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# **Insurance & Banking Subcommittee**

**Tuesday, April 5, 2011  
4:00 PM - 6:00 PM  
404 HOB**



# **The Florida House of Representatives**

**Economic Affairs Committee**

**Insurance & Banking Subcommittee**

**Dean Cannon**  
**Speaker**

**Bryan Nelson**  
**Chair**

## **AGENDA**

April 5, 2011  
404 House Office Building  
4:00 p.m. – 6:00 p.m.

- I. Introductory Remarks
- II. PCS for HB 803 **Property and Casualty Insurance**
- III. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 803 Property and Casualty 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		Callaway	Cooper

### SUMMARY ANALYSIS

This bill makes numerous changes to the laws related to property and casualty insurance, primarily residential property insurance. The bill addresses the following major issues:

- Losses, amounts, and expenses that are not reimbursable by the Florida Hurricane Catastrophe Fund.
- Increased surplus requirements for property insurance companies to obtain and maintain a certificate of authority to transact insurance.
- Public adjuster fees, advertisement, solicitation, and other conduct.
- Exemption from adjuster licensure for persons adjusting property claims on foreclosed properties for financial institutions.
- Time period for filing a notice of claim due to hurricanes or windstorms.
- Payment of acquisition costs by insurance companies.
- Certification of additional or supplemental information provided to a property insurance rate filing at the request of the Office of Insurance Regulation (OIR).
- Reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition.
- Insurer verification of mitigation discount forms submitted by policyholders or insurance agents.
- Change of policy terms of property or casualty insurance by insurers at policy renewal under specified conditions.
- Procedure and payment timing related to payment of replacement costs to policyholders for partial dwelling losses.
- Numerous revisions to the laws governing sinkholes claims, including adding definitions, changing the adjusting of claims and the payment of testing and reporting, changing repair requirements, and modifying the neutral evaluation process.
- Repeal of the sinkhole database.
- Payment of sinkhole claims by the Florida Insurance Guaranty Association.

The bill has no fiscal impact on state or local governments. Some of the provisions in the bill have fiscal impacts on consumers and the insurance industry. Some of the provisions restrict insurance coverage and some may impact rates and premiums. (See Fiscal Analysis Section of the staff analysis).

The bill is effective upon becoming a law unless provided otherwise in the bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

This bill makes numerous changes for property and casualty insurance, primarily property insurance.

#### **Florida Hurricane Catastrophe Fund**

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created after Hurricane Andrew as a form of reinsurance for residential property insurers.<sup>1</sup> The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). Residential property is defined in s. 627.4025(1), F.S. to include personal lines and commercial lines residential coverage. This coverage entails the following insurance policies: homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, condominium association, cooperative association, and apartment building.

The FHCF is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses to residential property above the insurer's retention (deductible).<sup>2</sup> A reimbursement contract between the FHCF and the property insurer governs an insurer's participation in the FHCF and the percentage of the insurer's reimbursement. Reimbursement contracts run from June 1<sup>st</sup> – May 30<sup>th</sup>.

Current law only specifies losses for fair rental value, rental income, or business interruption losses are not reimbursable by the FHCF. The bill adds the following additional losses, amounts, and expenses that are not reimbursable by the FHCF:

- Liability coverage losses.
- Property losses that are not proximately caused by a hurricane.
- Amounts paid because the insurer voluntarily expanded coverage, such as the waiver of a deductible.
- Reimbursement to the policyholder for an assessment levied by a condominium association or homeowners' association.
- Bad faith awards, punitive damage awards, and court-imposed fines, sanctions, or penalties.
- Amounts paid in excess of the insurance policy coverage limit.
- Allocated and unallocated loss adjustment expenses.

The FHCF has not historically reimbursed insurers for these losses, amounts, and expenses.

The bill also specifies the exceptions to the FHCF definition of "losses" first apply to the reimbursement contracts between the FHCF and the insurer that takes effect on June 1, 2011.

#### **Insurer Surplus Requirements**

Florida law specifies certain minimum surplus and capital requirements for property and casualty insurers to transact insurance in the state. Surplus is the reserves an insurer has available to pay claims and is a critical component in measuring the financial strength of a company.<sup>3</sup> The current

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<sup>1</sup> s. 215.555, F.S.

<sup>2</sup> Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the fund. A retention is calculated for each insurer based on its proportionate share of fund premiums.

