income, fairly present
 1219 in all material respects the basis of the rate filing for the
 1220 periods presented in the filing; and

1221 4. Based on the signing officer's and actuary's knowledge,
 1222 the rate filing reflects all premium savings that are reasonably
 1223 expected to result from legislative enactments and are in
 1224 accordance with generally accepted and reasonable actuarial
 1225 techniques.

1226 (b) A signing officer or actuary who knowingly makes
 1227 ~~making~~ a false certification under this subsection commits a
 1228 violation of s. 626.9541(1) (e) and is subject to the penalties
 1229 under s. 626.9521.

1230 (c) Failure to provide such certification by the officer.
 1231 and actuary shall result in the rate filing being disapproved
 1232 without prejudice to be refiled.

1233 (d) A certification made pursuant to paragraph (a) is not
 1234 rendered false if, after making the subject rate filing, the
 1235 insurer provides the office with additional or supplementary
 1236 information pursuant to a formal or informal request from the
 1237 office.

1238 ~~(e)-(d)~~ The commission may adopt rules and forms ~~pursuant~~
 1239 ~~to ss. 120.536(1) and 120.54~~ to administer this subsection.

1240 ~~(9)-(10)~~ The burden is on the office to establish that
 1241 rates are excessive for personal lines residential coverage with
 1242 a dwelling replacement cost of \$1 million or more or for a
 1243 single condominium unit with a combined dwelling and contents
 1244 replacement cost of \$1 million or more. Upon request of the
 1245 office, the insurer shall provide ~~to the office~~ such loss and
 1246 expense information as the office reasonably needs to meet this
 1247 burden.

1248 ~~(10)-(11)~~ Any interest paid pursuant to s. 627.70131(5) may
 1249 not be included in the insurer's rate base and may not be used
 1250 to justify a rate or rate change.

1251 Section 12. Subsections (1) and (5) and paragraph (b) of
 1252 subsection (8) of section 627.0629, Florida Statutes, are
 1253 amended to read:

1254 627.0629 Residential property insurance; rate filings.-

1255 ~~(1)-(a)~~ It is the intent of the Legislature that insurers
 1256 ~~must~~ provide the most accurate pricing signals available in
 1257 order ~~savings~~ to encourage consumers to ~~who~~ install or implement
 1258 windstorm damage mitigation techniques, alterations, or
 1259 solutions to their properties to prevent windstorm losses. It is
 1260 also the intent of the Legislature that implementation of

1261 mitigation discounts not result in a loss of income to the
 1262 insurers granting the discounts, so that the aggregate of such
 1263 discounts not exceed the aggregate of the expected reduction in
 1264 loss attributable to the mitigation efforts for which discounts
 1265 are granted. A rate filing for residential property insurance
 1266 must include actuarially reasonable discounts, credits, debits,
 1267 or other rate differentials, or appropriate reductions in
 1268 deductibles, which provide the proper pricing for all
 1269 properties. The rate filing must take into account the presence
 1270 or absence of ~~on which~~ fixtures or construction techniques
 1271 demonstrated to reduce the amount of loss in a windstorm which
 1272 have been installed or implemented. The fixtures or construction
 1273 techniques must ~~shall~~ include, but not be limited to, fixtures
 1274 or construction techniques that ~~which~~ enhance roof strength,
 1275 roof covering performance, roof-to-wall strength, wall-to-floor-
 1276 to-foundation strength, opening protection, and window, door,
 1277 and skylight strength. Credits, debits, discounts, or other rate
 1278 differentials, or appropriate reductions or increases in
 1279 deductibles, which recognize the presence or absence of ~~for~~
 1280 fixtures and construction techniques that ~~which~~ meet the minimum
 1281 requirements of the Florida Building Code must be included in
 1282 the rate filing. If an insurer demonstrates that the aggregate
 1283 of its mitigation discounts results in a reduction to revenue
 1284 which exceeds the reduction of the aggregate loss that is
 1285 expected to result from the mitigation, the insurer may recover
 1286 the lost revenue through an increase in its base rates. ~~All~~
 1287 insurance companies must make a rate filing which includes the
 1288 credits, discounts, or other rate differentials or reductions in

1289 | ~~deductibles by February 28, 2003. By July 1, 2007, the office~~
 1290 | ~~shall reevaluate the discounts, credits, other rate~~
 1291 | ~~differentials, and appropriate reductions in deductibles for~~
 1292 | ~~fixtures and construction techniques that meet the minimum~~
 1293 | ~~requirements of the Florida Building Code, based upon actual~~
 1294 | ~~experience or any other loss relativity studies available to the~~
 1295 | ~~office.~~ The office shall determine the discounts, credits,
 1296 | debits, other rate differentials, and appropriate reductions or
 1297 | increases in deductibles that reflect the full actuarial value
 1298 | of such revaluation, which may be used by insurers in rate
 1299 | filings.

1300 | ~~(b) By February 1, 2011, the Office of Insurance~~
 1301 | ~~Regulation, in consultation with the Department of Financial~~
 1302 | ~~Services and the Department of Community Affairs, shall develop~~
 1303 | ~~and make publicly available a proposed method for insurers to~~
 1304 | ~~establish discounts, credits, or other rate differentials for~~
 1305 | ~~hurricane mitigation measures which directly correlate to the~~
 1306 | ~~numerical rating assigned to a structure pursuant to the uniform~~
 1307 | ~~home grading scale adopted by the Financial Services Commission~~
 1308 | ~~pursuant to s. 215.55865, including any proposed changes to the~~
 1309 | ~~uniform home grading scale. By October 1, 2011, the commission~~
 1310 | ~~shall adopt rules requiring insurers to make rate filings for~~
 1311 | ~~residential property insurance which revise insurers' discounts,~~
 1312 | ~~credits, or other rate differentials for hurricane mitigation~~
 1313 | ~~measures so that such rate differentials correlate directly to~~
 1314 | ~~the uniform home grading scale. The rules may include such~~
 1315 | ~~changes to the uniform home grading scale as the commission~~
 1316 | ~~determines are necessary, and may specify the minimum required~~

1317 ~~discounts, credits, or other rate differentials. Such rate~~
 1318 ~~differentials must be consistent with generally accepted~~
 1319 ~~actuarial principles and wind loss mitigation studies. The rules~~
 1320 ~~shall allow a period of at least 2 years after the effective~~
 1321 ~~date of the revised mitigation discounts, credits, or other rate~~
 1322 ~~differentials for a property owner to obtain an inspection or~~
 1323 ~~otherwise qualify for the revised credit, during which time the~~
 1324 ~~insurer shall continue to apply the mitigation credit that was~~
 1325 ~~applied immediately prior to the effective date of the revised~~
 1326 ~~credit. Discounts, credits, and other rate differentials~~
 1327 ~~established for rate filings under this paragraph shall~~
 1328 ~~supersede, after adoption, the discounts, credits, and other~~
 1329 ~~rate differentials included in rate filings under paragraph (a).~~

1330 (5) In order to provide an appropriate transition period,
 1331 an insurer may, ~~in its sole discretion,~~ implement an approved
 1332 rate filing for residential property insurance over a period of
 1333 years. Such ~~An~~ insurer electing to phase in its rate filing must
 1334 provide an informational notice to the office setting out its
 1335 schedule for implementation of the phased-in rate filing. The ~~An~~
 1336 insurer may include in its rate the actual cost of private
 1337 market reinsurance that corresponds to available coverage of the
 1338 Temporary Increase in Coverage Limits, TICL, from the Florida
 1339 Hurricane Catastrophe Fund. The insurer may also include the
 1340 cost of reinsurance to replace the TICL reduction implemented
 1341 pursuant to s. 215.555(17) (d) 9. However, this cost ~~for~~
 1342 ~~reinsurance may not include any expense or profit load or result~~
 1343 in a total annual base rate increase in excess of 10 percent.

1344 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL

1345 SOUNDNESS.—

1346 (b) To the extent ~~that~~ funds are provided for this purpose
 1347 in the General Appropriations Act, ~~the Legislature hereby~~
 1348 ~~authorizes~~ the establishment of a program to be administered by
 1349 the Citizens Property Insurance Corporation for homeowners
 1350 insured in the coastal ~~high-risk~~ account is authorized.

1351 Section 13. Paragraphs (b), (c), (d), (v), and (y) of
 1352 subsection (6) of section 627.351, Florida Statutes, are amended
 1353 to read:

1354 627.351 Insurance risk apportionment plans.—

1355 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1356 (b)1. All insurers authorized to write one or more subject
 1357 lines of business in this state are subject to assessment by the
 1358 corporation and, for the purposes of this subsection, are
 1359 referred to collectively as "assessable insurers." Insurers
 1360 writing one or more subject lines of business in this state
 1361 pursuant to part VIII of chapter 626 are not assessable
 1362 insurers, but insureds who procure one or more subject lines of
 1363 business in this state pursuant to part VIII of chapter 626 are
 1364 subject to assessment by the corporation and are referred to
 1365 collectively as "assessable insureds." An ~~authorized~~ insurer's
 1366 assessment liability begins ~~shall begin~~ on the first day of the
 1367 calendar year following the year in which the insurer was issued
 1368 a certificate of authority to transact insurance for subject
 1369 lines of business in this state and terminates ~~shall terminate~~ 1
 1370 year after the end of the first calendar year during which the
 1371 insurer no longer holds a certificate of authority to transact
 1372 insurance for subject lines of business in this state.

1373 2.a. All revenues, assets, liabilities, losses, and
 1374 expenses of the corporation shall be divided into three separate
 1375 accounts as follows:

1376 (I) A personal lines account for personal residential
 1377 policies issued by the corporation, or issued by the Residential
 1378 Property and Casualty Joint Underwriting Association and renewed
 1379 by the corporation, which provides ~~that provide~~ comprehensive,
 1380 multiperil coverage on risks that are not located in areas
 1381 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting
 1382 Association as those areas were defined on January 1, 2002, and
 1383 for ~~such~~ policies that do not provide coverage for the peril of
 1384 wind on risks that are located in such areas;

1385 (II) A commercial lines account for commercial residential
 1386 and commercial nonresidential policies issued by the
 1387 corporation, or issued by the Residential Property and Casualty
 1388 Joint Underwriting Association and renewed by the corporation,
 1389 which provides ~~that provide~~ coverage for basic property perils
 1390 on risks that are not located in areas eligible for coverage by
 1391 ~~in~~ the Florida Windstorm Underwriting Association as those areas
 1392 were defined on January 1, 2002, and for ~~such~~ policies that do
 1393 not provide coverage for the peril of wind on risks that are
 1394 located in such areas; and

1395 (III) A coastal ~~high-risk~~ account for personal residential
 1396 policies and commercial residential and commercial
 1397 nonresidential property policies issued by the corporation, or
 1398 transferred to the corporation, which provides ~~that provide~~
 1399 coverage for the peril of wind on risks that are located in
 1400 areas eligible for coverage by ~~in~~ the Florida Windstorm

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1401 Underwriting Association as those areas were defined on January
 1402 1, 2002. The corporation may offer policies that provide
 1403 multiperil coverage and the corporation shall continue to offer
 1404 policies that provide coverage only for the peril of wind for
 1405 risks located in areas eligible for coverage in the coastal
 1406 ~~high-risk~~ account. In issuing multiperil coverage, the
 1407 corporation may use its approved policy forms and rates for the
 1408 personal lines account. An applicant or insured who is eligible
 1409 to purchase a multiperil policy from the corporation may
 1410 purchase a multiperil policy from an authorized insurer without
 1411 prejudice to the applicant's or insured's eligibility to
 1412 prospectively purchase a policy that provides coverage only for
 1413 the peril of wind from the corporation. An applicant or insured
 1414 who is eligible for a corporation policy that provides coverage
 1415 only for the peril of wind may elect to purchase or retain such
 1416 policy and also purchase or retain coverage excluding wind from
 1417 an authorized insurer without prejudice to the applicant's or
 1418 insured's eligibility to prospectively purchase a policy that
 1419 provides multiperil coverage from the corporation. It is the
 1420 goal of the Legislature that there ~~would~~ be an overall average
 1421 savings of 10 percent or more for a policyholder who currently
 1422 has a wind-only policy with the corporation, and an ex-wind
 1423 policy with a voluntary insurer or the corporation, and who ~~then~~
 1424 obtains a multiperil policy from the corporation. It is the
 1425 intent of the Legislature that the offer of multiperil coverage
 1426 in the coastal ~~high-risk~~ account be made and implemented in a
 1427 manner that does not adversely affect the tax-exempt status of
 1428 the corporation or creditworthiness of or security for currently

1429 outstanding financing obligations or credit facilities of the
 1430 coastal ~~high-risk~~ account, the personal lines account, or the
 1431 commercial lines account. The coastal ~~high-risk~~ account must
 1432 also include quota share primary insurance under subparagraph
 1433 (c)2. The area eligible for coverage under the coastal ~~high-risk~~
 1434 account also includes the area within Port Canaveral, which is
 1435 bordered on the south by the City of Cape Canaveral, bordered on
 1436 the west by the Banana River, and bordered on the north by
 1437 Federal Government property.

1438 b. The three separate accounts must be maintained as long
 1439 as financing obligations entered into by the Florida Windstorm
 1440 Underwriting Association or Residential Property and Casualty
 1441 Joint Underwriting Association are outstanding, in accordance
 1442 with the terms of the corresponding financing documents. If ~~When~~
 1443 the financing obligations are no longer outstanding, ~~in~~
 1444 ~~accordance with the terms of the corresponding financing~~
 1445 ~~documents,~~ the corporation may use a single account for all
 1446 revenues, assets, liabilities, losses, and expenses of the
 1447 corporation. Consistent with ~~the requirement of~~ this
 1448 subparagraph and prudent investment policies that minimize the
 1449 cost of carrying debt, the board shall exercise its best efforts
 1450 to retire existing debt or ~~to~~ obtain the approval of necessary
 1451 parties to amend the terms of existing debt, so as to structure
 1452 the most efficient plan to consolidate the three separate
 1453 accounts into a single account.

1454 c. Creditors of the Residential Property and Casualty
 1455 Joint Underwriting Association and ~~of~~ the accounts specified in
 1456 sub-sub-subparagraphs a.(I) and (II) may have a claim against,

1457 and recourse to, those the accounts ~~referred to in sub-sub-~~
 1458 ~~subparagraphs a.(I) and (II)~~ and shall have no claim against, or
 1459 recourse to, the account referred to in sub-sub-subparagraph
 1460 a.(III). Creditors of the Florida Windstorm Underwriting
 1461 Association ~~shall~~ have a claim against, and recourse to, the
 1462 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~
 1463 ~~have~~ no claim against, or recourse to, the accounts referred to
 1464 in sub-sub-subparagraphs a.(I) and (II).

1465 d. Revenues, assets, liabilities, losses, and expenses not
 1466 attributable to particular accounts shall be prorated among the
 1467 accounts.

1468 e. The Legislature finds that the revenues of the
 1469 corporation are revenues that are necessary to meet the
 1470 requirements set forth in documents authorizing the issuance of
 1471 bonds under this subsection.

1472 f. No part of the income of the corporation may inure to
 1473 the benefit of any private person.

1474 3. With respect to a deficit in an account:

1475 a. After accounting for the ~~Citizens~~ policyholder
 1476 surcharge imposed under sub-subparagraph h. ~~it~~, if ~~when~~ the
 1477 remaining projected deficit incurred in a particular calendar
 1478 year:

1479 (I) Is not greater than 6 percent of the aggregate
 1480 statewide direct written premium for the subject lines of
 1481 business for the prior calendar year, the entire deficit shall
 1482 be recovered through regular assessments of assessable insurers
 1483 under paragraph (q) and assessable insureds.

1484 (II) ~~b.~~ ~~After accounting for the Citizens policyholder~~

1485 ~~surcharge imposed under sub-subparagraph i., when the remaining~~
 1486 ~~projected deficit incurred in a particular calendar year Exceeds~~
 1487 6 percent of the aggregate statewide direct written premium for
 1488 the subject lines of business for the prior calendar year, the
 1489 corporation shall levy regular assessments on assessable
 1490 insurers under paragraph (q) and on assessable insureds in an
 1491 amount equal to the greater of 6 percent of the deficit or 6
 1492 percent of the aggregate statewide direct written premium for
 1493 the subject lines of business for the prior calendar year. Any
 1494 remaining deficit shall be recovered through emergency
 1495 assessments under sub-subparagraph c. ~~d.~~

1496 b.e. Each assessable insurer's share of the amount being
 1497 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~
 1498 ~~shall~~ be in the proportion that the assessable insurer's direct
 1499 written premium for the subject lines of business for the year
 1500 preceding the assessment bears to the aggregate statewide direct
 1501 written premium for the subject lines of business for that year.
 1502 The applicable assessment percentage ~~applicable to each~~
 1503 ~~assessable insured~~ is the ratio of the amount being assessed
 1504 under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the
 1505 aggregate statewide direct written premium for the subject lines
 1506 of business for the prior year. Assessments levied by the
 1507 corporation on assessable insurers under sub-subparagraphs a.
 1508 and b. must ~~shall~~ be paid as required by the corporation's plan
 1509 of operation and paragraph (q) . ~~Assessments levied by the~~
 1510 ~~corporation on assessable insureds under sub-subparagraphs a.~~
 1511 ~~and b. shall be~~ collected by the surplus lines agent at the time
 1512 the surplus lines agent collects the surplus lines tax required

1513 by s. 626.932, and ~~shall be~~ paid to the Florida Surplus Lines
 1514 Service Office at the time the surplus lines agent pays the
 1515 surplus lines tax to that ~~the Florida Surplus Lines Service~~
 1516 office. Upon receipt of regular assessments from surplus lines
 1517 agents, the Florida Surplus Lines Service Office shall transfer
 1518 the assessments directly to the corporation as determined by the
 1519 corporation.

1520 c.d. Upon a determination by the board of governors that a
 1521 deficit in an account exceeds the amount that will be recovered
 1522 through regular assessments under sub-subparagraph a. ~~or sub-~~
 1523 ~~subparagraph b.~~, plus the amount that is expected to be
 1524 recovered through surcharges under sub-subparagraph h. i., ~~as to~~
 1525 ~~the remaining projected deficit~~ the board ~~shall levy~~, after
 1526 verification by the office, shall levy emergency assessments,
 1527 for as many years as necessary to cover the deficits, to be
 1528 collected by assessable insurers and the corporation and
 1529 collected from assessable insureds upon issuance or renewal of
 1530 policies for subject lines of business, excluding National Flood
 1531 Insurance policies. The amount ~~of the emergency assessment~~
 1532 collected in a particular year must ~~shall~~ be a uniform
 1533 percentage of that year's direct written premium for subject
 1534 lines of business and all accounts of the corporation, excluding
 1535 National Flood Insurance Program policy premiums, as annually
 1536 determined by the board and verified by the office. The office
 1537 shall verify the arithmetic calculations involved in the board's
 1538 determination within 30 days after receipt of the information on
 1539 which the determination was based. Notwithstanding any other
 1540 provision of law, the corporation and each assessable insurer

1541 that writes subject lines of business shall collect emergency
 1542 assessments from its policyholders without such obligation being
 1543 affected by any credit, limitation, exemption, or deferment.
 1544 Emergency assessments levied by the corporation on assessable
 1545 insureds shall be collected by the surplus lines agent at the
 1546 time the surplus lines agent collects the surplus lines tax
 1547 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus
 1548 Lines Service Office at the time the surplus lines agent pays
 1549 the surplus lines tax to that ~~the Florida Surplus Lines Service~~
 1550 office. The emergency assessments ~~so~~ collected shall be
 1551 transferred directly to the corporation on a periodic basis as
 1552 determined by the corporation and ~~shall be~~ held by the
 1553 corporation solely in the applicable account. The aggregate
 1554 amount of emergency assessments levied for an account under this
 1555 sub-subparagraph in any calendar year may, ~~at the discretion of~~
 1556 ~~the board of governors,~~ be less than but may not exceed the
 1557 greater of 10 percent of the amount needed to cover the deficit,
 1558 plus interest, fees, commissions, required reserves, and other
 1559 costs associated with financing ~~of~~ the original deficit, or 10
 1560 percent of the aggregate statewide direct written premium for
 1561 subject lines of business and ~~for~~ all accounts of the
 1562 corporation for the prior year, plus interest, fees,
 1563 commissions, required reserves, and other costs associated with
 1564 financing the deficit.

1565 d.e. The corporation may pledge the proceeds of
 1566 assessments, projected recoveries from the Florida Hurricane
 1567 Catastrophe Fund, other insurance and reinsurance recoverables,
 1568 policyholder surcharges and other surcharges, and other funds

1569 available to the corporation as the source of revenue for and to
 1570 secure bonds issued under paragraph (q), bonds or other
 1571 indebtedness issued under subparagraph (c)3., or lines of credit
 1572 or other financing mechanisms issued or created under this
 1573 subsection, or to retire any other debt incurred as a result of
 1574 deficits or events giving rise to deficits, or in any other way
 1575 that the board determines will efficiently recover such
 1576 deficits. The purpose of the lines of credit or other financing
 1577 mechanisms is to provide additional resources to assist the
 1578 corporation in covering claims and expenses attributable to a
 1579 catastrophe. As used in this subsection, the term "assessments"
 1580 includes regular assessments under sub-subparagraph a., ~~sub-~~
 1581 ~~subparagraph b.~~ or subparagraph (q)1. and emergency assessments
 1582 under sub-subparagraph d. Emergency assessments collected under
 1583 sub-subparagraph d. are not part of an insurer's rates, are not
 1584 premium, and are not subject to premium tax, fees, or
 1585 commissions; however, failure to pay the emergency assessment
 1586 shall be treated as failure to pay premium. The emergency
 1587 assessments under sub-subparagraph c. ~~d.~~ shall continue as long
 1588 as any bonds issued or other indebtedness incurred with respect
 1589 to a deficit for which the assessment was imposed remain
 1590 outstanding, unless adequate provision has been made for the
 1591 payment of such bonds or other indebtedness pursuant to the
 1592 documents governing such bonds or ~~other~~ indebtedness.

1593 e.f. As used in this subsection for purposes of any
 1594 deficit incurred on or after January 25, 2007, the term "subject
 1595 lines of business" means insurance written by assessable
 1596 insurers or procured by assessable insureds for all property and

1597 | casualty lines of business in this state, but not including
 1598 | workers' compensation or medical malpractice. As used in this
 1599 | ~~the~~ sub-subparagraph, the term "property and casualty lines of
 1600 | business" includes all lines of business identified on Form 2,
 1601 | Exhibit of Premiums and Losses, in the annual statement required
 1602 | of authorized insurers under ~~by~~ s. 624.424 and any rule adopted
 1603 | under this section, except for those lines identified as
 1604 | accident and health insurance and except for policies written
 1605 | under the National Flood Insurance Program or the Federal Crop
 1606 | Insurance Program. For purposes of this sub-subparagraph, the
 1607 | term "workers' compensation" includes both workers' compensation
 1608 | insurance and excess workers' compensation insurance.

1609 | f.g. The Florida Surplus Lines Service Office shall
 1610 | determine annually the aggregate statewide written premium in
 1611 | subject lines of business procured by assessable insureds and
 1612 | ~~shall~~ report that information to the corporation in a form and
 1613 | at a time the corporation specifies to ensure that the
 1614 | corporation can meet the requirements of this subsection and the
 1615 | corporation's financing obligations.

1616 | g.h. The Florida Surplus Lines Service Office shall verify
 1617 | the proper application by surplus lines agents of assessment
 1618 | percentages for regular assessments and emergency assessments
 1619 | levied under this subparagraph on assessable insureds and ~~shall~~
 1620 | assist the corporation in ensuring the accurate, timely
 1621 | collection and payment of assessments by surplus lines agents as
 1622 | required by the corporation.

1623 | h.i. If a deficit is incurred in any account in 2008 or
 1624 | thereafter, the board of governors shall levy a ~~Citizens~~

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1625 | policyholder surcharge against all policyholders of the
 1626 | corporation. ~~for a 12-month period, which~~
 1627 | (I) The surcharge shall be levied ~~collected at the time of~~
 1628 | ~~issuance or renewal of a policy,~~ as a uniform percentage of the
 1629 | premium for the policy of up to 15 percent of such premium,
 1630 | which funds shall be used to offset the deficit.
 1631 | (II) The surcharge is payable upon cancellation or
 1632 | termination of the policy, upon renewal of the policy, or upon
 1633 | issuance of a new policy by the corporation within the first 12
 1634 | months after the date of the levy or the period of time
 1635 | necessary to fully collect the surcharge amount.
 1636 | (III) The corporation may not levy any regular assessments
 1637 | under paragraph (q) pursuant to sub-subparagraph a. or sub-
 1638 | subparagraph b. with respect to a particular year's deficit
 1639 | until the corporation has first levied the full amount of the
 1640 | surcharge authorized by this sub-subparagraph.
 1641 | (IV) The surcharge is ~~Citizens policyholder surcharges~~
 1642 | ~~under this sub-subparagraph~~ are not considered premium and is
 1643 | ~~are~~ not subject to commissions, fees, or premium taxes. However,
 1644 | failure to pay the surcharge ~~such surcharges~~ shall be treated as
 1645 | failure to pay premium.
 1646 | i.j. If the amount of any assessments or surcharges
 1647 | collected from corporation policyholders, assessable insurers or
 1648 | their policyholders, or assessable insureds exceeds the amount
 1649 | of the deficits, such excess amounts shall be remitted to and
 1650 | retained by the corporation in a reserve to be used by the
 1651 | corporation, as determined by the board of governors and
 1652 | approved by the office, to pay claims or reduce any past,

1653 present, or future plan-year deficits or to reduce outstanding
 1654 debt.

1655 (c) The corporation's plan of operation ~~of the~~
 1656 ~~corporation:~~

1657 1. Must provide for adoption of residential property and
 1658 casualty insurance policy forms and commercial residential and
 1659 nonresidential property insurance forms, which ~~forms~~ must be
 1660 approved by the office before ~~prior to~~ use. The corporation
 1661 shall adopt the following policy forms:

1662 a. Standard personal lines policy forms that are
 1663 comprehensive multiperil policies providing full coverage of a
 1664 residential property equivalent to the coverage provided in the
 1665 private insurance market under an HO-3, HO-4, or HO-6 policy.

1666 b. Basic personal lines policy forms that are policies
 1667 similar to an HO-8 policy or a dwelling fire policy that provide
 1668 coverage meeting the requirements of the secondary mortgage
 1669 market, but which ~~coverage~~ is more limited than the coverage
 1670 under a standard policy.

1671 c. Commercial lines residential and nonresidential policy
 1672 forms that are generally similar to the basic perils of full
 1673 coverage obtainable for commercial residential structures and
 1674 commercial nonresidential structures in the admitted voluntary
 1675 market.

1676 d. Personal lines and commercial lines residential
 1677 property insurance forms that cover the peril of wind only. The
 1678 forms are applicable only to residential properties located in
 1679 areas eligible for coverage under the coastal ~~high-risk~~ account
 1680 referred to in sub-subparagraph (b)2.a.

1681 e. Commercial lines nonresidential property insurance
 1682 forms that cover the peril of wind only. The forms are
 1683 applicable only to nonresidential properties located in areas
 1684 eligible for coverage under the coastal ~~high-risk~~ account
 1685 referred to in sub-subparagraph (b)2.a.

1686 f. The corporation may adopt variations of the policy
 1687 forms listed in sub-subparagraphs a.-e. which ~~that~~ contain more
 1688 restrictive coverage.

1689 ~~2.a.~~ Must provide that the corporation adopt a program in
 1690 which the corporation and authorized insurers enter into quota
 1691 share primary insurance agreements for hurricane coverage, as
 1692 defined in s. 627.4025(2)(a), for eligible risks, and adopt
 1693 property insurance forms for eligible risks which cover the
 1694 peril of wind only.

1695 a. As used in this subsection, the term:

1696 (I) "Quota share primary insurance" means an arrangement
 1697 in which the primary hurricane coverage of an eligible risk is
 1698 provided in specified percentages by the corporation and an
 1699 authorized insurer. The corporation and authorized insurer are
 1700 each solely responsible for a specified percentage of hurricane
 1701 coverage of an eligible risk as set forth in a quota share
 1702 primary insurance agreement between the corporation and an
 1703 authorized insurer and the insurance contract. The
 1704 responsibility of the corporation or authorized insurer to pay
 1705 its specified percentage of hurricane losses of an eligible
 1706 risk, as set forth in the ~~quota share primary insurance~~
 1707 agreement, may not be altered by the inability of the other
 1708 party ~~to the agreement~~ to pay its specified percentage of

1709 ~~hurricane~~ losses. Eligible risks that are provided hurricane
 1710 coverage through a quota share primary insurance arrangement
 1711 must be provided policy forms that set forth the obligations of
 1712 the corporation and authorized insurer under the arrangement,
 1713 clearly specify the percentages of quota share primary insurance
 1714 provided by the corporation and authorized insurer, and
 1715 conspicuously and clearly state that ~~neither~~ the authorized
 1716 insurer and ~~nor~~ the corporation may not be held responsible
 1717 beyond their ~~its~~ specified percentage of coverage of hurricane
 1718 losses.

1719 (II) "Eligible risks" means personal lines residential and
 1720 commercial lines residential risks that meet the underwriting
 1721 criteria of the corporation and are located in areas that were
 1722 eligible for coverage by the Florida Windstorm Underwriting
 1723 Association on January 1, 2002.

1724 b. The corporation may enter into quota share primary
 1725 insurance agreements with authorized insurers at corporation
 1726 coverage levels of 90 percent and 50 percent.

1727 c. If the corporation determines that additional coverage
 1728 levels are necessary to maximize participation in quota share
 1729 primary insurance agreements by authorized insurers, the
 1730 corporation may establish additional coverage levels. However,
 1731 the corporation's quota share primary insurance coverage level
 1732 may not exceed 90 percent.

1733 d. Any quota share primary insurance agreement entered
 1734 into between an authorized insurer and the corporation must
 1735 provide for a uniform specified percentage of coverage of
 1736 hurricane losses, by county or territory as set forth by the

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1737 corporation board, for all eligible risks of the authorized
 1738 insurer covered under the ~~quota share primary insurance~~
 1739 agreement.

1740 e. Any quota share primary insurance agreement entered
 1741 into between an authorized insurer and the corporation is
 1742 subject to review and approval by the office. However, such
 1743 agreement shall be authorized only as to insurance contracts
 1744 entered into between an authorized insurer and an insured who is
 1745 already insured by the corporation for wind coverage.

1746 f. For all eligible risks covered under quota share
 1747 primary insurance agreements, the exposure and coverage levels
 1748 for both the corporation and authorized insurers shall be
 1749 reported by the corporation to the Florida Hurricane Catastrophe
 1750 Fund. For all policies of eligible risks covered under such
 1751 ~~quota share primary insurance~~ agreements, the corporation and
 1752 the authorized insurer must ~~shall~~ maintain complete and accurate
 1753 records for the purpose of exposure and loss reimbursement
 1754 audits as required by ~~Florida Hurricane Catastrophe~~ fund rules.
 1755 The corporation and the authorized insurer shall each maintain
 1756 duplicate copies of policy declaration pages and supporting
 1757 claims documents.

1758 g. The corporation board shall establish in its plan of
 1759 operation standards for quota share agreements which ensure that
 1760 there is no discriminatory application among insurers as to the
 1761 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~
 1762 agreements, incentive provisions if any, and consideration paid
 1763 for servicing policies or adjusting claims.

1764 h. The quota share primary insurance agreement between the

1765 corporation and an authorized insurer must set forth the
 1766 specific terms under which coverage is provided, including, but
 1767 not limited to, the sale and servicing of policies issued under
 1768 the agreement by the insurance agent of the authorized insurer
 1769 producing the business, the reporting of information concerning
 1770 eligible risks, the payment of premium to the corporation, and
 1771 arrangements for the adjustment and payment of hurricane claims
 1772 incurred on eligible risks by the claims adjuster and personnel
 1773 of the authorized insurer. Entering into a quota sharing
 1774 insurance agreement between the corporation and an authorized
 1775 insurer is ~~shall be~~ voluntary and at the discretion of the
 1776 authorized insurer.

1777 3. May provide that the corporation may employ or
 1778 otherwise contract with individuals or other entities to provide
 1779 administrative or professional services that may be appropriate
 1780 to effectuate the plan. The corporation may ~~shall have the power~~
 1781 ~~to~~ borrow funds, by issuing bonds or by incurring other
 1782 indebtedness, and shall have other powers reasonably necessary
 1783 to effectuate the requirements of this subsection, including,
 1784 without limitation, the power to issue bonds and incur other
 1785 indebtedness in order to refinance outstanding bonds or other
 1786 indebtedness. The corporation ~~may, but is not required to,~~ seek
 1787 judicial validation of its bonds or other indebtedness under
 1788 chapter 75. The corporation may issue bonds or incur other
 1789 indebtedness, or have bonds issued on its behalf by a unit of
 1790 local government pursuant to subparagraph (q)2.7 in the absence
 1791 of a hurricane or other weather-related event, upon a
 1792 determination by the corporation, subject to approval by the

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1793 office, that such action would enable it to efficiently meet the
 1794 financial obligations of the corporation and that such
 1795 financings are reasonably necessary to effectuate the
 1796 requirements of this subsection. The corporation may ~~is~~
 1797 ~~authorized to~~ take all actions needed to facilitate tax-free
 1798 status for ~~any~~ such bonds or indebtedness, including formation
 1799 of trusts or other affiliated entities. The corporation may
 1800 ~~shall have the authority to~~ pledge assessments, projected
 1801 recoveries from the Florida Hurricane Catastrophe Fund, other
 1802 reinsurance recoverables, market equalization and other
 1803 surcharges, and other funds available to the corporation as
 1804 security for bonds or other indebtedness. In recognition of s.
 1805 10, Art. I of the State Constitution, prohibiting the impairment
 1806 of obligations of contracts, it is the intent of the Legislature
 1807 that no action be taken whose purpose is to impair any bond
 1808 indenture or financing agreement or any revenue source committed
 1809 by contract to such bond or other indebtedness.

1810 4.a. Must require that the corporation operate subject to
 1811 the supervision and approval of a board of governors consisting
 1812 of eight individuals who are residents of this state, from
 1813 different geographical areas of this state.

1814 a. The Governor, the Chief Financial Officer, the
 1815 President of the Senate, and the Speaker of the House of
 1816 Representatives shall each appoint two members of the board. At
 1817 least one of the two members appointed by each appointing
 1818 officer must have demonstrated expertise in insurance, and is
 1819 deemed to be within the scope of the exemption provided in s.
 1820 112.313(7)(b). The Chief Financial Officer shall designate one

1821 of the appointees as chair. All board members serve at the
 1822 pleasure of the appointing officer. All members of the board ~~of~~
 1823 ~~governors~~ are subject to removal at will by the officers who
 1824 appointed them. All board members, including the chair, must be
 1825 appointed to serve for 3-year terms beginning annually on a date
 1826 designated by the plan. However, for the first term beginning on
 1827 or after July 1, 2009, each appointing officer shall appoint one
 1828 member of the board for a 2-year term and one member for a 3-
 1829 year term. A ~~Any~~ board vacancy shall be filled for the unexpired
 1830 term by the appointing officer. The Chief Financial Officer
 1831 shall appoint a technical advisory group to provide information
 1832 and advice to the board ~~of governors~~ in connection with the
 1833 board's duties under this subsection. The executive director and
 1834 senior managers of the corporation shall be engaged by the board
 1835 and serve at the pleasure of the board. Any executive director
 1836 appointed on or after July 1, 2006, is subject to confirmation
 1837 by the Senate. The executive director is responsible for
 1838 employing other staff as the corporation may require, subject to
 1839 review and concurrence by the board.

1840 b. The board shall create a Market Accountability Advisory
 1841 Committee to assist the corporation in developing awareness of
 1842 its rates and its customer and agent service levels in
 1843 relationship to the voluntary market insurers writing similar
 1844 coverage.

1845 (I) The members of the advisory committee ~~shall~~ consist of
 1846 the following 11 persons, one of whom must be elected chair by
 1847 the members of the committee: four representatives, one
 1848 appointed by the Florida Association of Insurance Agents, one by

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1849 | the Florida Association of Insurance and Financial Advisors, one
 1850 | by the Professional Insurance Agents of Florida, and one by the
 1851 | Latin American Association of Insurance Agencies; three
 1852 | representatives appointed by the insurers with the three highest
 1853 | voluntary market share of residential property insurance
 1854 | business in the state; one representative from the Office of
 1855 | Insurance Regulation; one consumer appointed by the board who is
 1856 | insured by the corporation at the time of appointment to the
 1857 | committee; one representative appointed by the Florida
 1858 | Association of Realtors; and one representative appointed by the
 1859 | Florida Bankers Association. All members shall be appointed to
 1860 | ~~must serve for~~ 3-year terms and may serve for consecutive terms.

1861 | (II) The committee shall report to the corporation at each
 1862 | board meeting on insurance market issues which may include rates
 1863 | and rate competition with the voluntary market; service,
 1864 | including policy issuance, claims processing, and general
 1865 | responsiveness to policyholders, applicants, and agents; and
 1866 | matters relating to depopulation.

1867 | 5. Must provide a procedure for determining the
 1868 | eligibility of a risk for coverage, as follows:

1869 | a. Subject to ~~the provisions of~~ s. 627.3517, with respect
 1870 | to personal lines residential risks, if the risk is offered
 1871 | coverage from an authorized insurer at the insurer's approved
 1872 | rate under ~~either~~ a standard policy including wind coverage or,
 1873 | if consistent with the insurer's underwriting rules as filed
 1874 | with the office, a basic policy including wind coverage, for a
 1875 | new application to the corporation for coverage, the risk is not
 1876 | eligible for any policy issued by the corporation unless the

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1877 premium for coverage from the authorized insurer is more than 15
 1878 percent greater than the premium for comparable coverage from
 1879 the corporation. If the risk is not able to obtain ~~any~~ such
 1880 offer, the risk is eligible for ~~either~~ a standard policy
 1881 including wind coverage or a basic policy including wind
 1882 coverage issued by the corporation; however, if the risk could
 1883 not be insured under a standard policy including wind coverage
 1884 regardless of market conditions, the risk is ~~shall be~~ eligible
 1885 for a basic policy including wind coverage unless rejected under
 1886 subparagraph 8. However, ~~with regard to~~ a policyholder of the
 1887 corporation or a policyholder removed from the corporation
 1888 through an assumption agreement until the end of the assumption
 1889 period, ~~the policyholder~~ remains eligible for coverage from the
 1890 corporation regardless of any offer of coverage from an
 1891 authorized insurer or surplus lines insurer. The corporation
 1892 shall determine the type of policy to be provided on the basis
 1893 of objective standards specified in the underwriting manual and
 1894 based on generally accepted underwriting practices.

1895 (I) If the risk accepts an offer of coverage through the
 1896 market assistance plan or ~~an offer of coverage~~ through a
 1897 mechanism established by the corporation before a policy is
 1898 issued to the risk by the corporation or during the first 30
 1899 days of coverage by the corporation, and the producing agent who
 1900 submitted the application to the plan or to the corporation is
 1901 not currently appointed by the insurer, the insurer shall:

1902 (A) Pay to the producing agent of record of the policy~~7~~
 1903 for the first year, an amount that is the greater of the
 1904 insurer's usual and customary commission for the type of policy

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1905 written or a fee equal to the usual and customary commission of
 1906 the corporation; or

1907 (B) Offer to allow the producing agent of record of the
 1908 policy to continue servicing the policy for at least ~~a period of~~
 1909 ~~not less than~~ 1 year and offer to pay the agent the greater of
 1910 the insurer's or the corporation's usual and customary
 1911 commission for the type of policy written.

1912
 1913 If the producing agent is unwilling or unable to accept
 1914 appointment, the new insurer shall pay the agent in accordance
 1915 with sub-sub-sub-subparagraph (A).

1916 (II) If ~~When~~ the corporation enters into a contractual
 1917 agreement for a take-out plan, the producing agent of record of
 1918 the corporation policy is entitled to retain any unearned
 1919 commission on the policy, and the insurer shall:

1920 (A) Pay to the producing agent of record ~~of the~~
 1921 ~~corporation policy~~, for the first year, an amount that is the
 1922 greater of the insurer's usual and customary commission for the
 1923 type of policy written or a fee equal to the usual and customary
 1924 commission of the corporation; or

1925 (B) Offer to allow the producing agent of record ~~of the~~
 1926 ~~corporation policy~~ to continue servicing the policy for at least
 1927 ~~a period of not less than~~ 1 year and offer to pay the agent the
 1928 greater of the insurer's or the corporation's usual and
 1929 customary commission for the type of policy written.

1930
 1931 If the producing agent is unwilling or unable to accept
 1932 appointment, the new insurer shall pay the agent in accordance

1933 with sub-sub-sub-subparagraph (A).

1934 b. With respect to commercial lines residential risks, for
 1935 a new application to the corporation for coverage, if the risk
 1936 is offered coverage under a policy including wind coverage from
 1937 an authorized insurer at its approved rate, the risk is not
 1938 eligible for a a ~~any~~ policy issued by the corporation unless the
 1939 premium for coverage from the authorized insurer is more than 15
 1940 percent greater than the premium for comparable coverage from
 1941 the corporation. If the risk is not able to obtain any such
 1942 offer, the risk is eligible for a policy including wind coverage
 1943 issued by the corporation. However, ~~with regard to a~~
 1944 policyholder of the corporation or a policyholder removed from
 1945 the corporation through an assumption agreement until the end of
 1946 the assumption period, ~~the policyholder~~ remains eligible for
 1947 coverage from the corporation regardless of an ~~any~~ offer of
 1948 coverage from an authorized insurer or surplus lines insurer.

1949 (I) If the risk accepts an offer of coverage through the
 1950 market assistance plan or ~~an offer of coverage~~ through a
 1951 mechanism established by the corporation before a policy is
 1952 issued to the risk by the corporation or during the first 30
 1953 days of coverage by the corporation, and the producing agent who
 1954 submitted the application to the plan or the corporation is not
 1955 currently appointed by the insurer, the insurer shall:

1956 (A) Pay to the producing agent of record of the policy,
 1957 for the first year, an amount that is the greater of the
 1958 insurer's usual and customary commission for the type of policy
 1959 written or a fee equal to the usual and customary commission of
 1960 the corporation; or

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1961 (B) Offer to allow the producing agent of record of the
 1962 policy to continue servicing the policy for at least ~~a period of~~
 1963 ~~not less than~~ 1 year and offer to pay the agent the greater of
 1964 the insurer's or the corporation's usual and customary
 1965 commission for the type of policy written.

1966
 1967 If the producing agent is unwilling or unable to accept
 1968 appointment, the new insurer shall pay the agent in accordance
 1969 with sub-sub-sub-subparagraph (A).

1970 (II) If ~~When~~ the corporation enters into a contractual
 1971 agreement for a take-out plan, the producing agent of record of
 1972 the corporation policy is entitled to retain any unearned
 1973 commission on the policy, and the insurer shall:

1974 (A) Pay to the producing agent of record ~~of the~~
 1975 ~~corporation~~ policy, for the first year, an amount that is the
 1976 greater of the insurer's usual and customary commission for the
 1977 type of policy written or a fee equal to the usual and customary
 1978 commission of the corporation; or

1979 (B) Offer to allow the producing agent of record ~~of the~~
 1980 ~~corporation policy~~ to continue servicing the policy for at least
 1981 ~~a period of not less than~~ 1 year and offer to pay the agent the
 1982 greater of the insurer's or the corporation's usual and
 1983 customary commission for the type of policy written.

1984
 1985 If the producing agent is unwilling or unable to accept
 1986 appointment, the new insurer shall pay the agent in accordance
 1987 with sub-sub-sub-subparagraph (A).

1988 c. For purposes of determining comparable coverage under

1989 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based
 1990 on those forms and coverages that are reasonably comparable. The
 1991 corporation may rely on a determination of comparable coverage
 1992 and premium made by the producing agent who submits the
 1993 application to the corporation, made in the agent's capacity as
 1994 the corporation's agent. A comparison may be made solely of the
 1995 premium with respect to the main building or structure only on
 1996 the following basis: the same coverage A or other building
 1997 limits; the same percentage hurricane deductible that applies on
 1998 an annual basis or that applies to each hurricane for commercial
 1999 residential property; the same percentage of ordinance and law
 2000 coverage, if the same limit is offered by both the corporation
 2001 and the authorized insurer; the same mitigation credits, to the
 2002 extent the same types of credits are offered both by the
 2003 corporation and the authorized insurer; the same method for loss
 2004 payment, such as replacement cost or actual cash value, if the
 2005 same method is offered both by the corporation and the
 2006 authorized insurer in accordance with underwriting rules; and
 2007 any other form or coverage that is reasonably comparable as
 2008 determined by the board. If an application is submitted to the
 2009 corporation for wind-only coverage in the coastal ~~high-risk~~
 2010 account, the premium for the corporation's wind-only policy plus
 2011 the premium for the ex-wind policy that is offered by an
 2012 authorized insurer to the applicant must ~~shall~~ be compared to
 2013 the premium for multiperil coverage offered by an authorized
 2014 insurer, subject to the standards for comparison specified in
 2015 this subparagraph. If the corporation or the applicant requests
 2016 from the authorized insurer a breakdown of the premium of the

2017 offer by types of coverage so that a comparison may be made by
 2018 the corporation or its agent and the authorized insurer refuses
 2019 or is unable to provide such information, the corporation may
 2020 treat the offer as not being an offer of coverage from an
 2021 authorized insurer at the insurer's approved rate.

2022 6. Must include rules for classifications of risks and
 2023 rates ~~therefor~~.

2024 7. Must provide that if premium and investment income for
 2025 an account attributable to a particular calendar year are in
 2026 excess of projected losses and expenses for the account
 2027 attributable to that year, such excess shall be held in surplus
 2028 in the account. Such surplus must ~~shall~~ be available to defray
 2029 deficits in that account as to future years and ~~shall be~~ used
 2030 for that purpose before ~~prior to~~ assessing assessable insurers
 2031 and assessable insureds as to any calendar year.

2032 8. Must provide objective criteria and procedures to be
 2033 uniformly applied to ~~for~~ all applicants in determining whether
 2034 an individual risk is so hazardous as to be uninsurable. In
 2035 making this determination and in establishing the criteria and
 2036 procedures, the following must ~~shall~~ be considered:

2037 a. Whether the likelihood of a loss for the individual
 2038 risk is substantially higher than for other risks of the same
 2039 class; and

2040 b. Whether the uncertainty associated with the individual
 2041 risk is such that an appropriate premium cannot be determined.

2042

2043 The acceptance or rejection of a risk by the corporation shall
 2044 be construed as the private placement of insurance, and the

2045 provisions of chapter 120 do ~~shall~~ not apply.

2046 9. Must provide that the corporation ~~shall~~ make its best
 2047 efforts to procure catastrophe reinsurance at reasonable rates,
 2048 to cover its projected 100-year probable maximum loss as
 2049 determined by the board of governors.

2050 10. The policies issued by the corporation must provide
 2051 that, if the corporation or the market assistance plan obtains
 2052 an offer from an authorized insurer to cover the risk at its
 2053 approved rates, the risk is no longer eligible for renewal
 2054 through the corporation, except as otherwise provided in this
 2055 subsection.

2056 11. Corporation policies and applications must include a
 2057 notice that the corporation policy could, under this section, be
 2058 replaced with a policy issued by an authorized insurer which
 2059 ~~that~~ does not provide coverage identical to the coverage
 2060 provided by the corporation. The notice must ~~shall~~ also specify
 2061 that acceptance of corporation coverage creates a conclusive
 2062 presumption that the applicant or policyholder is aware of this
 2063 potential.

2064 12. May establish, subject to approval by the office,
 2065 different eligibility requirements and operational procedures
 2066 for any line or type of coverage for any specified county or
 2067 area if the board determines that such changes ~~to the~~
 2068 ~~eligibility requirements and operational procedures~~ are
 2069 justified due to the voluntary market being sufficiently stable
 2070 and competitive in such area or for such line or type of
 2071 coverage and that consumers who, in good faith, are unable to
 2072 obtain insurance through the voluntary market through ordinary

2073 methods ~~would~~ continue to have access to coverage from the
 2074 corporation. ~~If~~ When coverage is sought in connection with a
 2075 real property transfer, ~~the~~ such requirements and procedures may
 2076 ~~shall~~ not provide ~~for~~ an effective date of coverage later than
 2077 the date of the closing of the transfer as established by the
 2078 transferor, the transferee, and, if applicable, the lender.

2079 13. Must provide that, with respect to the coastal high-
 2080 ~~risk~~ account, any assessable insurer with a surplus as to
 2081 policyholders of \$25 million or less writing 25 percent or more
 2082 of its total countrywide property insurance premiums in this
 2083 state may petition the office, within the first 90 days of each
 2084 calendar year, to qualify as a limited apportionment company. A
 2085 regular assessment levied by the corporation on a limited
 2086 apportionment company for a deficit incurred by the corporation
 2087 for the coastal high-risk account ~~in 2006 or thereafter~~ may be
 2088 paid to the corporation on a monthly basis as the assessments
 2089 are collected by the limited apportionment company from its
 2090 insureds pursuant to s. 627.3512, but the regular assessment
 2091 must be paid in full within 12 months after being levied by the
 2092 corporation. A limited apportionment company shall collect from
 2093 its policyholders any emergency assessment imposed under sub-
 2094 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the
 2095 office determines that any regular assessment will result in an
 2096 impairment of the surplus of a limited apportionment company,
 2097 the office may direct that all or part of such assessment be
 2098 deferred as provided in subparagraph (q)4. However, ~~there shall~~
 2099 ~~be no limitation or deferment of~~ an emergency assessment to be
 2100 collected from policyholders under sub-subparagraph (b)3.d. may

2101 | not be limited or deferred.

2102 | 14. Must provide that the corporation appoint as its
 2103 | licensed agents only those agents who also hold an appointment
 2104 | as defined in s. 626.015(3) with an insurer who at the time of
 2105 | the agent's initial appointment by the corporation is authorized
 2106 | to write and is actually writing personal lines residential
 2107 | property coverage, commercial residential property coverage, or
 2108 | commercial nonresidential property coverage within the state.

2109 | 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan
 2110 | option to its policyholders which, ~~allows~~ at a minimum, allows
 2111 | for quarterly and semiannual payment of premiums. A monthly
 2112 | payment plan may, but is not required to, be offered.

2113 | 16. Must limit coverage on mobile homes or manufactured
 2114 | homes built before ~~prior to~~ 1994 to actual cash value of the
 2115 | dwelling rather than replacement costs of the dwelling.

2116 | 17. May provide such limits of coverage as the board
 2117 | determines, consistent with the requirements of this subsection.

2118 | 18. May require commercial property to meet specified
 2119 | hurricane mitigation construction features as a condition of
 2120 | eligibility for coverage.

2121 | (d)1. All prospective employees for senior management
 2122 | positions, as defined by the plan of operation, are subject to
 2123 | background checks as a prerequisite for employment. The office
 2124 | shall conduct the background checks ~~on such prospective~~
 2125 | ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2126 | 2. On or before July 1 of each year, employees of the
 2127 | corporation must ~~are required to~~ sign and submit a statement
 2128 | attesting that they do not have a conflict of interest, as

2129 defined in part III of chapter 112. As a condition of
 2130 employment, all prospective employees must ~~are required to~~ sign
 2131 and submit to the corporation a conflict-of-interest statement.

2132 3. Senior managers and members of the board of governors
 2133 are subject to ~~the provisions of~~ part III of chapter 112,
 2134 including, but not limited to, the code of ethics and public
 2135 disclosure and reporting of financial interests, pursuant to s.
 2136 112.3145. Notwithstanding s. 112.3143(2), a board member may not
 2137 vote on any measure that would inure to his or her special
 2138 private gain or loss; that he or she knows would inure to the
 2139 special private gain or loss of any principal by whom he or she
 2140 is retained or to the parent organization or subsidiary of a
 2141 corporate principal by which he or she is retained, other than
 2142 an agency as defined in s. 112.312; or that he or she knows
 2143 would inure to the special private gain or loss of a relative or
 2144 business associate of the public officer. Before the vote is
 2145 taken, such member shall publicly state to the assembly the
 2146 nature of his or her interest in the matter from which he or she
 2147 is abstaining from voting and, within 15 days after the vote
 2148 occurs, disclose the nature of his or her interest as a public
 2149 record in a memorandum filed with the person responsible for
 2150 recording the minutes of the meeting, who shall incorporate the
 2151 memorandum in the minutes. Senior managers and board members are
 2152 also required to file such disclosures with the Commission on
 2153 Ethics and the Office of Insurance Regulation. The executive
 2154 director of the corporation or his or her designee shall notify
 2155 each existing and newly appointed ~~and existing appointed~~ member
 2156 of the board of governors and senior managers of their duty to

2157 | comply with the reporting requirements of part III of chapter
 2158 | 112. At least quarterly, the executive director or his or her
 2159 | designee shall submit to the Commission on Ethics a list of
 2160 | names of the senior managers and members of the board of
 2161 | governors who are subject to the public disclosure requirements
 2162 | under s. 112.3145.

2163 | 4. Notwithstanding s. 112.3148 or s. 112.3149, or any
 2164 | other provision of law, an employee or board member may not
 2165 | knowingly accept, directly or indirectly, any gift or
 2166 | expenditure from a person or entity, or an employee or
 2167 | representative of such person or entity, which ~~that~~ has a
 2168 | contractual relationship with the corporation or who is under
 2169 | consideration for a contract. An employee or board member who
 2170 | fails to comply with subparagraph 3. or this subparagraph is
 2171 | subject to penalties provided under ss. 112.317 and 112.3173.

2172 | 5. Any senior manager of the corporation who is employed
 2173 | on or after January 1, 2007, regardless of the date of hire, who
 2174 | subsequently retires or terminates employment is prohibited from
 2175 | representing another person or entity before the corporation for
 2176 | 2 years after retirement or termination of employment from the
 2177 | corporation.

2178 | 6. Any senior manager of the corporation who is employed
 2179 | on or after January 1, 2007, regardless of the date of hire, who
 2180 | subsequently retires or terminates employment is prohibited from
 2181 | having any employment or contractual relationship for 2 years
 2182 | with an insurer that has entered into a take-out bonus agreement
 2183 | with the corporation.

2184 | (v)1. Effective July 1, 2002, policies of the Residential

2185 | Property and Casualty Joint Underwriting Association ~~shall~~
 2186 | become policies of the corporation. All obligations, rights,
 2187 | assets and liabilities of the ~~Residential Property and Casualty~~
 2188 | ~~Joint Underwriting~~ association, including bonds, note and debt
 2189 | obligations, and the financing documents pertaining to them
 2190 | become those of the corporation as of July 1, 2002. The
 2191 | corporation is not required to issue endorsements or
 2192 | certificates of assumption to insureds during the remaining term
 2193 | of in-force transferred policies.

2194 | 2. Effective July 1, 2002, policies of the Florida
 2195 | Windstorm Underwriting Association are transferred to the
 2196 | corporation and ~~shall~~ become policies of the corporation. All
 2197 | obligations, rights, assets, and liabilities of the ~~Florida~~
 2198 | ~~Windstorm Underwriting~~ association, including bonds, note and
 2199 | debt obligations, and the financing documents pertaining to them
 2200 | are transferred to and assumed by the corporation on July 1,
 2201 | 2002. The corporation is not required to issue endorsements or
 2202 | certificates of assumption to insureds during the remaining term
 2203 | of in-force transferred policies.

2204 | 3. The Florida Windstorm Underwriting Association and the
 2205 | Residential Property and Casualty Joint Underwriting Association
 2206 | shall take all actions necessary ~~as may be proper~~ to further
 2207 | evidence the transfers and ~~shall~~ provide the documents and
 2208 | instruments of further assurance as may reasonably be requested
 2209 | by the corporation for that purpose. The corporation shall
 2210 | execute assumptions and instruments as the trustees or other
 2211 | parties to the financing documents of the Florida Windstorm
 2212 | Underwriting Association or the Residential Property and

2213 Casualty Joint Underwriting Association may reasonably request
 2214 to further evidence the transfers and assumptions, which
 2215 transfers and assumptions, however, are effective on the date
 2216 provided under this paragraph whether or not, and regardless of
 2217 the date on which, the assumptions or instruments are executed
 2218 by the corporation. Subject to the relevant financing documents
 2219 pertaining to their outstanding bonds, notes, indebtedness, or
 2220 other financing obligations, the moneys, investments,
 2221 receivables, choses in action, and other intangibles of the
 2222 Florida Windstorm Underwriting Association shall be credited to
 2223 the coastal ~~high-risk~~ account of the corporation, and those of
 2224 the personal lines residential coverage account and the
 2225 commercial lines residential coverage account of the Residential
 2226 Property and Casualty Joint Underwriting Association shall be
 2227 credited to the personal lines account and the commercial lines
 2228 account, respectively, of the corporation.

2229 4. Effective July 1, 2002, a new applicant for property
 2230 insurance coverage who would otherwise have been eligible for
 2231 coverage in the Florida Windstorm Underwriting Association is
 2232 eligible for coverage from the corporation as provided in this
 2233 subsection.

2234 5. The transfer of all policies, obligations, rights,
 2235 assets, and liabilities from the Florida Windstorm Underwriting
 2236 Association to the corporation and the renaming of the
 2237 Residential Property and Casualty Joint Underwriting Association
 2238 as the corporation does not ~~shall in no way~~ affect the coverage
 2239 with respect to covered policies as defined in s. 215.555(2)(c)
 2240 provided to these entities by the Florida Hurricane Catastrophe

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2241 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~
 2242 fund to the Florida Windstorm Underwriting Association based on
 2243 its exposures as of June 30, 2002, and each June 30 thereafter
 2244 shall be redesignated as coverage for the coastal high-risk
 2245 account of the corporation. Notwithstanding any other provision
 2246 of law, the coverage provided by the ~~Florida Hurricane~~
 2247 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint
 2248 Underwriting Association based on its exposures as of June 30,
 2249 2002, and each June 30 thereafter shall be transferred to the
 2250 personal lines account and the commercial lines account of the
 2251 corporation. Notwithstanding any other provision of law, the
 2252 coastal high-risk account shall be treated, for all Florida
 2253 Hurricane Catastrophe Fund purposes, as if it were a separate
 2254 participating insurer with its own exposures, reimbursement
 2255 premium, and loss reimbursement. Likewise, the personal lines
 2256 and commercial lines accounts shall be viewed together, for all
 2257 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two
 2258 accounts were one and represent a single, separate participating
 2259 insurer with its own exposures, reimbursement premium, and loss
 2260 reimbursement. The coverage provided by the ~~Florida Hurricane~~
 2261 ~~Catastrophe~~ fund to the corporation shall constitute and operate
 2262 as a full transfer of coverage from the Florida Windstorm
 2263 Underwriting Association and Residential Property and Casualty
 2264 Joint Underwriting to the corporation.

2265 (y) It is the intent of the Legislature that the
 2266 amendments to this subsection enacted in 2002 should, over time,
 2267 reduce the probable maximum windstorm losses in the residual
 2268 markets and ~~should reduce~~ the potential assessments to be levied

2269 on property insurers and policyholders statewide. In furtherance
 2270 of this intent:

2271 1. The board shall, on or before February 1 of each year,
 2272 provide a report to the President of the Senate and the Speaker
 2273 of the House of Representatives showing the reduction or
 2274 increase in the 100-year probable maximum loss attributable to
 2275 wind-only coverages and the quota share program under this
 2276 subsection combined, as compared to the benchmark 100-year
 2277 probable maximum loss of the Florida Windstorm Underwriting
 2278 Association. For purposes of this paragraph, the benchmark 100-
 2279 year probable maximum loss of the Florida Windstorm Underwriting
 2280 Association is ~~shall be~~ the calculation dated February 2001 and
 2281 based on November 30, 2000, exposures. In order to ensure
 2282 comparability of data, the board shall use the same methods for
 2283 calculating its probable maximum loss as were used to calculate
 2284 the benchmark probable maximum loss.

2285 2. Beginning December 1, 2013 ~~2010~~, if the report under
 2286 subparagraph 1. for any year indicates that the 100-year
 2287 probable maximum loss attributable to wind-only coverages and
 2288 the quota share program combined does not reflect a reduction of
 2289 at least 25 percent from the benchmark, the board shall reduce
 2290 the boundaries of the high-risk area eligible for wind-only
 2291 coverages ~~under this subsection~~ in a manner calculated to reduce
 2292 the such probable maximum loss to an amount at least 25 percent
 2293 below the benchmark.

2294 3. Beginning February 1, 2015, if the report under
 2295 subparagraph 1. for any year indicates that the 100-year
 2296 probable maximum loss attributable to wind-only coverages and

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2297 | the quota share program combined does not reflect a reduction of
 2298 | at least 50 percent from the benchmark, the boundaries of the
 2299 | high-risk area eligible for wind-only coverages ~~under this~~
 2300 | ~~subsection~~ shall be reduced by the elimination of any area that
 2301 | is not seaward of a line 1,000 feet inland from the Intracoastal
 2302 | Waterway.

2303 | Section 14. Paragraph (a) of subsection (5) of section
 2304 | 627.3511, Florida Statutes, is amended to read:

2305 | 627.3511 Depopulation of Citizens Property Insurance
 2306 | Corporation.—

2307 | (5) APPLICABILITY.—

2308 | (a) The take-out bonus provided by subsection (2) and the
 2309 | exemption from assessment provided by paragraph (3)(a) apply
 2310 | only if the corporation policy is replaced by ~~either~~ a standard
 2311 | policy including wind coverage or, if consistent with the
 2312 | insurer's underwriting rules ~~as~~ filed with the office, a basic
 2313 | policy including wind coverage; however, for ~~with respect to~~
 2314 | risks located in areas where coverage through the coastal high-
 2315 | ~~risk~~ account of the corporation is available, the replacement
 2316 | policy need not provide wind coverage. The insurer must renew
 2317 | the replacement policy at approved rates on substantially
 2318 | similar terms for four additional 1-year terms, unless canceled
 2319 | or not renewed by the policyholder. If an insurer assumes the
 2320 | corporation's obligations for a policy, it must issue a
 2321 | replacement policy for a 1-year term upon expiration of the
 2322 | corporation policy and must renew the replacement policy at
 2323 | approved rates on substantially similar terms for four
 2324 | additional 1-year terms, unless canceled or not renewed by the

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2325 | policyholder. For each replacement policy canceled or nonrenewed
 2326 | by the insurer for any reason during the 5-year coverage period
 2327 | ~~required by this paragraph~~, the insurer must remove from the
 2328 | corporation one additional policy covering a risk similar to the
 2329 | risk covered by the canceled or nonrenewed policy. In addition
 2330 | ~~to these requirements~~, the corporation must place the bonus
 2331 | moneys in escrow for ~~a period of~~ 5 years; such moneys may be
 2332 | released from escrow only to pay claims. If the policy is
 2333 | canceled or nonrenewed before the end of the 5-year period, the
 2334 | amount of the take-out bonus must be prorated for the time
 2335 | period the policy was insured. A take-out bonus provided by
 2336 | subsection (2) or subsection (6) is ~~shall not be considered~~
 2337 | premium income for purposes of taxes and assessments under the
 2338 | Florida Insurance Code and ~~shall~~ remain the property of the
 2339 | corporation, subject to the prior security interest of the
 2340 | insurer under the escrow agreement until it is released from
 2341 | escrow; ~~and after it is released from escrow it is shall be~~
 2342 | considered an asset of the insurer and credited to the insurer's
 2343 | capital and surplus.

2344 | Section 15. Paragraph (b) of subsection (2) of section
 2345 | 627.4133, Florida Statutes, is amended to read:

2346 | 627.4133 Notice of cancellation, nonrenewal, or renewal
 2347 | premium.—

2348 | (2) With respect to any personal lines or commercial
 2349 | residential property insurance policy, including, but not
 2350 | limited to, any homeowner's, mobile home owner's, farmowner's,
 2351 | condominium association, condominium unit owner's, apartment
 2352 | building, or other policy covering a residential structure or

2353 | its contents:

2354 | (b) The insurer shall give the named insured written
 2355 | notice of nonrenewal, cancellation, or termination at least 90
 2356 | ~~100~~ days before ~~prior to~~ the effective date of the nonrenewal,
 2357 | cancellation, or termination. ~~However, the insurer shall give at~~
 2358 | ~~least 100 days' written notice, or written notice by June 1,~~
 2359 | ~~whichever is earlier, for any nonrenewal, cancellation, or~~
 2360 | ~~termination that would be effective between June 1 and November~~
 2361 | ~~30. The notice must include the reason or reasons for the~~
 2362 | ~~nonrenewal, cancellation, or termination, except that:~~

2363 | ~~1. The insurer shall give the named insured written notice~~
 2364 | ~~of nonrenewal, cancellation, or termination at least 180 days~~
 2365 | ~~prior to the effective date of the nonrenewal, cancellation, or~~
 2366 | ~~termination for a named insured whose residential structure has~~
 2367 | ~~been insured by that insurer or an affiliated insurer for at~~
 2368 | ~~least a 5-year period immediately prior to the date of the~~
 2369 | ~~written notice.~~

2370 | 1.2. ~~If~~ When cancellation is for nonpayment of premium, at
 2371 | least 10 days' written notice of cancellation accompanied by the
 2372 | reason therefor must ~~shall~~ be given. As used in this
 2373 | subparagraph, the term "nonpayment of premium" means failure of
 2374 | the named insured to discharge when due ~~any of~~ her or his
 2375 | obligations in connection with the payment of premiums on a
 2376 | policy or any installment of such premium, whether the premium
 2377 | is payable directly to the insurer or its agent or indirectly
 2378 | under any premium finance plan or extension of credit, or
 2379 | failure to maintain membership in an organization if such
 2380 | membership is a condition precedent to insurance coverage. The

2381 term ~~"Nonpayment of premium"~~ also means the failure of a
 2382 financial institution to honor an insurance applicant's check
 2383 after delivery to a licensed agent for payment of a premium,
 2384 even if the agent has previously delivered or transferred the
 2385 premium to the insurer. If a dishonored check represents the
 2386 initial premium payment, the contract and all contractual
 2387 obligations are ~~shall be~~ void ab initio unless the nonpayment is
 2388 cured within the earlier of 5 days after actual notice by
 2389 certified mail is received by the applicant or 15 days after
 2390 notice is sent to the applicant by certified mail or registered
 2391 mail, and if the contract is void, any premium received by the
 2392 insurer from a third party must ~~shall~~ be refunded to that party
 2393 in full.

2394 ~~2.3.~~ 2.3. ~~If~~ When such cancellation or termination occurs
 2395 during the first 90 days ~~during which~~ the insurance is in force
 2396 and the insurance is canceled or terminated for reasons other
 2397 than nonpayment of premium, at least 20 days' written notice of
 2398 cancellation or termination accompanied by the reason therefor
 2399 must ~~shall~~ be given unless ~~except where~~ there has been a
 2400 material misstatement or misrepresentation or failure to comply
 2401 with the underwriting requirements established by the insurer.

2402 ~~3.4.~~ 3.4. The requirement for providing written notice ~~of~~
 2403 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
 2404 between June 1 and November 30 does not apply to the following
 2405 situations, but the insurer remains subject to the requirement
 2406 to provide such notice at least 100 days before ~~prior to~~ the
 2407 effective date of nonrenewal:

2408 a. A policy that is nonrenewed due to a revision in the

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2409 coverage for sinkhole losses and catastrophic ground cover
 2410 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
 2411 ~~2007-1, Laws of Florida.~~

2412 b. A policy that is nonrenewed by Citizens Property
 2413 Insurance Corporation, pursuant to s. 627.351(6), for a policy
 2414 that has been assumed by an authorized insurer offering
 2415 replacement ~~or renewal~~ coverage to the policyholder is exempt
 2416 from the notice requirements of paragraph (a) and this
 2417 paragraph. In such cases, the corporation must give the named
 2418 insured written notice of nonrenewal at least 45 days before the
 2419 effective date of the nonrenewal.

2420
 2421 After the policy has been in effect for 90 days, the policy may
 2422 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
 2423 has been a material misstatement, a nonpayment of premium, a
 2424 failure to comply with underwriting requirements established by
 2425 the insurer within 90 days after ~~of~~ the date of effectuation of
 2426 coverage, or a substantial change in the risk covered by the
 2427 policy or if ~~when~~ the cancellation is for all insureds under
 2428 such policies for a given class of insureds. This paragraph does
 2429 not apply to individually rated risks having a policy term of
 2430 less than 90 days.

2431 4. Notwithstanding any other provision of law, an insurer
 2432 may cancel or nonrenew a property insurance policy after at
 2433 least 45 days' notice if the office finds that the early
 2434 cancellation of some or all of the insurer's policies is
 2435 necessary to protect the best interests of the public or
 2436 policyholders and the office approves the insurer's plan for

2437 early cancellation or nonrenewal of some or all of its policies.
 2438 The office may base such finding upon the financial condition of
 2439 the insurer, lack of adequate reinsurance coverage for hurricane
 2440 risk, or other relevant factors. The office may condition its
 2441 finding on the consent of the insurer to be placed under
 2442 administrative supervision pursuant to s. 624.81 or to the
 2443 appointment of a receiver under chapter 631.

2444 Section 16. Section 627.43141, Florida Statutes, is
 2445 created to read:

2446 627.43141 Notice of change in policy terms.-

2447 (1) As used in this section, the term:

2448 (a) "Change in policy terms" means the modification,
 2449 addition, or deletion of any term, coverage, duty, or condition
 2450 from the previous policy. The correction of typographical or
 2451 scrivener's errors or the application of mandated legislative
 2452 changes is not a change in policy terms.

2453 (b) "Policy" means a written contract of personal lines
 2454 property and casualty insurance or a written agreement for
 2455 insurance, or the certificate of such insurance, by whatever
 2456 name called, and includes all clauses, riders, endorsements, and
 2457 papers that are a part of such policy. The term does not include
 2458 a binder as defined in s. 627.420 unless the duration of the
 2459 binder period exceeds 60 days.

2460 (c) "Renewal" means the issuance and delivery by an
 2461 insurer of a policy superseding at the end of the policy period
 2462 a policy previously issued and delivered by the same insurer or
 2463 the issuance and delivery of a certificate or notice extending
 2464 the term of a policy beyond its policy period or term. Any

2465 policy that has a policy period or term of less than 6 months or
 2466 that does not have a fixed expiration date shall, for purposes
 2467 of this section, be considered as written for successive policy
 2468 periods or terms of 6 months.

2469 (2) A renewal policy may contain a change in policy terms.
 2470 If a renewal policy does contains such change, the insurer must
 2471 give the named insured written notice of the change, which must
 2472 be enclosed along with the written notice of renewal premium
 2473 required by ss. 627.4133 and 627.728. Such notice shall be
 2474 entitled "Notice of Change in Policy Terms."

2475 (3) Although not required, proof of mailing or registered
 2476 mailing through the United States Postal Service of the Notice
 2477 of Change in Policy Terms to the named insured at the address
 2478 shown in the policy is sufficient proof of notice.

2479 (4) Receipt of the premium payment for the renewal policy
 2480 by the insurer is deemed to be acceptance of the new policy
 2481 terms by the named insured.

2482 (5) If an insurer fails to provide the notice required in
 2483 subsection (2), the original policy terms remain in effect until
 2484 the next renewal and the proper service of the notice, or until
 2485 the effective date of replacement coverage obtained by the named
 2486 insured, whichever occurs first.

2487 (6) The intent of this section is to:

2488 (a) Allow an insurer to make a change in policy terms
 2489 without nonrenewing those policyholders that the insurer wishes
 2490 to continue insuring.

2491 (b) Alleviate concern and confusion to the policyholder
 2492 caused by the required policy nonrenewal for the limited issue

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2493 if an insurer intends to renew the insurance policy, but the new
 2494 policy contains a change in policy terms.

2495 (c) Encourage policyholders to discuss their coverages
 2496 with their insurance agents.

2497 Section 17. Section 627.7011, Florida Statutes, is amended
 2498 to read:

2499 627.7011 Homeowners' policies; offer of replacement cost
 2500 coverage and law and ordinance coverage.—

2501 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
 2502 insurance policy ~~on or after October 1, 2005, or prior to the~~
 2503 ~~first renewal of a homeowner's insurance policy on or after~~
 2504 ~~October 1, 2005,~~ the insurer must offer each of the following:

2505 (a) A policy or endorsement providing that any loss that
 2506 ~~which~~ is repaired or replaced will be adjusted on the basis of
 2507 replacement costs to the dwelling not exceeding policy limits ~~as~~
 2508 ~~to the dwelling,~~ rather than actual cash value, but not
 2509 including costs necessary to meet applicable laws and ordinances
 2510 regulating the construction, use, or repair of any property or
 2511 requiring the tearing down of any property, including the costs
 2512 of removing debris.

2513 (b) A policy or endorsement providing that, subject to
 2514 other policy provisions, any loss that ~~which~~ is repaired or
 2515 replaced at any location will be adjusted on the basis of
 2516 replacement costs to the dwelling not exceeding policy limits ~~as~~
 2517 ~~to the dwelling,~~ rather than actual cash value, and also
 2518 including costs necessary to meet applicable laws and ordinances
 2519 regulating the construction, use, or repair of any property or
 2520 requiring the tearing down of any property, including the costs

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2521 of removing debris. ~~However, such~~ additional costs necessary to
 2522 meet applicable laws and ordinances may be limited to ~~either~~ 25
 2523 percent or 50 percent of the dwelling limit, as selected by the
 2524 policyholder, and such coverage applies ~~shall apply~~ only to
 2525 repairs of the damaged portion of the structure unless the total
 2526 damage to the structure exceeds 50 percent of the replacement
 2527 cost of the structure.

2528

2529 An insurer is not required to make the offers required by this
 2530 subsection with respect to the issuance or renewal of a
 2531 homeowner's policy that contains the provisions specified in
 2532 paragraph (b) for law and ordinance coverage limited to 25
 2533 percent of the dwelling limit, except that the insurer must
 2534 offer the law and ordinance coverage limited to 50 percent of
 2535 the dwelling limit. This subsection does not prohibit the offer
 2536 of a guaranteed replacement cost policy.

2537 (2) Unless the insurer obtains the policyholder's written
 2538 refusal of the policies or endorsements specified in subsection
 2539 (1), any policy covering the dwelling is deemed to include the
 2540 law and ordinance coverage limited to 25 percent of the dwelling
 2541 limit. The rejection or selection of alternative coverage shall
 2542 be made on a form approved by the office. The form must ~~shall~~
 2543 fully advise the applicant of the nature of the coverage being
 2544 rejected. If this form is signed by a named insured, it is ~~will~~
 2545 ~~be~~ conclusively presumed that there was an informed, knowing
 2546 rejection of the coverage or election of the alternative
 2547 coverage on behalf of all insureds. Unless the policyholder
 2548 requests in writing the coverage specified in this section, it

2549 need not be provided in or supplemental to any other policy that
 2550 renews, insures, extends, changes, supersedes, or replaces an
 2551 existing policy if ~~when~~ the policyholder has rejected the
 2552 coverage specified in this section or has selected alternative
 2553 coverage. The insurer must provide the ~~such~~ policyholder with
 2554 notice of the availability of such coverage in a form approved
 2555 by the office at least once every 3 years. The failure to
 2556 provide such notice constitutes a violation of this code, but
 2557 does not affect the coverage provided under the policy.

2558 (3) (a) If ~~In the event of~~ a loss occurs for which a
 2559 dwelling ~~or personal property~~ is insured on the basis of
 2560 replacement costs, the insurer shall initially pay at least the
 2561 actual cash value of the insured loss, less any applicable
 2562 deductible. In order to receive payment from an insurer under
 2563 this paragraph, a policyholder must enter into a contract for
 2564 the performance of building and structural repairs. The insurer
 2565 shall pay any remaining amounts necessary to perform such
 2566 repairs as work is performed and expenses are incurred. Other
 2567 than incidental expenses to mitigate further damage, the insurer
 2568 or any contractor or subcontractor may not require the
 2569 policyholder to advance payment for such repairs or expenses.
 2570 The insurer may waive the requirement for a contract under this
 2571 paragraph. If a total loss for a dwelling occurs, the insurer
 2572 shall pay the replacement cost coverage without reservation or
 2573 holdback of any depreciation in value, ~~whether or not the~~
 2574 ~~insured replaces or repairs the dwelling or property.~~

2575 (b) If a loss occurs for which personal property is
 2576 insured on the basis of replacement costs, the insurer may limit

2577 an initial payment to the actual cash value of the personal
 2578 property to be replaced. An insurer may require that an insured
 2579 provide the receipts from the purchase of property financed by
 2580 the initial actual cash value payment mandated under this
 2581 paragraph, and the insurer shall use such receipts to make the
 2582 next payment requested by the insured for the replacement of
 2583 insured personal property. The insurer shall continue this
 2584 process until the insured remits all receipts up to the policy
 2585 limits for replacement costs. The insurer must provide clear
 2586 notice of this process in the insurance contract. The insurer
 2587 may not require the policyholder to advance payment for the
 2588 replaced property.

2589 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed~~
 2590 ~~on or after October 1, 2005,~~ must include in bold type no
 2591 smaller than 18 points the following statement:

2592
 2593 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
 2594 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
 2595 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
 2596 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
 2597 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
 2598 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."
 2599

2600 The intent of this subsection is to encourage policyholders to
 2601 purchase sufficient coverage to protect them in case events
 2602 excluded from the standard homeowners policy, such as law and
 2603 ordinance enforcement and flood, combine with covered events to
 2604 produce damage or loss to the insured property. The intent is

2605 also to encourage policyholders to discuss these issues with
 2606 their insurance agent.

2607 (5) ~~Nothing in This section does not: shall be construed~~
 2608 ~~to~~

2609 (a) Apply to policies not considered to be "homeowners'
 2610 policies," as that term is commonly understood in the insurance
 2611 industry. ~~This section specifically does not~~

2612 (b) Apply to mobile home policies. ~~Nothing in this section~~

2613 (c) Limit ~~shall be construed as limiting~~ the ability of an
 2614 ~~any~~ insurer to reject or nonrenew any insured or applicant on
 2615 the grounds that the structure does not meet underwriting
 2616 criteria applicable to replacement cost or law and ordinance
 2617 policies or for other lawful reasons.

2618 (d) ~~(6) This section does not~~ Prohibit an insurer from
 2619 limiting its liability under a policy or endorsement providing
 2620 that loss will be adjusted on the basis of replacement costs to
 2621 the lesser of:

2622 1. ~~(a)~~ The limit of liability shown on the policy
 2623 declarations page;

2624 2. ~~(b)~~ The reasonable and necessary cost to repair the
 2625 damaged, destroyed, or stolen covered property; or

2626 3. ~~(c)~~ The reasonable and necessary cost to replace the
 2627 damaged, destroyed, or stolen covered property.

2628 (e) ~~(7) This section does not~~ Prohibit an insurer from
 2629 exercising its right to repair damaged property in compliance
 2630 with its policy and s. 627.702(7).

2631 Section 18. Paragraph (a) of subsection (5) of section
 2632 627.70131, Florida Statutes, is amended to read:

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2633 627.70131 Insurer's duty to acknowledge communications
 2634 regarding claims; investigation.-

2635 (5) (a) Within 90 days after an insurer receives notice of
 2636 an initial, reopened, or supplemental a property insurance claim
 2637 from a policyholder, the insurer shall pay or deny such claim or
 2638 a portion of the claim unless the failure to pay ~~such claim or a~~
 2639 ~~portion of the claim~~ is caused by factors beyond the control of
 2640 the insurer which reasonably prevent such payment. Any payment
 2641 of an initial or supplemental a claim or portion of such a claim
 2642 ~~made paid~~ 90 days after the insurer receives notice of the
 2643 claim, or made ~~paid~~ more than 15 days after there are no longer
 2644 factors beyond the control of the insurer which reasonably
 2645 prevented such payment, whichever is later, bears ~~shall bear~~
 2646 interest at the rate set forth in s. 55.03. Interest begins to
 2647 accrue from the date the insurer receives notice of the claim.
 2648 The provisions of this subsection may not be waived, voided, or
 2649 nullified by the terms of the insurance policy. If there is a
 2650 right to prejudgment interest, the insured shall select whether
 2651 to receive prejudgment interest or interest under this
 2652 subsection. Interest is payable when the claim or portion of the
 2653 claim is paid. Failure to comply with this subsection
 2654 constitutes a violation of this code. However, failure to comply
 2655 with this subsection does ~~shall~~ not form the sole basis for a
 2656 private cause of action.

2657 Section 19. The Legislature finds and declares:

2658 (1) There is a compelling state interest in maintaining a
 2659 viable and orderly private-sector market for property insurance
 2660 in this state. The lack of a viable and orderly property market

2661 reduces the availability of property insurance coverage to state
 2662 residents, increases the cost of property insurance, and
 2663 increases the state's reliance on a residual property insurance
 2664 market and its potential for imposing assessments on
 2665 policyholders throughout the state.

2666 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
 2667 Florida Statutes, to adopt certain geological or technical
 2668 terms; to increase reliance on objective, scientific testing
 2669 requirements; and generally to reduce the number of sinkhole
 2670 claims and related disputes arising under prior law. The
 2671 Legislature determined that since the enactment of these
 2672 statutory revisions, both private-sector insurers and Citizens
 2673 Property Insurance Corporation have, nevertheless, continued to
 2674 experience high claims frequency and severity for sinkhole
 2675 insurance claims. In addition, many properties remain unrepaired
 2676 even after loss payments, which reduces the local property tax
 2677 base and adversely affects the real estate market. Therefore,
 2678 the Legislature finds that losses associated with sinkhole
 2679 claims adversely affect the public health, safety, and welfare
 2680 of this state and its citizens.

2681 (3) Pursuant to sections 19 through 24 of this act,
 2682 technical or scientific definitions adopted in the 2005
 2683 legislation are clarified to implement and advance the
 2684 Legislature's intended reduction of sinkhole claims and
 2685 disputes. The legal presumption intended by the Legislature is
 2686 clarified to reduce disputes and litigation associated with the
 2687 technical reviews associated with sinkhole claims. Certain other
 2688 revisions to ss. 627.706-627.7074, Florida Statutes, are enacted

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2689 to advance legislative intent to rely on scientific or technical
 2690 determinations relating to sinkholes and sinkhole claims, reduce
 2691 the number and cost of disputes relating to sinkhole claims, and
 2692 ensure that repairs are made commensurate with the scientific
 2693 and technical determinations and insurance claims payments.

2694 Section 20. Section 627.706, Florida Statutes, is
 2695 reordered and amended to read:

2696 627.706 Sinkhole insurance; catastrophic ground cover
 2697 collapse; definitions.-

2698 (1) Every insurer authorized to transact residential
 2699 property insurance, as described in s. 627.4025, in this state
 2700 must shall provide coverage for a catastrophic ground cover
 2701 collapse. However, the insurer may restrict such coverage to the
 2702 principal building, as defined in the applicable policy. The
 2703 insurer may and shall make available, for an appropriate
 2704 additional premium, coverage for sinkhole losses on any
 2705 structure, including the contents of personal property contained
 2706 therein, to the extent provided in the form to which the
 2707 coverage attaches. A policy for residential property insurance
 2708 may include a deductible amount applicable to sinkhole losses,
 2709 including any expenses incurred by an insurer investigating
 2710 whether sinkhole activity is present. The deductible may be
 2711 equal to 1 percent, 2 percent, 5 percent, or 10 percent of the
 2712 policy dwelling limits, with appropriate premium discounts
 2713 offered with each deductible amount.

2714 (2) As used in ss. 627.706-627.7074, and as used in
 2715 connection with any policy providing coverage for a catastrophic
 2716 ground cover collapse or for sinkhole losses, the term:

- 2717 (a) "Catastrophic ground cover collapse" means geological
 2718 activity that results in all the following:
 2719 1. The abrupt collapse of the ground cover;
 2720 2. A depression in the ground cover clearly visible to the
 2721 naked eye;
 2722 3. Structural damage to the covered building, including
 2723 the foundation; and
 2724 4. The insured structure being condemned and ordered to be
 2725 vacated by the governmental agency authorized by law to issue
 2726 such an order for that structure.

2727
 2728 Contents coverage applies if there is a loss resulting from a
 2729 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
 2730 merely of the settling or cracking of a foundation, structure,
 2731 or building does not constitute a loss resulting from a
 2732 catastrophic ground cover collapse.

2733 (b) "Neutral evaluation" means the alternative dispute
 2734 resolution provided in s. 627.7074.

2735 (c) "Neutral evaluator" means a professional engineer or a
 2736 professional geologist who has completed a course of study in
 2737 alternative dispute resolution designed or approved by the
 2738 department for use in the neutral evaluation process and who is
 2739 determined to be fair and impartial.

2740 (f)-(b) "Sinkhole" means a landform created by subsidence
 2741 of soil, sediment, or rock as underlying strata are dissolved by
 2742 groundwater. A sinkhole forms ~~may form~~ by collapse into
 2743 subterranean voids created by dissolution of limestone or
 2744 dolostone or by subsidence as these strata are dissolved.

2745 (h)~~(e)~~ "Sinkhole loss" means structural damage to the
 2746 covered building, including the foundation, caused by sinkhole
 2747 activity. Contents coverage and additional living expenses ~~shall~~
 2748 apply only if there is structural damage to the covered building
 2749 caused by sinkhole activity.

2750 (g)~~(d)~~ "Sinkhole activity" means settlement or systematic
 2751 weakening of the earth supporting ~~such~~ property only if the ~~when~~
 2752 ~~such~~ settlement or systematic weakening results from
 2753 contemporary movement or raveling of soils, sediments, or rock
 2754 materials into subterranean voids created by the effect of water
 2755 on a limestone or similar rock formation.

2756 (d)~~(e)~~ "Professional engineer" means a person, as defined
 2757 in s. 471.005, who has a bachelor's degree or higher in
 2758 engineering and has successfully completed at least five courses
 2759 in any combination of the following: geotechnical engineering,
 2760 structural engineering, soil mechanics, foundations, or geology
 2761 ~~with a specialty in the geotechnical engineering field.~~ A
 2762 professional engineer must also have ~~geotechnical~~ experience and
 2763 expertise in the identification of sinkhole activity as well as
 2764 other potential causes of structural damage ~~to the structure.~~

2765 (e)~~(f)~~ "Professional geologist" means a person, as defined
 2766 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in
 2767 geology or related earth science and ~~with expertise in the~~
 2768 ~~geology of Florida.~~ A professional geologist must have
 2769 ~~geological~~ experience and expertise in the identification of
 2770 sinkhole activity as well as other potential geologic causes of
 2771 structural damage ~~to the structure.~~

2772 (i) "Structural damage" means:

2773 | 1. A covered building that suffers foundation movement
 2774 | outside an acceptable variance under the applicable building
 2775 | code;

2776 | 2. Damage to a covered building, including the foundation,
 2777 | which prevents the primary structural members or primary
 2778 | structural systems from supporting the loads and forces they
 2779 | were designed to support; and

2780 | 3. As may be further defined by the applicable policy.

2781 | ~~(3) On or before June 1, 2007, Every insurer authorized to~~
 2782 | ~~transact property insurance in this state shall make a proper~~
 2783 | ~~filing with the office for the purpose of extending the~~
 2784 | ~~appropriate forms of property insurance to include coverage for~~
 2785 | ~~eatastrophic ground cover collapse or for sinkhole losses.~~
 2786 | ~~coverage for catastrophic ground cover collapse may not go into~~
 2787 | ~~effect until the effective date provided for in the filing~~
 2788 | ~~approved by the office.~~

2789 | (3)(4) Insurers offering policies that exclude coverage
 2790 | for sinkhole losses must shall inform policyholders in bold type
 2791 | of not less than 14 points as follows: "YOUR POLICY PROVIDES
 2792 | COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
 2793 | IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
 2794 | YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. ~~YOU~~
 2795 | ~~MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN~~
 2796 | ~~ADDITIONAL PREMIUM."~~

2797 | (4)(5) An insurer offering sinkhole coverage to
 2798 | policyholders before or after the adoption of s. 30, chapter
 2799 | 2007-1, Laws of Florida, may nonrenew the policies of
 2800 | policyholders maintaining sinkhole coverage ~~in Pasco County or~~

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2801 | ~~Hernando County,~~ at the option of the insurer, and provide an
 2802 | offer of coverage that ~~to such policyholders which~~ includes
 2803 | catastrophic ground cover collapse and excludes sinkhole
 2804 | coverage. Insurers acting in accordance with this subsection are
 2805 | subject to the following requirements:

2806 | (a) Policyholders must be notified that a nonrenewal is
 2807 | for purposes of removing sinkhole coverage, and that the
 2808 | policyholder is ~~still~~ being offered a policy that provides
 2809 | coverage for catastrophic ground cover collapse.

2810 | (b) Policyholders must be provided an actuarially
 2811 | reasonable premium credit or discount for the removal of
 2812 | sinkhole coverage and provision of only catastrophic ground
 2813 | cover collapse.

2814 | (c) Subject to the provisions of this subsection and the
 2815 | insurer's approved underwriting or insurability guidelines, the
 2816 | insurer may ~~shall~~ provide each policyholder with the opportunity
 2817 | to purchase an endorsement to his or her policy providing
 2818 | sinkhole coverage and may require an inspection of the property
 2819 | before issuance of a sinkhole coverage endorsement.

2820 | (d) Section 624.4305 does not apply to nonrenewal notices
 2821 | issued pursuant to this subsection.

2822 | (5) Any claim, including, but not limited to, initial,
 2823 | supplemental, and reopened claims under an insurance policy that
 2824 | provides sinkhole coverage is barred unless notice of the claim
 2825 | was given to the insurer in accordance with the terms of the
 2826 | policy within 2 years after the policyholder knew or reasonably
 2827 | should have known about the sinkhole loss.

2828 | Section 21. Section 627.7061, Florida Statutes, is amended

2829 to read:

2830 627.7061 Coverage inquiries.—Inquiries about coverage on a
 2831 property insurance contract are not claim activity, unless an
 2832 actual claim is filed by the policyholder which insured that
 2833 results in a company investigation of the claim.

2834 Section 22. Section 627.7065, Florida Statutes, is
 2835 repealed.

2836 Section 23. Section 627.707, Florida Statutes, is amended
 2837 to read:

2838 627.707 ~~Standards for~~ Investigation of sinkhole claims by
 2839 policyholders insurers; insurer payment; nonrenewals.—Upon
 2840 receipt of a claim for a sinkhole loss to a covered building, an
 2841 insurer must meet the following standards in investigating a
 2842 claim:

2843 (1) The insurer must inspect ~~make an inspection of~~ the
 2844 policyholder's insured's premises to determine if there is
 2845 structural has been physical damage that to the structure which
 2846 may be the result of sinkhole activity.

2847 (2) If the insurer confirms that structural damage exists
 2848 but is unable to identify a valid cause of such damage or
 2849 discovers that such damage is consistent with sinkhole loss
 2850 ~~Following the insurer's initial inspection,~~ the insurer shall
 2851 engage a professional engineer or a professional geologist to
 2852 conduct testing as provided in s. 627.7072 to determine the
 2853 cause of the loss within a reasonable professional probability
 2854 and issue a report as provided in s. 627.7073, only if sinkhole
 2855 loss is covered under the policy. Except as provided in
 2856 subsection (6), the fees and costs of the professional engineer

2857 | or professional geologist shall be paid by the insurer.†

2858 | ~~(a) The insurer is unable to identify a valid cause of the~~

2859 | ~~damage or discovers damage to the structure which is consistent~~

2860 | ~~with sinkhole loss; or~~

2861 | ~~(b) The policyholder demands testing in accordance with~~

2862 | ~~this section or s. 627.7072.~~

2863 | (3) Following the initial inspection of the policyholder's

2864 | ~~insured~~ premises, the insurer shall provide written notice to

2865 | the policyholder disclosing the following information:

2866 | (a) What the insurer has determined to be the cause of

2867 | damage, if the insurer has made such a determination.

2868 | (b) A statement of the circumstances under which the

2869 | insurer is required to engage a professional engineer or a

2870 | professional geologist to verify or eliminate sinkhole loss and

2871 | to engage a professional engineer to make recommendations

2872 | regarding land and building stabilization and foundation repair.

2873 | ~~(c) A statement regarding the right of the policyholder to~~

2874 | ~~request testing by a professional engineer or a professional~~

2875 | ~~geologist and the circumstances under which the policyholder may~~

2876 | ~~demand certain testing.~~

2877 | (4) If the insurer determines that there is no sinkhole

2878 | loss, the insurer may deny the claim. If coverage for sinkhole

2879 | loss is available and ~~If~~ the insurer denies the claim on such

2880 | basis, without performing testing under s. 627.7072, the

2881 | policyholder may demand testing by the insurer ~~under s.~~

2882 | ~~627.7072~~. The policyholder's demand for testing must be

2883 | communicated to the insurer in writing within 60 days after the

2884 | policyholder's receipt of the insurer's denial of the claim.

2885 (5) ~~(a)~~ ~~Subject to paragraph (b),~~ If a sinkhole loss is
 2886 verified, the insurer shall pay to stabilize the land and
 2887 building and repair the foundation in accordance with the
 2888 recommendations of the professional engineer retained pursuant
 2889 to subsection (2), as provided under s. 627.7073, and in
 2890 ~~consultation~~ with notice to the policyholder, subject to the
 2891 coverage and terms of the policy. The insurer shall pay for
 2892 other repairs to the structure and contents in accordance with
 2893 the terms of the policy.

2894 ~~(a)~~ ~~(b)~~ The insurer may limit its total claims payment to
 2895 the actual cash value of the sinkhole loss, which does not
 2896 include including underpinning or grouting or any other repair
 2897 technique performed below the existing foundation of the
 2898 building, until the policyholder enters into a contract for the
 2899 performance of building stabilization or foundation repairs in
 2900 the insurer's report issued pursuant to s. 627.7073.

2901 (b) In order to prevent additional damage to the building
 2902 or structure, the policyholder must enter into a contract for
 2903 the performance of building stabilization or foundation repairs
 2904 within 90 days after the insurance company confirms coverage for
 2905 the sinkhole loss and notifies the policyholder of such
 2906 confirmation. This time period is tolled if either party invokes
 2907 the neutral evaluation process.

2908 (c) After the policyholder enters into the contract for
 2909 the performance of building stabilization or foundation repairs,
 2910 the insurer shall pay the amounts necessary to begin and perform
 2911 such repairs as the work is performed and the expenses are
 2912 incurred. The insurer may not require the policyholder to

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2913 advance payment for such repairs. If repair covered by a
 2914 personal lines residential property insurance policy has begun
 2915 and the professional engineer selected or approved by the
 2916 insurer determines that the repair cannot be completed within
 2917 the policy limits, the insurer must ~~either~~ complete the
 2918 professional engineer's recommended repair or tender the policy
 2919 limits to the policyholder without a reduction for the repair
 2920 expenses incurred.

2921 (d) The stabilization and all other repairs to the
 2922 structure and contents must be completed within 12 months after
 2923 entering into the contract for repairs described in paragraph

2924 (b) unless:

2925 1. There is a mutual agreement between the insurer and the
 2926 policyholder;

2927 2. The claim is involved with the neutral evaluation
 2928 process;

2929 3. The claim is in litigation; or

2930 4. The claim is under appraisal.

2931 (e)-(e) Upon the insurer's obtaining the written approval
 2932 of ~~the policyholder and~~ any lienholder, the insurer may make
 2933 payment directly to the persons selected by the policyholder to
 2934 perform the land and building stabilization and foundation
 2935 repairs. The decision by the insurer to make payment to such
 2936 persons does not hold the insurer liable for the work performed.

2937 The policyholder may not accept a rebate from any person
 2938 performing the repairs specified in this section. If a
 2939 policyholder does receive a rebate, coverage is void and the
 2940 policyholder must refund the amount of the rebate to the

2941 | insurer. Any person making the repairs specified in this section
 2942 | who offers a rebate, or any policyholder who accepts a rebate
 2943 | for such repairs, commits insurance fraud, a felony of the third
 2944 | degree punishable as provided in s. 775.082, s. 775.083, or s.
 2945 | 775.084.

2946 | ~~(6) Except as provided in subsection (7), the fees and~~
 2947 | ~~costs of the professional engineer or the professional geologist~~
 2948 | ~~shall be paid by the insurer.~~

2949 | (6)(7) If the insurer obtains, pursuant to s. 627.7073,
 2950 | written certification that there is no sinkhole loss ~~or that the~~
 2951 | ~~cause of the damage was not sinkhole activity, and if the~~
 2952 | ~~policyholder has submitted the sinkhole claim without good faith~~
 2953 | ~~grounds for submitting such claim,~~ the policyholder shall
 2954 | reimburse the insurer for 50 percent of the actual costs of the
 2955 | analyses and services provided under ss. 627.7072 and 627.7073;
 2956 | however, a policyholder is not required to reimburse an insurer
 2957 | more than the deductible or \$2,500, whichever is greater, with
 2958 | respect to any claim. A policyholder is required to pay
 2959 | reimbursement under this subsection only if the policyholder
 2960 | requested the analysis and services provided under ss. 627.7072
 2961 | and 627.7073 and the insurer, before ~~prior to~~ ordering the
 2962 | analysis under s. 627.7072, informs the policyholder in writing
 2963 | of the policyholder's potential liability for reimbursement and
 2964 | gives the policyholder the opportunity to withdraw the claim.

2965 | (7)(8) ~~An~~ No insurer may not ~~shall~~ nonrenew any policy of
 2966 | property insurance on the basis of filing of claims for partial
 2967 | loss caused by sinkhole damage or clay shrinkage if as long as
 2968 | the total of such payments does not equal or exceed the ~~current~~

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2969 | policy limits of coverage for the policy in effect on the date
 2970 | of loss, for property damage to the covered building, as set
 2971 | forth on the declarations page, or if ~~and provided~~ the
 2972 | policyholder ~~insured~~ has repaired the structure in accordance
 2973 | with the engineering recommendations made pursuant to subsection
 2974 | (2) upon which any payment or policy proceeds were based. If the
 2975 | insurer pays such limits, it may nonrenew the policy.

2976 | ~~(8)-(9)~~ The insurer may engage a professional structural
 2977 | engineer to make recommendations as to the repair of the
 2978 | structure.

2979 | Section 24. Section 627.7073, Florida Statutes, is amended
 2980 | to read:

2981 | 627.7073 Sinkhole reports.—

2982 | (1) Upon completion of testing as provided in s. 627.7072,
 2983 | the professional engineer or professional geologist shall issue
 2984 | a report and certification to the insurer and the policyholder
 2985 | as provided in this section.

2986 | (a) Sinkhole loss is verified if, based upon tests
 2987 | performed in accordance with s. 627.7072, a professional
 2988 | engineer or a professional geologist issues a written report and
 2989 | certification stating:

2990 | 1. That structural damage to the covered building has been
 2991 | identified within a reasonable professional probability.

2992 | ~~2.1.~~ That the cause of the ~~actual physical and~~ structural
 2993 | damage is sinkhole activity within a reasonable professional
 2994 | probability.

2995 | ~~3.2.~~ That the analyses conducted were of sufficient scope
 2996 | to identify sinkhole activity as the cause of damage within a

2997 reasonable professional probability.

2998 ~~4.3.~~ A description of the tests performed.

2999 ~~5.4.~~ A recommendation by the professional engineer of
 3000 methods for stabilizing the land and building and for making
 3001 repairs to the foundation.

3002 (b) If there is no structural damage or if sinkhole
 3003 activity is eliminated as the cause of such damage to the
 3004 covered building structure, the professional engineer or
 3005 professional geologist shall issue a written report and
 3006 certification to the policyholder and the insurer stating:

3007 1. That there is no structural damage or the cause of such
 3008 ~~the~~ damage is not sinkhole activity within a reasonable
 3009 professional probability.

3010 2. That the analyses and tests conducted were of
 3011 sufficient scope to eliminate sinkhole activity as the cause of
 3012 the structural damage within a reasonable professional
 3013 probability.

3014 3. A statement of the cause of the structural damage
 3015 within a reasonable professional probability.

3016 4. A description of the tests performed.

3017 (c) The respective findings, opinions, and recommendations
 3018 of the professional engineer or professional geologist as to the
 3019 cause of distress to the property and the findings, opinions,
 3020 and recommendations of the insurer's professional engineer as to
 3021 land and building stabilization and foundation repair set forth
 3022 by s. 627.7072 shall be presumed correct, which presumption
 3023 shifts the burden of proof in accordance with s. 90.302(2). The
 3024 presumption of correctness is based upon public policy concerns

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3025 regarding the affordability of sinkhole coverage, consistency in
 3026 claims handling, and a reduction in the number of disputed
 3027 sinkhole claims.

3028 (2)~~(a)~~ Any insurer that has paid a claim for a sinkhole
 3029 loss shall file a copy of the report and certification, prepared
 3030 pursuant to subsection (1), including the legal description of
 3031 the real property and the name of the property owner, the
 3032 neutral evaluator's report, if any, that indicates that sinkhole
 3033 activity caused the damage claimed, a copy of the certification
 3034 indicating that stabilization has been completed, if applicable,
 3035 and the amount of the payment, with the county clerk of court,
 3036 who shall record the report and certification. The insurer shall
 3037 bear the cost of filing and recording one or more reports and
 3038 certifications ~~the report and certification~~. There shall be no
 3039 cause of action or liability against an insurer for compliance
 3040 with this section.

3041 (a) The recording of the report and certification does
 3042 not:

3043 1. Constitute a lien, encumbrance, or restriction on the
 3044 title to the real property or constitute a defect in the title
 3045 to the real property;

3046 2. Create any cause of action or liability against any
 3047 grantor of the real property for breach of any warranty of good
 3048 title or warranty against encumbrances; or

3049 3. Create any cause of action or liability against any
 3050 title insurer that insures the title to the real property.

3051 (b) As a precondition to accepting payment for a sinkhole
 3052 loss, the policyholder must file a copy of any report prepared

3053 on behalf or at the request of the policyholder regarding the
 3054 insured property. The policyholder shall bear the cost of filing
 3055 and recording such sinkhole report. The recording of the report
 3056 does not:

3057 1. Constitute a lien, encumbrance, or restriction on the
 3058 title to the real property or constitute a defect in the title
 3059 to the real property;

3060 2. Create any cause of action or liability against any
 3061 grantor of the real property for breach of any warranty of good
 3062 title or warranty against encumbrances; or

3063 3. Create any cause of action or liability against any
 3064 title insurer that insures the title to the real property.

3065 (c)(b) The seller of real property upon which a sinkhole
 3066 claim has been made by the seller and paid by the insurer must
 3067 shall disclose to the buyer of such property, before the
 3068 closing, that a claim has been paid, the amount of the payment,
 3069 and whether or not the full amount of the proceeds were used to
 3070 repair the sinkhole damage.

3071 Section 25. Section 627.7074, Florida Statutes, is amended
 3072 to read:

3073 627.7074 Alternative procedure for resolution of disputed
 3074 sinkhole insurance claims.—

3075 ~~(1) As used in this section, the term:~~

3076 ~~(a) "Neutral evaluation" means the alternative dispute~~
 3077 ~~resolution provided for in this section.~~

3078 ~~(b) "Neutral evaluator" means a professional engineer or a~~
 3079 ~~professional geologist who has completed a course of study in~~
 3080 ~~alternative dispute resolution designed or approved by the~~

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3081 | ~~department for use in the neutral evaluation process, who is~~
 3082 | ~~determined to be fair and impartial.~~

3083 | (1)-(2)(a) The department shall:

3084 | (a) Certify and maintain a list of persons who are neutral
 3085 | evaluators.

3086 | **~~The department shall~~** Prepare a consumer information
 3087 | pamphlet for distribution by insurers to policyholders which
 3088 | clearly describes the neutral evaluation process and includes
 3089 | information ~~and forms~~ necessary for the policyholder to request
 3090 | a neutral evaluation.

3091 | (2) Neutral evaluation is available to either party if a
 3092 | sinkhole report has been issued pursuant to s. 627.7073. At a
 3093 | minimum, neutral evaluation must determine:

3094 | (a) Causation;

3095 | (b) All methods of stabilization and repair both above and
 3096 | below ground;

3097 | (c) The costs for stabilization and all repairs; and

3098 | (d) Information necessary to carry out subsection (12).

3099 | (3) Following the receipt of the report provided under s.
 3100 | 627.7073 or the denial of a claim for a sinkhole loss, the
 3101 | insurer shall notify the policyholder of his or her right to
 3102 | participate in the neutral evaluation program under this
 3103 | section. Neutral evaluation supersedes the alternative dispute
 3104 | resolution process under s. 627.7015, but does not invalidate
 3105 | the appraisal clause of the insurance policy. The insurer shall
 3106 | provide to the policyholder the consumer information pamphlet
 3107 | prepared by the department pursuant to subsection (1)
 3108 | electronically or by United States mail ~~paragraph (2)(b).~~

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3109 (4) Neutral evaluation is nonbinding, but mandatory if
 3110 requested by either party. A request for neutral evaluation may
 3111 be filed with the department by the policyholder or the insurer
 3112 on a form approved by the department. The request for neutral
 3113 evaluation must state the reason for the request and must
 3114 include an explanation of all the issues in dispute at the time
 3115 of the request. Filing a request for neutral evaluation tolls
 3116 the applicable time requirements for filing suit for ~~a period of~~
 3117 60 days following the conclusion of the neutral evaluation
 3118 process or the time prescribed in s. 95.11, whichever is later.

3119 (5) Neutral evaluation shall be conducted as an informal
 3120 process in which formal rules of evidence and procedure need not
 3121 be observed. A party to neutral evaluation is not required to
 3122 attend neutral evaluation if a representative of the party
 3123 attends and has the authority to make a binding decision on
 3124 behalf of the party. All parties shall participate in the
 3125 evaluation in good faith. The neutral evaluator must be allowed
 3126 reasonable access to the interior and exterior of insured
 3127 structures to be evaluated or for which a claim has been made.
 3128 Any reports initiated by the policyholder, or an agent of the
 3129 policyholder, confirming a sinkhole loss or disputing another
 3130 sinkhole report regarding insured structures must be provided to
 3131 the neutral evaluator before the evaluator's physical inspection
 3132 of the insured property.

3133 (6) The insurer shall pay reasonable ~~the~~ costs associated
 3134 with the neutral evaluation. However, if a party chooses to hire
 3135 a court reporter or stenographer to contemporaneously record and
 3136 document the neutral evaluation, that party must bear such

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3137 | costs.

3138 | (7) Upon receipt of a request for neutral evaluation, the
 3139 | department shall provide the parties a list of certified neutral
 3140 | evaluators. ~~The parties shall mutually select a neutral~~
 3141 | ~~evaluator from the list and promptly inform the department. If~~
 3142 | ~~the parties cannot agree to a neutral evaluator within 10~~
 3143 | ~~business days,~~ The department shall allow the parties to submit
 3144 | requests to disqualify evaluators on the list for cause.

3145 | (a) The department shall disqualify neutral evaluators for
 3146 | cause based only on any of the following grounds:

3147 | 1. A familial relationship exists between the neutral
 3148 | evaluator and either party or a representative of either party
 3149 | within the third degree.

3150 | 2. The proposed neutral evaluator has, in a professional
 3151 | capacity, previously represented either party or a
 3152 | representative of either party, in the same or a substantially
 3153 | related matter.

3154 | 3. The proposed neutral evaluator has, in a professional
 3155 | capacity, represented another person in the same or a
 3156 | substantially related matter and that person's interests are
 3157 | materially adverse to the interests of the parties. The term
 3158 | "substantially related matter" means participation by the
 3159 | neutral evaluator on the same claim, property, or adjacent
 3160 | property.

3161 | 4. The proposed neutral evaluator has, within the
 3162 | preceding 5 years, worked as an employer or employee of any
 3163 | party to the case.

3164 | (b) The parties shall appoint a neutral evaluator from the

3165 | department list and promptly inform the department. If the
 3166 | parties cannot agree to a neutral evaluator within 14 days, the
 3167 | department shall appoint a neutral evaluator from the list of
 3168 | certified neutral evaluators. The department shall allow each
 3169 | party to disqualify two neutral evaluators without cause. Upon
 3170 | selection or appointment, the department shall promptly refer
 3171 | the request to the neutral evaluator.

3172 | (c) Within 14 ~~5~~ business days after the referral, the
 3173 | neutral evaluator shall notify the policyholder and the insurer
 3174 | of the date, time, and place of the neutral evaluation
 3175 | conference. The conference may be held by telephone, if feasible
 3176 | and desirable. The neutral evaluator shall make reasonable
 3177 | efforts to hold the ~~neutral evaluation~~ conference ~~shall be held~~
 3178 | within 90 ~~45~~ days after the receipt of the request by the
 3179 | department. Failure of the neutral evaluator to hold the
 3180 | conference within 90 days does not invalidate either party's
 3181 | right to neutral evaluation or to a neutral evaluation
 3182 | conference held outside this timeframe.

3183 | ~~(8)~~ ~~The department shall adopt rules of procedure for the~~
 3184 | ~~neutral evaluation process.~~

3185 | (8)~~(9)~~ For policyholders not represented by an attorney, a
 3186 | consumer affairs specialist of the department or an employee
 3187 | designated as the primary contact for consumers on issues
 3188 | relating to sinkholes under s. 20.121 shall be available for
 3189 | consultation to the extent that he or she may lawfully do so.

3190 | (9)~~(10)~~ Evidence of an offer to settle a claim during the
 3191 | neutral evaluation process, as well as any relevant conduct or
 3192 | statements made in negotiations concerning the offer to settle a

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3193 | claim, is inadmissible to prove liability or absence of
 3194 | liability for the claim or its value, except as provided in
 3195 | subsection (14) ~~(13)~~.

3196 | ~~(10)-(11)~~ Regardless of when noticed, any court proceeding
 3197 | related to the subject matter of the neutral evaluation shall be
 3198 | stayed pending completion of the neutral evaluation and for 5
 3199 | days after the filing of the neutral evaluator's report with the
 3200 | court.

3201 | (11) If, based upon his or her professional training and
 3202 | credentials, a neutral evaluator is qualified to determine only
 3203 | disputes relating to causation or method of repair, the
 3204 | department shall allow the neutral evaluator to enlist the
 3205 | assistance of another professional from the neutral evaluators
 3206 | list not previously stricken, who, based upon his or her
 3207 | professional training and credentials, is able to provide an
 3208 | opinion as to other disputed issues. A professional who would be
 3209 | disqualified for any reason listed in subsection (7) must be
 3210 | disqualified. The neutral evaluator may also use the services of
 3211 | professional engineers and professional geologists who are not
 3212 | certified as neutral evaluators, as well as licensed building
 3213 | contractors, in order to ensure that all items in dispute are
 3214 | addressed and the neutral evaluation can be completed. Any
 3215 | professional engineer, professional geologist, or licensed
 3216 | building contractor retained may be disqualified for any of the
 3217 | reasons listed in subsection (7). The neutral evaluator may
 3218 | request the entity that performed the investigation pursuant to
 3219 | s. 627.7072 perform such additional and reasonable testing as
 3220 | deemed necessary in the professional opinion of the neutral

3221 evaluator.

3222 (12) ~~At For matters that are not resolved by the parties~~

3223 ~~at~~ the conclusion of the neutral evaluation, the neutral

3224 evaluator shall prepare a report describing all matters that are

3225 the subject of the neutral evaluation, including whether,

3226 ~~stating that~~ in his or her opinion, the sinkhole loss has been

3227 verified or eliminated within a reasonable degree of

3228 professional probability and, if verified, whether the sinkhole

3229 activity caused structural damage to the covered building, and

3230 if so, the need for and estimated costs of stabilizing the land

3231 and any covered ~~structures or~~ buildings and other appropriate

3232 remediation or necessary building structural repairs due to the

3233 sinkhole loss. The evaluator's report shall be sent to all

3234 parties ~~in attendance at the neutral evaluation~~ and to the

3235 department, within 14 days after completing the neutral

3236 evaluation conference.

3237 (13) The recommendation of the neutral evaluator is not

3238 binding on any party, and the parties retain access to the

3239 court. The neutral evaluator's written recommendation, oral

3240 testimony, and full report shall be admitted ~~is admissible~~ in

3241 any ~~subsequent~~ action, litigation, or proceeding relating to the

3242 claim or to the cause of action giving rise to the claim.

3243 However, oral or written statements or nonverbal conduct

3244 intended to make an assertion made by a party or neutral

3245 evaluator during the course of neutral evaluation, other than

3246 those statements or conduct expressly required to be admitted by

3247 this subsection, are confidential and may not be disclosed to a

3248 person other than a party to neutral evaluation or a party's

3249 counsel.

3250 (14) If the neutral evaluator ~~first~~ verifies the existence
 3251 of a sinkhole that caused structural damage and, ~~second,~~
 3252 recommends the need for and estimates costs of stabilizing the
 3253 land and any covered ~~structures or~~ buildings and other
 3254 appropriate remediation or building structural repairs, which
 3255 ~~costs~~ exceed the amount that the insurer estimates as necessary
 3256 to stabilize and repair, and the insurer refuses to comply with
 3257 the neutral evaluator's findings and recommendations ~~has offered~~
 3258 ~~to pay the policyholder,~~ the insurer is liable to the
 3259 policyholder for up to \$2,500 in attorney's fees for the
 3260 attorney's participation in the neutral evaluation process. ~~For~~
 3261 ~~purposes of this subsection, the term "offer to pay" means a~~
 3262 ~~written offer signed by the insurer or its legal representative~~
 3263 ~~and delivered to the policyholder within 10 days after the~~
 3264 ~~insurer receives notice that a request for neutral evaluation~~
 3265 ~~has been made under this section.~~

3266 (15) If the insurer timely agrees in writing to comply and
 3267 timely complies with the recommendation of the neutral
 3268 evaluator, but the policyholder declines to resolve the matter
 3269 in accordance with the recommendation of the neutral evaluator
 3270 pursuant to this section:

3271 (a) The insurer is not liable for extracontractual damages
 3272 related to a claim for a sinkhole loss but only as related to
 3273 the issues determined by the neutral evaluation process. This
 3274 section does not affect or impair claims for extracontractual
 3275 damages unrelated to the issues determined by the neutral
 3276 evaluation process contained in this section; and

3277 (b) The actions of the insurer are not a confession of
 3278 judgment or admission of liability, and the insurer is not
 3279 liable for attorney's fees under s. 627.428 or other provisions
 3280 of the insurance code unless the policyholder obtains a judgment
 3281 that is more favorable than the recommendation of the neutral
 3282 evaluator.

3283 (16) If the insurer agrees to comply with the neutral
 3284 evaluator's report, payments shall be made in accordance with
 3285 the terms and conditions of the applicable insurance policy
 3286 pursuant to s. 627.707(5).

3287 (17) Neutral evaluators are deemed to be agents of the
 3288 department and have immunity from suit as provided in s. 44.107.

3289 (18) The department shall adopt rules of procedure for the
 3290 neutral evaluation process.

3291 Section 26. Subsection (1) of section 627.712, Florida
 3292 Statutes, is amended to read:

3293 627.712 Residential windstorm coverage required;
 3294 availability of exclusions for windstorm or contents.—

3295 (1) An insurer issuing a residential property insurance
 3296 policy must provide windstorm coverage. Except as provided in
 3297 paragraph (2)(c), this section does not apply ~~with respect~~ to
 3298 risks that are eligible for wind-only coverage from Citizens
 3299 Property Insurance Corporation under s. 627.351(6), and ~~with~~
 3300 ~~respect to~~ risks that are not eligible for coverage from
 3301 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.
 3302 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation
 3303 under s. 627.351(6)(a)3. or 5. is exempt from ~~the requirements~~
 3304 ~~of~~ this section only if the risk is located within the

3305 boundaries of the coastal ~~high-risk~~ account of the corporation.

3306 Section 27. If any provision of this act, or the
 3307 application thereof to any person or circumstance is held
 3308 invalid, such invalidity shall not affect other provisions or
 3309 applications of this act which can be given effect without the
 3310 invalid provision or application. It is the express intent of
 3311 the Legislature to enact multiple important, but independent,
 3312 reforms to Florida law relating to sinkhole insurance coverage
 3313 and related claims. The Legislature further intends that the
 3314 multiple reforms in the act could and should be enforced if one
 3315 or more provisions are held invalid. To this end, the provisions
 3316 of this act are declared to be severable.

3317 Section 28. Except as otherwise expressly provided in this
 3318 act and except for this section, which shall take effect June 1,
 3319 2011, this act shall take effect July 1, 2011.

29 nature of their interest as a public record; providing
 30 that the corporation operates as a residual market
 31 mechanism; revising provisions relating to corporation
 32 rates; clarifying that the corporation is immune from
 33 certain liabilities; deleting a requirement for an annual
 34 report to the Legislature on losses attributable to wind-
 35 only coverages; requiring owners of properties in Special
 36 Flood Hazard Areas to maintain a separate flood insurance
 37 policy after a certain date; providing exceptions;
 38 amending ss. 627.3511 and 627.712, F.S.; conforming cross-
 39 references; providing an effective date.

40

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

42

43 Section 1. Paragraphs (a), (b), (c), (d), (n), (o), (s),
 44 (w), (y), (aa), and (ee) of subsection (6) of section 627.351,
 45 Florida Statutes, are amended to read:

46 627.351 Insurance risk apportionment plans.—

47 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

48 (a)~~1. It is~~ The public purpose of this subsection is to
 49 ensure that there is ~~the existence of~~ an orderly market for
 50 property insurance for residents ~~Floridians~~ and ~~Florida~~
 51 businesses of this state.

52 1. The Legislature finds that actual and threatened
 53 catastrophic losses to property from hurricanes in this state
 54 have caused insurers to be unwilling or unable to provide
 55 property insurance coverage to the extent sought and needed. The
 56 Legislature declares that it is in the public interest and

57 serves a public purpose that property in this state be
 58 adequately insured in order to facilitate the remediation,
 59 reconstruction, and replacement of damaged or destroyed
 60 property. Such efforts are necessary in order to avoid or reduce
 61 negative effects to the public health, safety, and welfare; the
 62 economy of the state; and the revenues of state and local
 63 governments. It is necessary, therefore, to provide property
 64 insurance to applicants who are entitled to procure insurance
 65 through the voluntary market but who, in good faith, are unable
 66 to do so. The Legislature finds that private insurers are
 67 unwilling or unable to provide affordable property insurance
 68 coverage in this state to the extent sought and needed. The
 69 absence of affordable property insurance threatens the public
 70 health, safety, and welfare and likewise threatens the economic
 71 health of the state. The state therefore has a compelling public
 72 interest and a public purpose to assist in assuring that
 73 property in the state is insured and that it is insured at
 74 affordable rates so as to facilitate the remediation,
 75 reconstruction, and replacement of damaged or destroyed property
 76 in order to reduce or avoid the negative effects otherwise
 77 resulting to the public health, safety, and welfare, to the
 78 economy of the state, and to the revenues of the state and local
 79 governments which are needed to provide for the public welfare.
 80 It is necessary, therefore, to provide affordable property
 81 insurance to applicants who are in good faith entitled to
 82 procure insurance through the voluntary market but are unable to
 83 do so. The Legislature intends, therefore, by this subsection
 84 that affordable property insurance be provided and that it

85 continue to be provided, as long as necessary, through Citizens
 86 Property Insurance Corporation, a government entity that is an
 87 integral part of the state, and that is not a private insurance
 88 company. ~~To that end, Citizens Property Insurance Corporation~~
 89 ~~shall strive to increase the availability of affordable property~~
 90 ~~insurance in this state, while achieving efficiencies and~~
 91 ~~economies, and while providing service to policyholders,~~
 92 ~~applicants, and agents which is no less than the quality~~
 93 ~~generally provided in the voluntary market, for the achievement~~
 94 ~~of the foregoing public purposes. Because it is essential for~~
 95 ~~this government entity to have the maximum financial resources~~
 96 ~~to pay claims following a catastrophic hurricane, it is the~~
 97 ~~intent of the Legislature that Citizens Property Insurance~~
 98 ~~Corporation continue to be an integral part of the state and~~
 99 ~~that the income of the corporation be exempt from federal income~~
 100 ~~taxation and that interest on the debt obligations issued by the~~
 101 ~~corporation be exempt from federal income taxation.~~

102 a. It is also the intent of the Legislature that
 103 policyholders, applicants, and agents of the corporation receive
 104 service and treatment of the highest possible level and never
 105 less than that generally provided in the voluntary market. The
 106 corporation must be held to service standards no less than those
 107 applied to insurers in the voluntary market by the office with
 108 respect to responsiveness, timeliness, customer courtesy, and
 109 overall dealings with policyholders, applicants, or agents of
 110 the corporation. It is also the intent of the Legislature that
 111 the corporation operate efficiently and economically.

112 b. Because it is essential that the corporation have the

113 | maximum financial resources necessary to pay claims following a
 114 | catastrophic hurricane, the Legislature also intends that the
 115 | income of the corporation and interest on the debt obligations
 116 | issued by the corporation be exempt from federal income
 117 | taxation.

118 | 2. The Residential Property and Casualty Joint
 119 | Underwriting Association originally created by this statute
 120 | shall be known~~, as of July 1, 2002,~~ as the Citizens Property
 121 | Insurance Corporation. The corporation shall provide insurance
 122 | for residential and commercial property, for applicants who are
 123 | ~~in good faith~~ entitled, but, in good faith, are unable~~,~~ to
 124 | procure insurance through the voluntary market. ~~The corporation~~
 125 | ~~shall operate pursuant to a plan of operation approved by order~~
 126 | ~~of the Financial Services Commission. The plan is subject to~~
 127 | ~~continuous review by the commission. The commission may, by~~
 128 | ~~order, withdraw approval of all or part of a plan if the~~
 129 | ~~commission determines that conditions have changed since~~
 130 | ~~approval was granted and that the purposes of the plan require~~
 131 | ~~changes in the plan. The corporation shall continue to operate~~
 132 | ~~pursuant to the plan of operation approved by the Office of~~
 133 | ~~Insurance Regulation until October 1, 2006.~~ For the purposes of
 134 | this subsection, residential coverage includes both personal
 135 | lines residential coverage, which consists of the type of
 136 | coverage provided by homeowner's, mobile home owner's, dwelling,
 137 | tenant's, condominium unit owner's, and similar policies;~~;~~ and
 138 | commercial lines residential coverage, which consists of the
 139 | type of coverage provided by condominium association, apartment
 140 | building, and similar policies.

141 3. With respect to coverage for personal lines residential
 142 structures:

143 a. Effective January 1, 2009, a ~~personal lines residential~~
 144 structure that has a dwelling replacement cost of \$2 million or
 145 more, or a single condominium unit that has a combined dwelling
 146 and contents ~~content~~ replacement cost of \$2 million or more is
 147 not eligible for coverage by the corporation. Such dwellings
 148 insured by the corporation on December 31, 2008, may continue to
 149 be covered by the corporation until the end of the policy term.
 150 However, such dwellings ~~that are insured by the corporation and~~
 151 ~~become ineligible for coverage due to the provisions of this~~
 152 ~~subparagraph~~ may reapply and obtain coverage if the property
 153 owner provides the corporation with a sworn affidavit from one
 154 or more insurance agents, on a form provided by the corporation,
 155 stating that the agents have made their best efforts to obtain
 156 coverage and that the property has been rejected for coverage by
 157 at least one authorized insurer and at least three surplus lines
 158 insurers. If such conditions are met, the dwelling may be
 159 insured by the corporation for up to 3 years, after which time
 160 the dwelling is ineligible for coverage. ~~The office shall~~
 161 ~~approve the method used by the corporation for valuing the~~
 162 ~~dwelling replacement cost for the purposes of this subparagraph.~~
 163 ~~If a policyholder is insured by the corporation prior to being~~
 164 ~~determined to be ineligible pursuant to this subparagraph and~~
 165 ~~such policyholder files a lawsuit challenging the determination,~~
 166 ~~the policyholder may remain insured by the corporation until the~~
 167 ~~conclusion of the litigation.~~

168 b. Effective January 1, 2012, a structure that has a

169 dwelling replacement cost of \$1 million or more, or a single
 170 condominium unit that has a combined dwelling and contents
 171 replacement cost of \$1 million or more is not eligible for
 172 coverage by the corporation. Such dwellings insured by the
 173 corporation on December 31, 2011, may continue to be covered by
 174 the corporation only until the end of the policy term.

175 c. Effective January 1, 2014, a structure insured in the
 176 personal lines account of the corporation that has a dwelling
 177 replacement cost of \$750,000 or more, or a single condominium
 178 unit that has a combined dwelling and contents replacement cost
 179 of \$750,000 or more is not eligible for coverage by the
 180 corporation. Such dwellings insured by the corporation on
 181 December 31, 2013, may continue to be covered by the corporation
 182 until the end of the policy term.

183 d. Effective January 1, 2016, a structure insured in the
 184 personal lines account of the corporation that has a dwelling
 185 replacement cost of \$500,000 or more, or a single condominium
 186 unit that has a combined dwelling and contents replacement cost
 187 of \$500,000 or more is not eligible for coverage by the
 188 corporation. Such dwellings insured by the corporation on
 189 December 31, 2015, may continue to be covered by the corporation
 190 until the end of the policy term.

191 ~~4. It is the intent of the Legislature that policyholders,~~
 192 ~~applicants, and agents of the corporation receive service and~~
 193 ~~treatment of the highest possible level but never less than that~~
 194 ~~generally provided in the voluntary market. It also is intended~~
 195 ~~that the corporation be held to service standards no less than~~
 196 ~~those applied to insurers in the voluntary market by the office~~

197 | ~~with respect to responsiveness, timeliness, customer courtesy,~~
 198 | ~~and overall dealings with policyholders, applicants, or agents~~
 199 | ~~of the corporation.~~

200 | ~~4.5.~~ Effective January 1, 2009, a personal lines
 201 | residential structure that is located in the "wind-borne debris
 202 | region," as defined in s. 1609.2, International Building Code
 203 | (2006), and that has an insured value on the structure of
 204 | \$750,000 or more is not eligible for coverage by the corporation
 205 | unless the structure has opening protections as required under
 206 | the Florida Building Code for a newly constructed residential
 207 | structure in that area. A residential structure shall be deemed
 208 | to comply with ~~the requirements of~~ this subparagraph if it has
 209 | shutters or opening protections on all openings and if such
 210 | opening protections complied with the Florida Building Code at
 211 | the time they were installed.

212 | 5. In recognition of the corporation's status as a
 213 | government entity, policies issued by the corporation must
 214 | include a provision stating that as a condition of coverage with
 215 | the corporation, policyholders may not engage the services of a
 216 | public adjuster to represent the policyholder with respect to
 217 | any claim incurred under a policy issued by the corporation.

218 | (b)1. All insurers authorized to write one or more subject
 219 | lines of business in this state are subject to assessment by the
 220 | corporation and, for the purposes of this subsection, are
 221 | referred to collectively as "assessable insurers." Insurers
 222 | writing one or more subject lines of business in this state
 223 | pursuant to part VIII of chapter 626 are not assessable
 224 | insurers, but insureds who procure one or more subject lines of

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225 business in this state pursuant to part VIII of chapter 626 are
 226 subject to assessment by the corporation and are referred to
 227 collectively as "assessable insureds." An ~~authorized~~ insurer's
 228 assessment liability begins ~~shall begin~~ on the first day of the
 229 calendar year following the year in which the insurer was issued
 230 a certificate of authority to transact insurance for subject
 231 lines of business in this state and terminates ~~shall terminate~~ 1
 232 year after the end of the first calendar year during which the
 233 insurer no longer holds a certificate of authority to transact
 234 insurance for subject lines of business in this state.

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

238 (I) A personal lines account for personal residential
 239 policies issued by the corporation, or issued by the Residential
 240 Property and Casualty Joint Underwriting Association and renewed
 241 by the corporation, which provides basic ~~that provide~~
 242 ~~comprehensive,~~ multiperil coverage on risks that are not located
 243 in areas eligible for coverage by ~~in~~ the Florida Windstorm
 244 Underwriting Association as those areas were defined on January
 245 1, 2002, and for ~~such~~ policies that do not provide coverage for
 246 the peril of wind on risks that are located in such areas;

247 (II) A commercial lines account for commercial residential
 248 and commercial nonresidential policies issued by the
 249 corporation, or issued by the Residential Property and Casualty
 250 Joint Underwriting Association and renewed by the corporation, which provides ~~that provide~~ coverage for basic property perils
 251 on risks that are not located in areas eligible for coverage by
 252

253 ~~in~~ the Florida Windstorm Underwriting Association as those areas
 254 were defined on January 1, 2002, and for ~~such~~ policies that do
 255 not provide coverage for the peril of wind on risks that are
 256 located in such areas; and

257 (III) A high-risk account for personal residential
 258 policies and commercial residential and commercial
 259 nonresidential property policies issued by the corporation or
 260 transferred to the corporation, which provides ~~that provide~~
 261 coverage for the peril of wind on risks that are located in
 262 areas eligible for coverage by ~~in~~ the Florida Windstorm
 263 Underwriting Association as those areas were defined on January
 264 1, 2002. The corporation may offer policies that provide
 265 multiperil coverage and the corporation shall continue to offer
 266 policies that provide coverage only for the peril of wind for
 267 risks located in areas eligible for coverage in the high-risk
 268 account. In issuing multiperil coverage, the corporation may use
 269 its approved policy forms and rates for the personal lines
 270 account. An applicant or insured who is eligible to purchase a
 271 multiperil policy from the corporation may purchase a multiperil
 272 policy from an authorized insurer without prejudice to the
 273 applicant's or insured's eligibility to prospectively purchase a
 274 policy that provides coverage only for the peril of wind from
 275 the corporation. An applicant or insured who is eligible for a
 276 corporation policy that provides coverage only for the peril of
 277 wind may elect to purchase or retain such policy and also
 278 purchase or retain coverage excluding wind from an authorized
 279 insurer without prejudice to the applicant's or insured's
 280 eligibility to prospectively purchase a policy that provides

281 | multiperil coverage from the corporation. ~~It is the goal of the~~
 282 | ~~Legislature that there would be an overall average savings of 10~~
 283 | ~~percent or more for a policyholder who currently has a wind-only~~
 284 | ~~policy with the corporation, and an ex-wind policy with a~~
 285 | ~~voluntary insurer or the corporation, and who then obtains a~~
 286 | ~~multiperil policy from the corporation.~~ It is the intent of the
 287 | Legislature that the offer of multiperil coverage in the high-
 288 | risk account be made and implemented in a manner that does not
 289 | adversely affect the tax-exempt status of the corporation or
 290 | creditworthiness of or security for currently outstanding
 291 | financing obligations or credit facilities of the high-risk
 292 | account, the personal lines account, or the commercial lines
 293 | account. ~~The high-risk account must also include quota share~~
 294 | ~~primary insurance under subparagraph (c)2.~~ The area eligible for
 295 | coverage under the high-risk account also includes the area
 296 | within Port Canaveral, which is bordered on the south by the
 297 | City of Cape Canaveral, bordered on the west by the Banana
 298 | River, and bordered on the north by Federal Government property.
 299 | b. The three separate accounts must be maintained as long
 300 | as financing obligations entered into by the Florida Windstorm
 301 | Underwriting Association or Residential Property and Casualty
 302 | Joint Underwriting Association are outstanding, in accordance
 303 | with the terms of the corresponding financing documents. If ~~When~~
 304 | the financing obligations are no longer outstanding, ~~in~~
 305 | ~~accordance with the terms of the corresponding financing~~
 306 | ~~documents,~~ the corporation may use a single account for all
 307 | revenues, assets, liabilities, losses, and expenses of the
 308 | corporation. Consistent with ~~the requirement of this~~

309 | subparagraph and prudent investment policies that minimize the
 310 | cost of carrying debt, the board shall exercise its best efforts
 311 | to retire existing debt or ~~to~~ obtain the approval of necessary
 312 | parties to amend the terms of existing debt, so as to structure
 313 | the most efficient plan to consolidate the three separate
 314 | accounts into a single account.

315 | c. Creditors of the Residential Property and Casualty
 316 | Joint Underwriting Association and of the accounts specified in
 317 | sub-sub-subparagraphs a.(I) and (II) may have a claim against,
 318 | and recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~
 319 | ~~subparagraphs a.(I) and (II)~~ and ~~shall have~~ no claim against, or
 320 | recourse to, the account referred to in sub-sub-subparagraph
 321 | a.(III). Creditors of the Florida Windstorm Underwriting
 322 | Association ~~shall~~ have a claim against, and recourse to, the
 323 | account referred to in sub-sub-subparagraph a.(III) and ~~shall~~
 324 | ~~have~~ no claim against, or recourse to, the accounts referred to
 325 | in sub-sub-subparagraphs a.(I) and (II).

326 | d. Revenues, assets, liabilities, losses, and expenses not
 327 | attributable to particular accounts shall be prorated among the
 328 | accounts.

329 | e. The Legislature finds that the revenues of the
 330 | corporation are revenues that are necessary to meet the
 331 | requirements set forth in documents authorizing the issuance of
 332 | bonds under this subsection.

333 | f. No part of the income of the corporation may inure to
 334 | the benefit of any private person.

335 | 3. With respect to a deficit in an account:

336 | a. After accounting for the ~~Citizens~~ policyholder

337 surcharge imposed under sub-subparagraph i., if ~~when~~ the
 338 remaining projected deficit incurred in a particular calendar
 339 year is not greater than 6 percent of the aggregate statewide
 340 direct written premium for the subject lines of business for the
 341 prior calendar year, the entire deficit shall be recovered
 342 through regular assessments of assessable insurers under
 343 paragraph (q) and assessable insureds.

344 b. After accounting for the Citizens policyholder
 345 surcharge imposed under sub-subparagraph i., when the remaining
 346 projected deficit incurred in a particular calendar year exceeds
 347 6 percent of the aggregate statewide direct written premium for
 348 the subject lines of business for the prior calendar year, the
 349 corporation shall levy regular assessments on assessable
 350 insurers under paragraph (q) and on assessable insureds in an
 351 amount equal to the greater of 6 percent of the deficit or 6
 352 percent of the aggregate statewide direct written premium for
 353 the subject lines of business for the prior calendar year. Any
 354 remaining deficit shall be recovered through emergency
 355 assessments under sub-subparagraph d.

356 c. Each assessable insurer's share of the amount being
 357 assessed under sub-subparagraph a. or sub-subparagraph b. must
 358 ~~shall~~ be in the proportion that the assessable insurer's direct
 359 written premium for the subject lines of business for the year
 360 preceding the assessment bears to the aggregate statewide direct
 361 written premium for the subject lines of business for that year.
 362 The applicable assessment percentage ~~applicable to each~~
 363 ~~assessable insured~~ is the ratio of the amount being assessed
 364 under sub-subparagraph a. or sub-subparagraph b. to the

365 aggregate statewide direct written premium for the subject lines
 366 of business for the prior year. Assessments levied by the
 367 corporation on assessable insurers under sub-subparagraphs a.
 368 and b. must ~~shall~~ be paid as required by the corporation's plan
 369 of operation and paragraph (q) , ~~Assessments levied by the~~
 370 ~~corporation on assessable insureds under sub-subparagraphs a.~~
 371 ~~and b. shall~~ be collected by the surplus lines agent at the time
 372 the surplus lines agent collects the surplus lines tax required
 373 by s. 626.932, and shall be paid to the Florida Surplus Lines
 374 Service Office at the time the surplus lines agent pays the
 375 surplus lines tax to that ~~the Florida Surplus Lines Service~~
 376 office. Upon receipt of regular assessments from surplus lines
 377 agents, the Florida Surplus Lines Service Office shall transfer
 378 the assessments directly to the corporation as determined by the
 379 corporation.

380 d. Upon a determination by the board of governors that a
 381 deficit in an account exceeds the amount that will be recovered
 382 through regular assessments under sub-subparagraph a. or sub-
 383 subparagraph b., plus the amount that is expected to be
 384 recovered through surcharges under sub-subparagraph i., ~~as to~~
 385 ~~the remaining projected deficit~~ the board ~~shall~~ levy, after
 386 verification by the office, shall levy emergency assessments,
 387 for as many years as necessary to cover the deficits, to be
 388 collected by assessable insurers and the corporation and
 389 collected from assessable insureds upon issuance or renewal of
 390 policies for subject lines of business, excluding National Flood
 391 Insurance policies. The amount of the emergency assessment
 392 collected in a particular year must ~~shall~~ be a uniform

393 percentage of that year's direct written premium for subject
 394 lines of business ~~and all accounts of the corporation~~, excluding
 395 National Flood Insurance Program policy premiums, as annually
 396 determined by the board and verified by the office. For all
 397 accounts of the corporation, the amount of the emergency
 398 assessment levied in a particular year must be a uniform
 399 percentage equal to 1 1/2 times the uniform percentage emergency
 400 assessment levied on subject lines of business. The office shall
 401 verify the arithmetic calculations involved in the board's
 402 determination within 30 days after receipt of the information on
 403 which the determination was based. Notwithstanding any other
 404 provision of law, the corporation and each assessable insurer
 405 that writes subject lines of business shall collect emergency
 406 assessments from its policyholders without such obligation being
 407 affected by any credit, limitation, exemption, or deferment.
 408 Emergency assessments levied by the corporation on assessable
 409 insureds shall be collected by the surplus lines agent at the
 410 time the surplus lines agent collects the surplus lines tax
 411 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus
 412 Lines Service Office at the time the surplus lines agent pays
 413 the surplus lines tax to that ~~the Florida Surplus Lines Service~~
 414 office. The emergency assessments ~~so~~ collected shall be
 415 transferred directly to the corporation on a periodic basis as
 416 determined by the corporation and ~~shall be~~ held by the
 417 corporation solely in the applicable account. The aggregate
 418 amount of emergency assessments levied for an account under this
 419 sub-subparagraph in any calendar year may, ~~at the discretion of~~
 420 ~~the board of governors~~, be less than but ~~may~~ not exceed the

421 | greater of 10 percent of the amount needed to cover the deficit,
 422 | plus interest, fees, commissions, required reserves, and other
 423 | costs associated with financing ~~of~~ the original deficit, or 10
 424 | percent of the aggregate statewide direct written premium for
 425 | subject lines of business and ~~for~~ all accounts of the
 426 | corporation for the prior year, plus interest, fees,
 427 | commissions, required reserves, and other costs associated with
 428 | financing the deficit.

429 | e. The corporation may pledge the proceeds of assessments,
 430 | projected recoveries from the Florida Hurricane Catastrophe
 431 | Fund, other insurance and reinsurance recoverables, policyholder
 432 | surcharges and other surcharges, and other funds available to
 433 | the corporation as the source of revenue for and to secure bonds
 434 | issued under paragraph (q), bonds or other indebtedness issued
 435 | under subparagraph (c)2.3-, or lines of credit or other
 436 | financing mechanisms issued or created under this subsection, or
 437 | to retire any other debt incurred as a result of deficits or
 438 | events giving rise to deficits, or in any other way that the
 439 | board determines will efficiently recover such deficits. The
 440 | purpose of the lines of credit or other financing mechanisms is
 441 | to provide additional resources to assist the corporation in
 442 | covering claims and expenses attributable to a catastrophe. As
 443 | used in this subsection, the term "assessments" includes regular
 444 | assessments under sub-subparagraph a., sub-subparagraph b., or
 445 | subparagraph (q)1. and emergency assessments under sub-
 446 | subparagraph d. Emergency assessments collected under sub-
 447 | subparagraph d. are not part of an insurer's rates, are not
 448 | premium, and are not subject to premium tax, fees, or

449 | commissions; however, failure to pay the emergency assessment
 450 | shall be treated as failure to pay premium. The emergency
 451 | assessments under sub-subparagraph d. shall continue as long as
 452 | any bonds issued or other indebtedness incurred with respect to
 453 | a deficit for which the assessment was imposed remain
 454 | outstanding, unless adequate provision has been made for the
 455 | payment of such bonds or other indebtedness pursuant to the
 456 | documents governing such bonds or ~~other~~ indebtedness.

457 | f. As used in this subsection for purposes of any deficit
 458 | incurred on or after January 25, 2007, the term "subject lines
 459 | of business" means insurance written by assessable insurers or
 460 | procured by assessable insureds for all property and casualty
 461 | lines of business in this state, but not including workers'
 462 | compensation or medical malpractice. As used in this ~~the~~ sub-
 463 | subparagraph, the term "property and casualty lines of business"
 464 | includes all lines of business identified on Form 2, Exhibit of
 465 | Premiums and Losses, in the annual statement required of
 466 | authorized insurers under ~~by~~ s. 624.424 and any rule adopted
 467 | under this section, except for those lines identified as
 468 | accident and health insurance and except for policies written
 469 | under the National Flood Insurance Program or the Federal Crop
 470 | Insurance Program. For purposes of this sub-subparagraph, the
 471 | term "workers' compensation" includes both workers' compensation
 472 | insurance and excess workers' compensation insurance.

473 | g. The Florida Surplus Lines Service Office shall
 474 | determine annually the aggregate statewide written premium in
 475 | subject lines of business procured by assessable insureds and
 476 | ~~shall~~ report that information to the corporation in a form and

477 at a time the corporation specifies to ensure that the
 478 corporation can meet the requirements of this subsection and the
 479 corporation's financing obligations.

480 h. The Florida Surplus Lines Service Office shall verify
 481 the proper application by surplus lines agents of assessment
 482 percentages for regular assessments and emergency assessments
 483 levied under this subparagraph on assessable insureds and ~~shall~~
 484 assist the corporation in ensuring the accurate, timely
 485 collection and payment of assessments by surplus lines agents as
 486 required by the corporation.

487 i. If a deficit is incurred in any account in 2011 ~~2008~~ or
 488 thereafter, the board of governors shall levy a ~~Citizens~~
 489 policyholder surcharge against all policyholders of the
 490 corporation. ~~for a 12-month period, which~~

491 (I) The surcharge shall be levied ~~collected at the time of~~
 492 ~~issuance or renewal of a policy,~~ as a uniform percentage of the
 493 premium for the policy of up to 15 percent of such premium,
 494 which funds shall be used to offset the deficit.

495 (II) It is the intent of the Legislature that the
 496 policyholder's liability for the surcharge attach on the date of
 497 the order levying the surcharge. The surcharge is payable upon
 498 cancellation or termination of the policy, upon renewal of the
 499 policy, or upon issuance of a new policy by the corporation
 500 within the first 12 months after the date of the levy or the
 501 period of time necessary to fully collect the surcharge amount.

502 (III) The corporation may not levy any regular assessments
 503 under paragraph (q) pursuant to sub-subparagraph a. or sub-
 504 subparagraph b. with respect to a particular year's deficit

505 until the corporation has first levied a surcharge under this
 506 sub-subparagraph in the full amount authorized by this sub-
 507 subparagraph.

508 (IV) The surcharge is ~~Citizens policyholder surcharges~~
 509 ~~under this sub-subparagraph~~ are not considered premium and is
 510 ~~are~~ not subject to commissions, fees, or premium taxes. However,
 511 failure to pay the surcharge ~~such surcharges~~ shall be treated as
 512 failure to pay premium.

513 j. If the amount of any assessments or surcharges
 514 collected from corporation policyholders, assessable insurers or
 515 their policyholders, or assessable insureds exceeds the amount
 516 of the deficits, such excess amounts shall be remitted to and
 517 retained by the corporation in a reserve to be used by the
 518 corporation, as determined by the board of governors and
 519 approved by the office, to pay claims or reduce any past,
 520 present, or future plan-year deficits or to reduce outstanding
 521 debt.

522 (c) ~~The plan of operation of the corporation:~~

523 1. Must provide ~~for adoption of~~ residential property and
 524 casualty insurance policy forms and commercial residential and
 525 nonresidential property insurance forms, which ~~forms~~ must be
 526 approved by the office before ~~prior to~~ use. The corporation
 527 shall adopt and offer only the following policy forms:

528 a. Standard personal lines policy forms that are similar
 529 ~~comprehensive multiperil policies providing full coverage of a~~
 530 ~~residential property equivalent~~ to the coverage provided in the
 531 private insurance market under an HO-3, HO-4, or HO-6 policy.
 532 The corporation shall cease to offer or renew HO-3 policy forms

533 on December 31, 2012.

534 b. Basic personal lines policy forms that are policies
 535 similar to an HO-8 policy or a dwelling fire policy that provide
 536 coverage meeting the requirements of the secondary mortgage
 537 market, but which ~~coverage~~ is more limited than the coverage
 538 under a standard policy.

539 c. Commercial lines residential and nonresidential policy
 540 forms that are generally similar to the basic perils of full
 541 coverage obtainable for commercial residential structures and
 542 commercial nonresidential structures in the admitted voluntary
 543 market.

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

549 e. Commercial lines nonresidential property insurance
 550 forms that cover the peril of wind only. The forms are
 551 applicable only to nonresidential properties located in areas
 552 eligible for coverage under the high-risk account referred to in
 553 sub-subparagraph (b)2.a.

554 f. The corporation may adopt variations of the policy
 555 forms listed in sub-subparagraphs a.-e. which ~~that~~ contain more
 556 restrictive coverage.

557 ~~2.a. Must provide that the corporation adopt a program in~~
 558 ~~which the corporation and authorized insurers enter into quota~~
 559 ~~share primary insurance agreements for hurricane coverage, as~~
 560 ~~defined in s. 627.4025(2)(a), for eligible risks, and adopt~~

561 | ~~property insurance forms for eligible risks which cover the~~
 562 | ~~peril of wind only. As used in this subsection, the term:~~

563 | ~~(I) "Quota share primary insurance" means an arrangement~~
 564 | ~~in which the primary hurricane coverage of an eligible risk is~~
 565 | ~~provided in specified percentages by the corporation and an~~
 566 | ~~authorized insurer. The corporation and authorized insurer are~~
 567 | ~~each solely responsible for a specified percentage of hurricane~~
 568 | ~~coverage of an eligible risk as set forth in a quota share~~
 569 | ~~primary insurance agreement between the corporation and an~~
 570 | ~~authorized insurer and the insurance contract. The~~
 571 | ~~responsibility of the corporation or authorized insurer to pay~~
 572 | ~~its specified percentage of hurricane losses of an eligible~~
 573 | ~~risk, as set forth in the quota share primary insurance~~
 574 | ~~agreement, may not be altered by the inability of the other~~
 575 | ~~party to the agreement to pay its specified percentage of~~
 576 | ~~hurricane losses. Eligible risks that are provided hurricane~~
 577 | ~~coverage through a quota share primary insurance arrangement~~
 578 | ~~must be provided policy forms that set forth the obligations of~~
 579 | ~~the corporation and authorized insurer under the arrangement,~~
 580 | ~~clearly specify the percentages of quota share primary insurance~~
 581 | ~~provided by the corporation and authorized insurer, and~~
 582 | ~~conspicuously and clearly state that neither the authorized~~
 583 | ~~insurer nor the corporation may be held responsible beyond its~~
 584 | ~~specified percentage of coverage of hurricane losses.~~

585 | ~~(II) "Eligible risks" means personal lines residential and~~
 586 | ~~commercial lines residential risks that meet the underwriting~~
 587 | ~~criteria of the corporation and are located in areas that were~~
 588 | ~~eligible for coverage by the Florida Windstorm Underwriting~~

589 ~~Association on January 1, 2002.~~

590 ~~b. The corporation may enter into quota share primary~~
 591 ~~insurance agreements with authorized insurers at corporation~~
 592 ~~coverage levels of 90 percent and 50 percent.~~

593 ~~e. If the corporation determines that additional coverage~~
 594 ~~levels are necessary to maximize participation in quota share~~
 595 ~~primary insurance agreements by authorized insurers, the~~
 596 ~~corporation may establish additional coverage levels. However,~~
 597 ~~the corporation's quota share primary insurance coverage level~~
 598 ~~may not exceed 90 percent.~~

599 ~~d. Any quota share primary insurance agreement entered~~
 600 ~~into between an authorized insurer and the corporation must~~
 601 ~~provide for a uniform specified percentage of coverage of~~
 602 ~~hurricane losses, by county or territory as set forth by the~~
 603 ~~corporation board, for all eligible risks of the authorized~~
 604 ~~insurer covered under the quota share primary insurance~~
 605 ~~agreement.~~

606 ~~e. Any quota share primary insurance agreement entered~~
 607 ~~into between an authorized insurer and the corporation is~~
 608 ~~subject to review and approval by the office. However, such~~
 609 ~~agreement shall be authorized only as to insurance contracts~~
 610 ~~entered into between an authorized insurer and an insured who is~~
 611 ~~already insured by the corporation for wind coverage.~~

612 ~~f. For all eligible risks covered under quota share~~
 613 ~~primary insurance agreements, the exposure and coverage levels~~
 614 ~~for both the corporation and authorized insurers shall be~~
 615 ~~reported by the corporation to the Florida Hurricane Catastrophe~~
 616 ~~Fund. For all policies of eligible risks covered under quota~~

617 ~~share primary insurance agreements, the corporation and the~~
 618 ~~authorized insurer shall maintain complete and accurate records~~
 619 ~~for the purpose of exposure and loss reimbursement audits as~~
 620 ~~required by Florida Hurricane Catastrophe Fund rules. The~~
 621 ~~corporation and the authorized insurer shall each maintain~~
 622 ~~duplicate copies of policy declaration pages and supporting~~
 623 ~~claims documents.~~

624 ~~g. The corporation board shall establish in its plan of~~
 625 ~~operation standards for quota share agreements which ensure that~~
 626 ~~there is no discriminatory application among insurers as to the~~
 627 ~~terms of quota share agreements, pricing of quota share~~
 628 ~~agreements, incentive provisions if any, and consideration paid~~
 629 ~~for servicing policies or adjusting claims.~~

630 ~~h. The quota share primary insurance agreement between the~~
 631 ~~corporation and an authorized insurer must set forth the~~
 632 ~~specific terms under which coverage is provided, including, but~~
 633 ~~not limited to, the sale and servicing of policies issued under~~
 634 ~~the agreement by the insurance agent of the authorized insurer~~
 635 ~~producing the business, the reporting of information concerning~~
 636 ~~eligible risks, the payment of premium to the corporation, and~~
 637 ~~arrangements for the adjustment and payment of hurricane claims~~
 638 ~~incurred on eligible risks by the claims adjuster and personnel~~
 639 ~~of the authorized insurer. Entering into a quota sharing~~
 640 ~~insurance agreement between the corporation and an authorized~~
 641 ~~insurer shall be voluntary and at the discretion of the~~
 642 ~~authorized insurer.~~

643 ~~2.3. May provide that the corporation may employ or~~
 644 ~~otherwise contract with individuals or other entities to provide~~

645 administrative or professional services ~~that may be appropriate~~
 646 ~~to effectuate the plan.~~

647 a. The corporation may ~~shall have the power to~~ borrow
 648 funds, by issuing bonds or by incurring other indebtedness, and
 649 shall have other powers reasonably necessary to effectuate the
 650 requirements of this subsection, including, without limitation,
 651 the power to issue bonds and incur other indebtedness in order
 652 to refinance outstanding bonds or other indebtedness. The
 653 corporation ~~may, but is not required to,~~ seek judicial
 654 validation of its bonds or other indebtedness under chapter 75.
 655 The corporation may issue bonds or incur other indebtedness, or
 656 have bonds issued on its behalf by a unit of local government
 657 pursuant to subparagraph (q)2., in the absence of a hurricane or
 658 other weather-related event, upon a determination by the
 659 corporation, subject to approval by the office, that such action
 660 would enable it to efficiently meet the financial obligations of
 661 the corporation and that such financings are reasonably
 662 necessary to effectuate the requirements of this subsection. The
 663 corporation ~~may is authorized to~~ take all actions needed to
 664 facilitate tax-free status for ~~any~~ such bonds or indebtedness,
 665 including formation of trusts or other affiliated entities. The
 666 corporation ~~may shall have the authority to~~ pledge assessments,
 667 projected recoveries from the Florida Hurricane Catastrophe
 668 Fund, other reinsurance recoverables, market equalization and
 669 other surcharges, and other funds available to the corporation
 670 as security for bonds or other indebtedness. In recognition of
 671 s. 10, Art. I of the State Constitution, prohibiting the
 672 impairment of obligations of contracts, it is the intent of the

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673 | Legislature that no action be taken whose purpose is to impair
674 | any bond indenture or financing agreement or any revenue source
675 | committed by contract to such bond or other indebtedness.

676 | b. To ensure that the corporation is operating in an
677 | efficient and economic manner while providing quality service to
678 | policyholders, applicants, and agents, the board shall
679 | commission an independent third-party consultant having
680 | expertise in insurance company management or insurance company
681 | management consulting to prepare a report and make
682 | recommendations on the relative costs and benefits of
683 | outsourcing various policy issuance and service functions to
684 | private servicing carriers or entities performing similar
685 | functions in the private market for a fee, rather than
686 | performing such functions in-house. In making such
687 | recommendations, the consultant shall consider how other
688 | residual markets, both in this state and around the country,
689 | outsource appropriate functions or use servicing carriers to
690 | better match expenses with revenues that fluctuate based on a
691 | widely varying policy count. The report must be completed by
692 | February 1, 2012. Upon receiving the report, the board shall
693 | develop a plan to implement the report and submit the plan to
694 | the Financial Services Commission. The commission has 30 days
695 | after receiving the plan to review and make additions or
696 | corrections, if any. Upon the commission's approval of the plan,
697 | the board shall begin implementing the plan by January 1, 2013.

698 | ~~3.4.a. Must require that the corporation operate subject~~
699 | ~~to the supervision and approval of a board of governors~~
700 | ~~consisting of eight individuals who are residents of this state,~~

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701 from different geographical areas of this state.

702 a. The Governor, the Chief Financial Officer, the
 703 President of the Senate, and the Speaker of the House of
 704 Representatives shall each appoint two members of the board. At
 705 least one of the two members appointed by each appointing
 706 officer must have demonstrated expertise in insurance, and be
 707 within the scope of the exemption provided in s. 112.313(7)(b).

708 The Chief Financial Officer shall designate one of the
 709 appointees as chair. All board members serve at the pleasure of
 710 the appointing officer. All members of the board ~~of governors~~
 711 are subject to removal at will by the officers who appointed
 712 them. All board members, including the chair, must be appointed
 713 to serve for 3-year terms beginning annually on a date
 714 designated by the plan. However, for the first term beginning on
 715 or after July 1, 2009, each appointing officer shall appoint one
 716 member of the board for a 2-year term and one member for a 3-
 717 year term. A ~~Any~~ board vacancy shall be filled for the unexpired
 718 term by the appointing officer. The Chief Financial Officer
 719 shall appoint a technical advisory group to provide information
 720 and advice to the board ~~of governors~~ in connection with the
 721 board's duties under this subsection. The executive director and
 722 senior managers of the corporation shall be engaged by the board
 723 and serve at the pleasure of the board. Any executive director
 724 appointed on or after July 1, 2006, is subject to confirmation
 725 by the Senate. The executive director is responsible for
 726 employing other staff as the corporation may require, subject to
 727 review and concurrence by the board.

728 b. The board shall create a Market Accountability Advisory

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729 Committee to assist the corporation in developing awareness of
 730 its rates and its customer and agent service levels in
 731 relationship to the voluntary market insurers writing similar
 732 coverage, and to provide advice on issues regarding agent
 733 appointments and compensation.

734 (I) The members of the advisory committee shall consist of
 735 the following 11 persons, one of whom must be elected chair by
 736 the members of the committee: four representatives, one
 737 appointed by the Florida Association of Insurance Agents, one by
 738 the National Florida Association of Insurance and Financial
 739 Advisors-Florida ~~Advisors~~, one by the Professional Insurance
 740 Agents of Florida, and one by the Latin American Association of
 741 Insurance Agencies; three representatives appointed by the
 742 insurers with the three highest voluntary market share of
 743 residential property insurance business in the state; one
 744 representative from the Office of Insurance Regulation; one
 745 consumer appointed by the board who is insured by the
 746 corporation at the time of appointment to the committee; one
 747 representative appointed by the Florida Association of Realtors;
 748 and one representative appointed by the Florida Bankers
 749 Association. All members shall be appointed to ~~must serve for~~ 3-
 750 year terms and may serve for consecutive terms.

751 (II) The committee shall report to the corporation at each
 752 board meeting on insurance market issues which may include rates
 753 and rate competition with the voluntary market; service,
 754 including policy issuance, claims processing, and general
 755 responsiveness to policyholders, applicants, and agents; and
 756 matters relating to depopulation, producer compensation, or

757 | agency agreements.

758 | ~~4.5-~~ Must provide a procedure for determining the
759 | eligibility of a risk for coverage, as follows:

760 | a. Subject to ~~the provisions of~~ s. 627.3517, with respect
761 | to personal lines residential risks, if the risk is offered
762 | coverage from an authorized insurer at the insurer's approved
763 | rate under ~~either~~ a standard policy including wind coverage or,
764 | if consistent with the insurer's underwriting rules as filed
765 | with the office, a basic policy including wind coverage, for a
766 | new application to the corporation for coverage, the risk is not
767 | eligible for any policy issued by the corporation ~~unless the~~
768 | ~~premium for coverage from the authorized insurer is more than 15~~
769 | ~~percent greater than the premium for comparable coverage from~~
770 | ~~the corporation.~~ If the risk is not able to obtain ~~any~~ such
771 | offer, the risk is eligible for ~~either~~ a standard policy
772 | including wind coverage or a basic policy including wind
773 | coverage issued by the corporation; however, if the risk could
774 | not be insured under a standard policy including wind coverage
775 | regardless of market conditions, the risk is ~~shall be~~ eligible
776 | for a basic policy including wind coverage unless rejected under
777 | subparagraph 9. 8- Notwithstanding these limitations, an
778 | application for coverage having an effective date before January
779 | 1, 2015, is eligible for coverage by the corporation if the
780 | premium for coverage from an authorized insurer exceeds the
781 | premium from the corporation by more than 25 percent. ~~However,~~
782 | ~~with regard to a policyholder of the corporation or a~~
783 | ~~policyholder removed from the corporation through an assumption~~
784 | ~~agreement until the end of the assumption period, the~~

785 | ~~policyholder remains eligible for coverage from the corporation~~
 786 | ~~regardless of any offer of coverage from an authorized insurer~~
 787 | ~~or surplus lines insurer.~~ The corporation shall determine the
 788 | type of policy to be provided on the basis of objective
 789 | standards specified in the underwriting manual and based on
 790 | generally accepted underwriting practices.

791 | (I) If the risk accepts an offer of coverage through the
 792 | market assistance plan or ~~an offer of coverage~~ through a
 793 | mechanism established by the corporation before a policy is
 794 | issued to the risk by the corporation or during the first 30
 795 | days of coverage by the corporation, and the producing agent who
 796 | submitted the application to the plan or to the corporation is
 797 | not currently appointed by the insurer, the insurer shall:

798 | (A) Pay to the producing agent of record of the policy,
 799 | for the first year, an amount that is the greater of the
 800 | insurer's usual and customary commission for the type of policy
 801 | written or a fee equal to the usual and customary commission of
 802 | the corporation; or

803 | (B) Offer to allow the producing agent of record of the
 804 | policy to continue servicing the policy for at least ~~a period of~~
 805 | ~~not less than~~ 1 year and offer to pay the agent the greater of
 806 | the insurer's or the corporation's usual and customary
 807 | commission for the type of policy written.

808 |
 809 | If the producing agent is unwilling or unable to accept
 810 | appointment, the new insurer shall pay the agent in accordance
 811 | with sub-sub-sub-subparagraph (A).

812 | (II) If ~~When~~ the corporation enters into a contractual

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

816 (A) Pay to the producing agent ~~of record of the~~
 817 ~~corporation policy~~, for the first year, an amount that is the
 818 greater of the insurer's usual and customary commission for the
 819 type of policy written or a fee equal to the usual and customary
 820 commission of the corporation; or

821 (B) Offer to allow the producing agent ~~of record of the~~
 822 ~~corporation policy~~ to continue servicing the policy for at least
 823 ~~a period of not less than~~ 1 year and offer to pay the agent the
 824 greater of the insurer's or the corporation's usual and
 825 customary commission for the type of policy written.

826
 827 If the producing agent is unwilling or unable to accept
 828 appointment, the new insurer shall pay the agent in accordance
 829 with sub-sub-sub-paragraph (A).

830 b. Subject to s. 627.3517, with respect to commercial
 831 lines residential risks, ~~for a new application to the~~
 832 ~~corporation for coverage~~, if the risk is offered coverage under
 833 a policy including wind coverage from an authorized insurer at
 834 its approved rate, the risk is not eligible for a ~~any~~ policy
 835 issued by the corporation ~~unless the premium for coverage from~~
 836 ~~the authorized insurer is more than 15 percent greater than the~~
 837 ~~premium for comparable coverage from the corporation~~. If the
 838 risk is not able to obtain any such offer, the risk is eligible
 839 for a policy including wind coverage issued by the corporation.
 840 Notwithstanding these limitations, an application for coverage

841 having an effective date before January 1, 2015, is eligible for
 842 coverage by the corporation if the premium for coverage from an
 843 authorized insurer exceeds the premium from the corporation by
 844 more than 25 percent. ~~However, with regard to a policyholder of~~
 845 ~~the corporation or a policyholder removed from the corporation~~
 846 ~~through an assumption agreement until the end of the assumption~~
 847 ~~period, the policyholder remains eligible for coverage from the~~
 848 ~~corporation regardless of any offer of coverage from an~~
 849 ~~authorized insurer or surplus lines insurer.~~

850 (I) If the risk accepts an offer of coverage through the
 851 market assistance plan or ~~an offer of coverage~~ through a
 852 mechanism established by the corporation before a policy is
 853 issued to the risk by the corporation or during the first 30
 854 days of coverage by the corporation, and the producing agent who
 855 submitted the application to the plan or the corporation is not
 856 currently appointed by the insurer, the insurer shall:

857 (A) Pay to the producing agent ~~of record of the policy,~~
 858 for the first year, an amount that is the greater of the
 859 insurer's usual and customary commission for the type of policy
 860 written or a fee equal to the usual and customary commission of
 861 the corporation; or

862 (B) Offer to allow the producing agent ~~of record of the~~
 863 ~~policy~~ to continue servicing the policy for at least a period of
 864 ~~not less than~~ 1 year and offer to pay the agent the greater of
 865 the insurer's or the corporation's usual and customary
 866 commission for the type of policy written.

867

868 If the producing agent is unwilling or unable to accept

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

871 (II) If ~~When~~ the corporation enters into a contractual
 872 agreement for a take-out plan, the producing agent of record of
 873 the corporation policy is entitled to retain any unearned
 874 commission on the policy, and the insurer shall:

875 (A) Pay to the producing agent ~~of record of the~~
 876 ~~corporation policy~~, for the first year, an amount that is the
 877 greater of the insurer's usual and customary commission for the
 878 type of policy written or a fee equal to the usual and customary
 879 commission of the corporation; or

880 (B) Offer to allow the producing agent ~~of record of the~~
 881 ~~corporation policy~~ to continue servicing the policy for at least
 882 ~~a period of not less than~~ 1 year and offer to pay the agent the
 883 greater of the insurer's or the corporation's usual and
 884 customary commission for the type of policy written.

885

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

889 c. Effective upon this act becoming a law, the corporation
 890 shall cease to accept applications for or issue new policies
 891 covering commercial nonresidential risks. ~~For purposes of~~
 892 ~~determining comparable coverage under sub-subparagraphs a. and~~
 893 ~~b., the comparison shall be based on those forms and coverages~~
 894 ~~that are reasonably comparable. The corporation may rely on a~~
 895 ~~determination of comparable coverage and premium made by the~~
 896 ~~producing agent who submits the application to the corporation,~~

897 | ~~made in the agent's capacity as the corporation's agent. A~~
 898 | ~~comparison may be made solely of the premium with respect to the~~
 899 | ~~main building or structure only on the following basis: the same~~
 900 | ~~coverage A or other building limits; the same percentage~~
 901 | ~~hurricane deductible that applies on an annual basis or that~~
 902 | ~~applies to each hurricane for commercial residential property;~~
 903 | ~~the same percentage of ordinance and law coverage, if the same~~
 904 | ~~limit is offered by both the corporation and the authorized~~
 905 | ~~insurer; the same mitigation credits, to the extent the same~~
 906 | ~~types of credits are offered both by the corporation and the~~
 907 | ~~authorized insurer; the same method for loss payment, such as~~
 908 | ~~replacement cost or actual cash value, if the same method is~~
 909 | ~~offered both by the corporation and the authorized insurer in~~
 910 | ~~accordance with underwriting rules; and any other form or~~
 911 | ~~coverage that is reasonably comparable as determined by the~~
 912 | ~~board. If an application is submitted to the corporation for~~
 913 | ~~wind only coverage in the high risk account, the premium for the~~
 914 | ~~corporation's wind only policy plus the premium for the ex-wind~~
 915 | ~~policy that is offered by an authorized insurer to the applicant~~
 916 | ~~shall be compared to the premium for multiperil coverage offered~~
 917 | ~~by an authorized insurer, subject to the standards for~~
 918 | ~~comparison specified in this subparagraph. If the corporation or~~
 919 | ~~the applicant requests from the authorized insurer a breakdown~~
 920 | ~~of the premium of the offer by types of coverage so that a~~
 921 | ~~comparison may be made by the corporation or its agent and the~~
 922 | ~~authorized insurer refuses or is unable to provide such~~
 923 | ~~information, the corporation may treat the offer as not being an~~
 924 | ~~offer of coverage from an authorized insurer at the insurer's~~

925 | ~~approved rate.~~

926 | ~~5.6.~~ Must include rules for classifications of risks and
927 | rates ~~therefor.~~

928 | ~~6.7.~~ Must provide that if premium and investment income
929 | for an account attributable to a particular calendar year are in
930 | excess of projected losses and expenses for the account
931 | attributable to that year, such excess shall be held in surplus
932 | in the account. Such surplus must ~~shall~~ be available to defray
933 | deficits in that account as to future years and ~~shall be~~ used
934 | for that purpose before ~~prior to~~ assessing assessable insurers
935 | and assessable insureds as to any calendar year.

936 | ~~7.8.~~ Must provide objective criteria and procedures to be
937 | uniformly applied to ~~for~~ all applicants in determining whether
938 | an individual risk is so hazardous as to be uninsurable. In
939 | making this determination and in establishing the criteria and
940 | procedures, the following must ~~shall~~ be considered:

941 | a. Whether the likelihood of a loss for the individual
942 | risk is substantially higher than for other risks of the same
943 | class; and

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

946 |

947 | The acceptance or rejection of a risk by the corporation shall
948 | be construed as the private placement of insurance, and the
949 | provisions of chapter 120 do ~~shall~~ not apply.

950 | ~~8.9.~~ ~~Must provide that the corporation~~ Shall make its best
951 | efforts to procure catastrophe reinsurance at reasonable rates,
952 | to cover its projected 100-year probable maximum loss as

953 | determined by the board of governors.

954 | 9.10. Must issue ~~The policies that issued by the~~
 955 | ~~corporation must~~ provide that, if the corporation or the market
 956 | assistance plan obtains an offer from an authorized insurer to
 957 | cover the risk at its approved rates, the risk is no longer
 958 | eligible for renewal through the corporation, except as
 959 | otherwise provided in this subsection.

960 | 10.11. Must ~~Corporation Policies and applications must~~
 961 | include a notice in the corporation policies and applications
 962 | that the corporation policy could, under this section, be
 963 | replaced with a policy issued by an authorized insurer which
 964 | ~~that~~ does not provide coverage identical to the coverage
 965 | provided by the corporation. The notice must ~~shall~~ also specify
 966 | that acceptance of corporation coverage creates a conclusive
 967 | presumption that the applicant or policyholder is aware of this
 968 | potential.

969 | 11.12. May establish, subject to approval by the office,
 970 | different eligibility requirements and operational procedures
 971 | for any line or type of coverage for any specified county or
 972 | area if the board determines that such changes ~~to the~~
 973 | ~~eligibility requirements and operational procedures~~ are
 974 | justified due to the voluntary market being sufficiently stable
 975 | and competitive in such area or for such line or type of
 976 | coverage and that consumers who, in good faith, are unable to
 977 | obtain insurance through the voluntary market through ordinary
 978 | methods ~~would~~ continue to have access to coverage from the
 979 | corporation. If ~~When~~ coverage is sought in connection with a
 980 | real property transfer, the ~~such~~ requirements and procedures may

981 ~~shall~~ not provide ~~for~~ an effective date of coverage later than
 982 the date of the closing of the transfer as established by the
 983 transferor, the transferee, and, if applicable, the lender.

984 12.13. Must provide that, with respect to the high-risk
 985 account, any assessable insurer with a surplus as to
 986 policyholders of \$25 million or less writing 25 percent or more
 987 of its total countrywide property insurance premiums in this
 988 state may petition the office, within the first 90 days of each
 989 calendar year, to qualify as a limited apportionment company. A
 990 regular assessment levied by the corporation on a limited
 991 apportionment company for a deficit incurred by the corporation
 992 for the high-risk account ~~in 2006 or thereafter~~ may be paid to
 993 the corporation on a monthly basis as the assessments are
 994 collected by the limited apportionment company from its insureds
 995 pursuant to s. 627.3512, but the regular assessment must be paid
 996 in full within 12 months after being levied by the corporation.
 997 A limited apportionment company shall collect from its
 998 policyholders any emergency assessment imposed under sub-
 999 subparagraph (b)3.d. ~~The plan shall provide that,~~ If the office
 1000 determines that any regular assessment will result in an
 1001 impairment of the surplus of a limited apportionment company,
 1002 the office may direct that all or part of such assessment be
 1003 deferred as provided in subparagraph (q)4. However, ~~there shall~~
 1004 ~~be no limitation or deferment of~~ an emergency assessment to be
 1005 collected from policyholders under sub-subparagraph (b)3.d. may
 1006 not be limited or deferred.

1007 13.14. Effective January 1, 2012, ~~must provide that the~~
 1008 ~~corporation~~ appoint as its licensed agents only those agents who

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1009 | also hold an appointment as defined in s. 626.015(3) with an
 1010 | insurer who ~~at the time of the agent's initial appointment by~~
 1011 | ~~the corporation~~ is authorized to write and is actually writing
 1012 | personal lines residential property coverage, commercial
 1013 | residential property coverage, or commercial nonresidential
 1014 | property coverage within the state.

1015 | 14.15. Must provide, ~~by July 1, 2007,~~ a premium payment
 1016 | plan option to its policyholders which, ~~allows~~ at a minimum,
 1017 | allows for quarterly and semiannual payment of premiums. A
 1018 | monthly payment plan may, ~~but is not required to,~~ be offered.

1019 | 15.16. Must limit coverage on mobile homes or manufactured
 1020 | homes built before ~~prior to~~ 1994 to actual cash value of the
 1021 | dwelling rather than replacement costs of the dwelling.

1022 | 16.17. May provide such limits of coverage as the board
 1023 | determines, consistent with the requirements of this subsection.

1024 | 17.18. May require commercial property to meet specified
 1025 | hurricane mitigation construction features as a condition of
 1026 | eligibility for coverage.

1027 | 18. As of January 1, 2012, must require that the agent
 1028 | obtain from an applicant for coverage from the corporation an
 1029 | acknowledgement signed by the applicant, which includes, at a
 1030 | minimum, the following statement:

1031 |
 1032 | ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:
 1033 |

1034 | 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
 1035 | CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
 1036 | DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,

1037 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
 1038 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
 1039 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
 1040 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
 1041 LEGISLATURE.

1042 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
 1043 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
 1044 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
 1045 FLORIDA LEGISLATURE.

1046 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
 1047 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
 1048 STATE OF FLORIDA.

1049
 1050 a. The corporation shall maintain, in electronic format or
 1051 otherwise, a copy of the applicant's signed acknowledgement and
 1052 provide a copy of the statement to the policyholder as part of
 1053 the first renewal after the effective date of this sub-
 1054 subparagraph.

1055 b. The signed acknowledgement form creates a conclusive
 1056 presumption that the policyholder understood and accepted his or
 1057 her potential surcharge and assessment liability as a
 1058 policyholder of the corporation.

1059 19. Upon notice and determination by the Department of
 1060 Financial Services that an agent appointed by the corporation
 1061 has violated s. 626.9541(1)(h), immediately terminate the
 1062 agent's appointment to represent the corporation.

1063 20. Must provide that new or renewal policies issued by
 1064 the corporation on or after January 1, 2012, do not include

1065 | coverage for attached or detached screen enclosures. The
 1066 | corporation is not required to issue a notice of nonrenewal to
 1067 | exclude this coverage upon the renewal of current policies, but
 1068 | shall exclude such coverage using a notice of coverage change.

1069 | 21. Must provide that new or renewal policies issued by the
 1070 | corporation on or after January 1, 2012, which cover the peril
 1071 | of sinkhole do not include coverage for any loss to appurtenant
 1072 | structures, driveways, sidewalks, decks, or patios which is
 1073 | caused directly or indirectly by sinkhole activity. The
 1074 | corporation is not required to issue a notice of nonrenewal to
 1075 | exclude this coverage upon the renewal of current policies, but
 1076 | shall exclude such coverage using a notice of coverage change
 1077 | which may be included with the policy renewal.

1078 | (d)1. All prospective employees for senior management
 1079 | positions, as defined by the plan of operation, are subject to
 1080 | background checks as a prerequisite for employment. The office
 1081 | shall conduct the background checks ~~on such prospective~~
 1082 | ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

1083 | 2. On or before July 1 of each year, employees of the
 1084 | corporation must ~~are required to~~ sign and submit a statement
 1085 | attesting that they do not have a conflict of interest, as
 1086 | defined in part III of chapter 112. As a condition of
 1087 | employment, all prospective employees must ~~are required to~~ sign
 1088 | and submit to the corporation a conflict-of-interest statement.

1089 | 3. Senior managers and members of the board of governors
 1090 | are subject to ~~the provisions of~~ part III of chapter 112,
 1091 | including, but not limited to, the code of ethics and public
 1092 | disclosure and reporting of financial interests, pursuant to s.

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1093 112.3145.

1094 a. Senior managers and board members are also required to
 1095 file such disclosures with the Commission on Ethics and the
 1096 Office of Insurance Regulation. The executive director of the
 1097 corporation or his or her designee shall notify each existing
 1098 and newly appointed ~~and existing appointed~~ member of the board
 1099 of governors and senior managers of their duty to comply with
 1100 the reporting requirements of part III of chapter 112. At least
 1101 quarterly, the executive director or his or her designee shall
 1102 submit to the Commission on Ethics a list of names of the senior
 1103 managers and members of the board of governors who are subject
 1104 to the public disclosure requirements under s. 112.3145.

1105 b. Notwithstanding s. 112.3143(2), a board member may not
 1106 vote on any measure that would inure to his or her special
 1107 private gain or loss; that he or she knows would inure to the
 1108 special private gain or loss of any principal by whom he or she
 1109 is retained or to the parent organization or subsidiary of a
 1110 corporate principal by which he or she is retained, other than
 1111 an agency as defined in s. 112.312; or that he or she knows
 1112 would inure to the special private gain or loss of a relative or
 1113 business associate of the public officer. Before the vote is
 1114 taken, such member must publicly state to the assembly the
 1115 nature of his or her interest in the matter from which he or she
 1116 is abstaining and, within 15 days after the vote occurs,
 1117 disclose the nature of his or her interest as a public record in
 1118 a memorandum filed with the person responsible for recording the
 1119 minutes of the meeting, who shall incorporate the memorandum in
 1120 the minutes.

1121 4. Notwithstanding s. 112.3148 or s. 112.3149, or any
 1122 other provision of law, an employee or board member may not
 1123 knowingly accept, directly or indirectly, any gift or
 1124 expenditure from a person or entity, or an employee or
 1125 representative of such person or entity, which ~~that~~ has a
 1126 contractual relationship with the corporation or who is under
 1127 consideration for a contract. An employee or board member who
 1128 fails to comply with subparagraph 3. or this subparagraph is
 1129 subject to penalties provided under ss. 112.317 and 112.3173.

1130 5. Any senior manager of the corporation who is employed
 1131 on or after January 1, 2007, regardless of the date of hire, who
 1132 subsequently retires or terminates employment is prohibited from
 1133 representing another person or entity before the corporation for
 1134 2 years after retirement or termination of employment from the
 1135 corporation.

1136 6. Any senior manager of the corporation who is employed
 1137 on or after January 1, 2007, regardless of the date of hire, who
 1138 subsequently retires or terminates employment is prohibited from
 1139 having any employment or contractual relationship for 2 years
 1140 with an insurer that has entered into a take-out bonus agreement
 1141 with the corporation.

1142 (n)~~1~~. It is the intent of the Legislature that the rates
 1143 for coverage provided by the corporation be actuarially
 1144 determined and not be competitive with rates charged in the
 1145 admitted voluntary market such that the corporation functions as
 1146 a residual market mechanism that provides insurance only if such
 1147 insurance cannot be procured in the voluntary market. To achieve
 1148 this goal, for any rate filing made by the corporation on or

1149 ~~after July 1, 2011: Rates for coverage provided by the~~
 1150 ~~corporation shall be actuarially sound and subject to the~~
 1151 ~~requirements of s. 627.062, except as otherwise provided in this~~
 1152 ~~paragraph. The corporation shall file its recommended rates with~~
 1153 ~~the office at least annually. The corporation shall provide any~~
 1154 ~~additional information regarding the rates which the office~~
 1155 ~~requires. The office shall consider the recommendations of the~~
 1156 ~~board and issue a final order establishing the rates for the~~
 1157 ~~corporation within 45 days after the recommended rates are~~
 1158 ~~filed. The corporation may not pursue an administrative~~
 1159 ~~challenge or judicial review of the final order of the office.~~

1160 1. The corporation shall file its recommended rates with
 1161 the office at least annually. The office shall consider the
 1162 recommended rates and issue a final order establishing the rates
 1163 within 45 days after the recommended rates are filed. The
 1164 corporation may not pursue an administrative challenge or
 1165 judicial review of the office's final order.

1166 2. In developing its rates, the corporation shall use an
 1167 appropriate industry expense equalization factor to ensure that
 1168 its rates include standard industry ratemaking expense
 1169 provisions. The industry expense equalization factor must
 1170 include a catastrophe risk load, a provision for taxes, a market
 1171 provision for reinsurance costs, and an industry expense
 1172 provision for general expenses, acquisition expenses, and
 1173 commissions.

1174 3. The corporation shall implement a rate increase each
 1175 year for each residential line of business it writes, which may
 1176 not exceed 20 percent by territory and 25 percent for any single

1177 policy, excluding coverage changes and surcharges. This
 1178 subparagraph expires January 1, 2015, and does not apply to
 1179 rates for sinkhole coverage or costs for the purchase of private
 1180 reinsurance, if any.

1181 4.2. In addition to the rates otherwise determined
 1182 pursuant to this paragraph, the corporation shall impose and
 1183 collect an amount equal to the premium tax provided for in s.
 1184 624.509 to augment the financial resources of the corporation.

1185 ~~3. After the public hurricane loss projection model under~~
 1186 ~~s. 627.06281 has been found to be accurate and reliable by the~~
 1187 ~~Florida Commission on Hurricane Loss Projection Methodology,~~
 1188 ~~that model shall serve as the minimum benchmark for determining~~
 1189 ~~the windstorm portion of the corporation's rates. This~~
 1190 ~~subparagraph does not require or allow the corporation to adopt~~
 1191 ~~rates lower than the rates otherwise required or allowed by this~~
 1192 ~~paragraph.~~

1193 ~~4. The rate filings for the corporation which were~~
 1194 ~~approved by the office and which took effect January 1, 2007,~~
 1195 ~~are rescinded, except for those rates that were lowered. As soon~~
 1196 ~~as possible, the corporation shall begin using the lower rates~~
 1197 ~~that were in effect on December 31, 2006, and shall provide~~
 1198 ~~refunds to policyholders who have paid higher rates as a result~~
 1199 ~~of that rate filing. The rates in effect on December 31, 2006,~~
 1200 ~~shall remain in effect for the 2007 and 2008 calendar years~~
 1201 ~~except for any rate change that results in a lower rate. The~~
 1202 ~~next rate change that may increase rates shall take effect~~
 1203 ~~pursuant to a new rate filing recommended by the corporation and~~
 1204 ~~established by the office, subject to the requirements of this~~

1205 | ~~paragraph.~~

1206 | ~~5. Beginning on July 15, 2009, and each year thereafter,~~
 1207 | ~~the corporation must make a recommended actuarially sound rate~~
 1208 | ~~filing for each personal and commercial line of business it~~
 1209 | ~~writes, to be effective no earlier than January 1, 2010.~~

1210 | ~~6. Beginning on or after January 1, 2010, and~~
 1211 | ~~notwithstanding the board's recommended rates and the office's~~
 1212 | ~~final order regarding the corporation's filed rates under~~
 1213 | ~~subparagraph 1., the corporation shall implement a rate increase~~
 1214 | ~~each year which does not exceed 10 percent for any single policy~~
 1215 | ~~issued by the corporation, excluding coverage changes and~~
 1216 | ~~surcharges.~~

1217 | ~~5.7.~~ The corporation may also implement an increase to
 1218 | reflect the effect on the corporation of the cash buildup factor
 1219 | pursuant to s. 215.555(5) (b).

1220 | 6. This paragraph does not require or allow the
 1221 | corporation to reduce rates.

1222 | ~~8. The corporation's implementation of rates as prescribed~~
 1223 | ~~in subparagraph 6. shall cease for any line of business written~~
 1224 | ~~by the corporation upon the corporation's implementation of~~
 1225 | ~~actuarially sound rates. Thereafter, the corporation shall~~
 1226 | ~~annually make a recommended actuarially sound rate filing for~~
 1227 | ~~each commercial and personal line of business the corporation~~
 1228 | ~~writes.~~

1229 | (o) If coverage in an account is deactivated pursuant to
 1230 | paragraph (p), coverage through the corporation shall be
 1231 | reactivated by order of the office only under one of the
 1232 | following circumstances:

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1233 | 1. If the market assistance plan receives a minimum of 100
 1234 | applications for coverage within a 3-month period, or 200
 1235 | applications for coverage within a 1-year period or less for
 1236 | residential coverage, unless the market assistance plan provides
 1237 | a quotation from admitted carriers at their filed rates for at
 1238 | least 90 percent of such applicants. A ~~Any~~ market assistance
 1239 | plan application that is rejected because an individual risk is
 1240 | so hazardous as to be uninsurable using the criteria specified
 1241 | in subparagraph (c)7. ~~may (c)8. shall~~ not be included in the
 1242 | minimum percentage calculation ~~provided herein.~~ If ~~In the event~~
 1243 | ~~that~~ there is a legal or administrative challenge to a
 1244 | determination by the office that the conditions of this
 1245 | subparagraph have been met for eligibility for coverage by ~~in~~
 1246 | the corporation, an ~~any~~ eligible risk may obtain coverage during
 1247 | the pendency of such challenge.

1248 | 2. In response to a state of emergency declared by the
 1249 | Governor under s. 252.36, the office may activate coverage by
 1250 | order during ~~for the period of~~ the emergency upon a finding by
 1251 | the office that the emergency significantly affects the
 1252 | availability of residential property insurance.

1253 | (s)1. There is ~~shall be~~ no liability on the part of, and
 1254 | no cause of action ~~of any nature~~ shall arise against, any
 1255 | assessable insurer or its agents or employees, the corporation
 1256 | or its agents or employees, members of the board of governors or
 1257 | their respective designees at a board meeting, corporation
 1258 | committee members, or the office or its representatives, for any
 1259 | action taken by them in the performance of their duties or
 1260 | responsibilities under this subsection.

1261 a. As part of the immunity, the corporation, as a
 1262 governmental entity serving a public purpose, is not liable for
 1263 any claim for bad faith whether or not brought pursuant to s.
 1264 624.155, and this subsection or any other provision of law does
 1265 not create liability or a cause of action for bad faith or a
 1266 claim for extracontractual damages.

1267 b. Such immunity does not apply to:

1268 (I) ~~a.~~ Any of the foregoing persons or entities for any
 1269 willful tort;

1270 (II) ~~b.~~ The corporation or its producing agents for breach
 1271 of any contract or agreement pertaining to insurance coverage;

1272 (III) ~~c.~~ The corporation with respect to issuance or
 1273 payment of debt;

1274 (IV) ~~d.~~ An ~~Any~~ assessable insurer with respect to any
 1275 action to enforce an assessable insurer's obligations to the
 1276 corporation under this subsection; or

1277 (V) ~~e.~~ The corporation in any pending or future action for
 1278 breach of contract or for benefits under a policy issued by the
 1279 corporation. ~~+~~ In any such action, the corporation is ~~shall be~~
 1280 liable to the policyholders and beneficiaries for attorney's
 1281 fees under s. 627.428.

1282 2. The corporation shall manage its claim employees,
 1283 independent adjusters, and others who handle claims to ensure
 1284 they carry out the corporation's duty to its policyholders to
 1285 handle claims carefully, timely, diligently, and in good faith,
 1286 balanced against the corporation's duty to the state to manage
 1287 its assets responsibly in order to minimize its assessment
 1288 potential.

1289 (w) Notwithstanding any other provision of law:
 1290 1. The pledge or sale of, the lien upon, and the security
 1291 interest in any rights, revenues, or other assets of the
 1292 corporation created or purported to be created pursuant to any
 1293 financing documents to secure any bonds or other indebtedness of
 1294 the corporation shall be and remain valid and enforceable,
 1295 notwithstanding the commencement of and during the continuation
 1296 of, and after, any rehabilitation, insolvency, liquidation,
 1297 bankruptcy, receivership, conservatorship, reorganization, or
 1298 similar proceeding against the corporation under the laws of
 1299 this state.
 1300 2. ~~No~~ Such proceeding does not shall relieve the
 1301 corporation of its obligation, or otherwise affect its ability
 1302 to perform its obligation, to continue to collect, or levy and
 1303 collect, assessments, market equalization or other surcharges
 1304 ~~under subparagraph (c)10.~~, or any other rights, revenues, or
 1305 other assets of the corporation pledged pursuant to any
 1306 financing documents.
 1307 3. Each such pledge or sale of, lien upon, and security
 1308 interest in, including the priority of such pledge, lien, or
 1309 security interest, any such assessments, market equalization or
 1310 other surcharges, or other rights, revenues, or other assets
 1311 which are collected, or levied and collected, after the
 1312 commencement of and during the pendency of, or after, any such
 1313 proceeding continues shall continue unaffected by such
 1314 proceeding. As used in this subsection, the term "financing
 1315 documents" means any agreement or agreements, instrument or
 1316 instruments, or other document or documents now existing or

1317 hereafter created evidencing any bonds or other indebtedness of
 1318 the corporation or pursuant to which any such bonds or other
 1319 indebtedness has been or may be issued and pursuant to which any
 1320 rights, revenues, or other assets of the corporation are pledged
 1321 or sold to secure the repayment of such bonds or indebtedness,
 1322 together with the payment of interest on such bonds or such
 1323 indebtedness, or the payment of any other obligation or
 1324 financial product, as defined in the plan of operation of the
 1325 corporation related to such bonds or indebtedness.

1326 4. Any such pledge or sale of assessments, revenues,
 1327 contract rights, or other rights or assets of the corporation
 1328 constitutes ~~shall constitute~~ a lien and security interest, or
 1329 sale, as the case may be, that is immediately effective and
 1330 attaches to such assessments, revenues, or contract rights or
 1331 other rights or assets, whether or not imposed or collected at
 1332 the time the pledge or sale is made. ~~Any~~ Such pledge or sale is
 1333 effective, valid, binding, and enforceable against the
 1334 corporation or other entity making such pledge or sale, and
 1335 valid and binding against and superior to any competing claims
 1336 or obligations owed to any other person or entity, including
 1337 policyholders in this state, asserting rights in any such
 1338 assessments, revenues, or contract rights or other rights or
 1339 assets to the extent set forth in and in accordance with the
 1340 terms of the pledge or sale contained in the applicable
 1341 financing documents, whether or not any such person or entity
 1342 has notice of such pledge or sale and without the need for any
 1343 physical delivery, recordation, filing, or other action.

1344 5. If ~~As long as~~ the corporation has any bonds

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1345 outstanding, the corporation may not file a voluntary petition
 1346 under chapter 9 of the federal Bankruptcy Code or such
 1347 corresponding chapter or sections as may be in effect, ~~from time~~
 1348 ~~to time~~, and a public officer or any organization, entity, or
 1349 other person may not authorize the corporation to be or become a
 1350 debtor under chapter 9 of the federal Bankruptcy Code or such
 1351 corresponding chapter or sections as may be in effect, ~~from time~~
 1352 ~~to time~~, during any such period.

1353 6. If ordered by a court ~~of competent jurisdiction~~, the
 1354 corporation may assume policies or otherwise provide coverage
 1355 for policyholders of an insurer placed in liquidation under
 1356 chapter 631, under such forms, rates, terms, and conditions as
 1357 the corporation deems appropriate, subject to approval by the
 1358 office.

1359 (y) It is the intent of the Legislature that the
 1360 amendments to this subsection enacted in 2002 should, over time,
 1361 reduce the probable maximum windstorm losses in the residual
 1362 markets and ~~should~~ reduce the potential assessments to be levied
 1363 on property insurers and policyholders statewide. ~~In furtherance~~
 1364 ~~of this intent:~~

1365 1. ~~The board shall, on or before February 1 of each year,~~
 1366 ~~provide a report to the President of the Senate and the Speaker~~
 1367 ~~of the House of Representatives showing the reduction or~~
 1368 ~~increase in the 100-year probable maximum loss attributable to~~
 1369 ~~wind only coverages and the quota share program under this~~
 1370 ~~subsection combined, as compared to the benchmark 100-year~~
 1371 ~~probable maximum loss of the Florida Windstorm Underwriting~~
 1372 ~~Association. For purposes of this paragraph, the benchmark 100-~~

1373 ~~year probable maximum loss of the Florida Windstorm Underwriting~~
 1374 ~~Association shall be the calculation dated February 2001 and~~
 1375 ~~based on November 30, 2000, exposures. In order to ensure~~
 1376 ~~comparability of data, the board shall use the same methods for~~
 1377 ~~calculating its probable maximum loss as were used to calculate~~
 1378 ~~the benchmark probable maximum loss.~~

1379 ~~2. Beginning December 1, 2010, if the report under~~
 1380 ~~subparagraph 1. for any year indicates that the 100 year~~
 1381 ~~probable maximum loss attributable to wind only coverages and~~
 1382 ~~the quota share program combined does not reflect a reduction of~~
 1383 ~~at least 25 percent from the benchmark, the board shall reduce~~
 1384 ~~the boundaries of the high risk area eligible for wind only~~
 1385 ~~coverages under this subsection in a manner calculated to reduce~~
 1386 ~~such probable maximum loss to an amount at least 25 percent~~
 1387 ~~below the benchmark.~~

1388 ~~3. Beginning February 1, 2015, if the report under~~
 1389 ~~subparagraph 1. for any year indicates that the 100 year~~
 1390 ~~probable maximum loss attributable to wind only coverages and~~
 1391 ~~the quota share program combined does not reflect a reduction of~~
 1392 ~~at least 50 percent from the benchmark, the boundaries of the~~
 1393 ~~high risk area eligible for wind only coverages under this~~
 1394 ~~subsection shall be reduced by the elimination of any area that~~
 1395 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~
 1396 ~~Waterway.~~

1397 (aa) As a condition of eligibility for coverage by the
 1398 corporation, an applicant or insured of a property located in
 1399 Special Flood Hazard Area, as defined by the National Flood
 1400 Insurance Program, must maintain in effect a separate flood

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1401 | insurance policy having coverage limits for building and
 1402 | contents at least equal to those provided under the
 1403 | corporation's policy, subject to the maximum limits available
 1404 | under the National Flood Insurance Program policy. This
 1405 | requirement does not apply to an insured who is a tenant or a
 1406 | condominium unit owner above the ground floor; a policy issued
 1407 | by the corporation which excludes wind and hail coverage; a risk
 1408 | that is not eligible for flood coverage under the National Flood
 1409 | Insurance Program; or a mobile home that is located more than 2
 1410 | miles from open water, including the ocean, the gulf, a bay, a
 1411 | river, or the intracoastal waterway. This paragraph applies to
 1412 | new policies issued by the corporation on or after January 1,
 1413 | 2012, and to policies renewed by the corporation on or after
 1414 | January 1, 2013. The corporation shall not require the securing
 1415 | ~~of flood insurance as a condition of coverage if the insured or~~
 1416 | ~~applicant executes a form approved by the office affirming that~~
 1417 | ~~flood insurance is not provided by the corporation and that if~~
 1418 | ~~flood insurance is not secured by the applicant or insured in~~
 1419 | ~~addition to coverage by the corporation, the risk will not be~~
 1420 | ~~covered for flood damage. A corporation policyholder electing~~
 1421 | ~~not to secure flood insurance and executing a form as provided~~
 1422 | ~~herein making a claim for water damage against the corporation~~
 1423 | ~~shall have the burden of proving the damage was not caused by~~
 1424 | ~~flooding. Notwithstanding other provisions of this subsection,~~
 1425 | ~~the corporation may deny coverage to an applicant or insured who~~
 1426 | ~~refuses to execute the form described herein.~~
 1427 | ~~(cc) The office may establish a pilot program to offer~~
 1428 | ~~optional sinkhole coverage in one or more counties or other~~

1429 ~~territories of the corporation for the purpose of implementing~~
 1430 ~~s. 627.706, as amended by s. 30, chapter 2007-1, Laws of~~
 1431 ~~Florida. Under the pilot program, the corporation is not~~
 1432 ~~required to issue a notice of nonrenewal to exclude sinkhole~~
 1433 ~~coverage upon the renewal of existing policies, but may exclude~~
 1434 ~~such coverage using a notice of coverage change.~~

1435 Section 2. Subsection (4) of section 627.3511, Florida
 1436 Statutes, is amended to read:

1437 627.3511 Depopulation of Citizens Property Insurance
 1438 Corporation.—

1439 (4) AGENT BONUS.—If ~~When~~ the corporation enters into a
 1440 contractual agreement for a take-out plan that provides a bonus
 1441 to the insurer, the producing agent of record of the corporation
 1442 policy is entitled to retain any unearned commission on such
 1443 policy, and the insurer shall ~~either~~:

1444 (a) Pay to the producing agent ~~of record of the~~
 1445 ~~association policy~~, for the first year, an amount that is the
 1446 greater of the insurer's usual and customary commission for the
 1447 type of policy written or a fee equal to the usual and customary
 1448 commission of the corporation; or

1449 (b) Offer to allow the producing agent ~~of record of the~~
 1450 ~~corporation policy~~ to continue servicing the policy for at least
 1451 ~~a period of not less than~~ 1 year and offer to pay the agent the
 1452 greater of the insurer's or the corporation's usual and
 1453 customary commission for the type of policy written.

1454
 1455 If the producing agent is unwilling or unable to accept
 1456 appointment, the new insurer shall pay the agent in accordance

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1457 with paragraph (a). The requirement ~~of this subsection~~ that the
 1458 producing agent of record is entitled to retain the unearned
 1459 commission on an association policy does not apply to a policy
 1460 for which coverage has been provided in the association for 30
 1461 days or less ~~or for which a cancellation notice has been issued~~
 1462 ~~pursuant to s. 627.351(6)(c)10. during the first 30 days of~~
 1463 ~~coverage.~~

1464 Section 3. Subsection (1) of section 627.712, Florida
 1465 Statutes, is amended to read:

1466 627.712 Residential windstorm coverage required;
 1467 availability of exclusions for windstorm or contents.—

1468 (1) An insurer issuing a residential property insurance
 1469 policy must provide windstorm coverage. Except as provided in
 1470 paragraph (2)(c), this section does not apply ~~with respect~~ to
 1471 risks that are eligible for wind-only coverage from Citizens
 1472 Property Insurance Corporation under s. 627.351(6), and ~~with~~
 1473 ~~respect~~ to risks that are not eligible for coverage from
 1474 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.
 1475 or 4. 5. A risk ineligible for ~~Citizens~~ coverage under s.
 1476 627.351(6)(a)3. or 4. 5. is exempt from the requirements of this
 1477 section only if the risk is located within the boundaries of the
 1478 high-risk account of the corporation.

1479 Section 4. This act shall take effect upon becoming a law.