<sup>3</sup> An insurer's surplus is the remainder after a company's liabilities are subtracted from its assets.

surplus and capital requirements for property and casualty insurers have not been changed since 1993.<sup>4</sup>

### ***Surplus Needed To Obtain A Certificate of Authority***

With limited exceptions, a certificate of authority from the Office of Insurance Regulation (OIR) is needed to act as an insurer and transact insurance.<sup>5</sup> Generally, a new property and casualty company that is not a pup company must have the greater of \$5 million in surplus or ten percent of the insurer's liabilities to obtain a certificate of authority.<sup>6</sup>

Under the bill, an insurance company that is formed under Florida law, that is licensed after the bill takes effect to write residential property insurance, and that is not a pup company of an existing insurer must have \$15 million in surplus to obtain a certificate of authority, rather than the greater of \$5 million or ten percent of the insurer's liabilities.

### ***Surplus Needed To Maintain A Certificate of Authority***

Once a property and casualty insurer is licensed in Florida, the minimum surplus required to keep a certificate of authority is the greater of \$4 million or ten percent of the insurer's liabilities.<sup>7</sup> In addition, generally, a property and casualty insurer's written premium to surplus ratio must not exceed 4 to 1 for net written premiums or 10 to 1 for gross written premiums.<sup>8</sup>

Under the bill, an insurance company formed under Florida law and licensed after July 1, 2011, to write residential property insurance must have the greater of ten percent of the insurer's liabilities or \$15 million, rather than \$4 million, in surplus to keep a certificate of authority. However, residential property insurance companies licensed before July 1, 2011, must keep the greater of ten percent of the insurer's liabilities or:

- \$5 million, rather than \$4 million, in surplus until June 30, 2016;
- \$10 million, rather than \$4 million, in surplus until June 30, 2021; and
- \$15 million, rather than \$4 million, in surplus after June 30, 2021.

Thus, companies writing residential property insurance and licensed before July 1, 2011, must incrementally meet increased surplus requirements, whereas, companies licensed after July 1, 2011, must immediately meet increased surplus requirements.

The OIR can reduce the required surplus under three circumstances:

- the insurer is not writing new business;
- the insurer has residential property insurance premiums less than \$1 million per year; or
- the insurer is a mutual insurance company<sup>9</sup>.

The bill does not increase surplus requirements for property insurers writing nonresidential property insurance. These companies have to have \$4 million or 10 percent of the insurer's liabilities in surplus in order to keep a certificate of authority.

## **Public Adjusters**

### **Background**

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside

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<sup>4</sup> Ch. 1993-410, L.O.F.

<sup>5</sup> s. 624.401(1), F.S.

<sup>6</sup> ss. 624.407(1)(a) and (d), F.S. The \$5 million surplus requirement is increased to \$50 million for pup companies writing residential property insurance in Florida. Pup companies are wholly owned Florida subsidiaries of an insurer domiciled in another state.

<sup>7</sup> s. 624.408(1)(a), F.S.

<sup>8</sup> s. 624.4095(1), F.S. Net Premiums = Gross Premiums minus reinsurance premiums ceded

<sup>9</sup> A mutual insurance company is defined in s. 628.031, F.S.

in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state.

The Department of Financial Services (DFS) regulates all types of adjusters. The DFS reports that as of January 31, 2011, Florida licenses almost 32,500 resident adjusters and almost 45,000 non-resident adjusters.<sup>10</sup> Of these, 2,086 are resident public adjusters and 380 are non-resident public adjusters.<sup>11</sup>

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies.

Generally, public adjusters are paid a percentage of the claim payment. The fee percentage is usually negotiated between the public adjuster and the policyholder, except in residential property and condominium association property claims. For these claims, public adjuster fees are limited by law to a specified percentage which varies depending on whether the claim is hurricane or non-hurricane related and if the claim is hurricane-related, depending on how soon after the hurricane the claim is filed. In addition with supplemental claims for residential property or condominium associations, the public adjuster fee cannot be based on the amount paid to the policyholder on the previous claim. Independent and company employee adjusters do not charge policyholders a fee for adjusting the claim.

Public adjusters are licensed by the DFS if they meet the statutory qualifications for licensure found in s. 626.865, F.S. Qualifications include age, residency, testing, experience, and trustworthiness.<sup>12</sup> Public adjusters must also present a \$50,000 bond to DFS in order to be licensed.<sup>13</sup> No bond is required of company employee or independent adjusters.

Administrative rules relating to public adjusters, in part, address public adjuster contract cancellation, public adjuster actions relating to business referrals, and public adjuster actions relating to the hiring of other professionals to help with the claim.<sup>14</sup> Administrative rules also govern the solicitation of business and advertising by public adjusters and the contract used by public adjusters.<sup>15</sup> Public adjusters must also abide by general ethical rules applicable to all types of adjusters.<sup>16</sup>

### **2008 Legislation Relating to Public Adjusters**

In 2008, the Legislature enacted legislation imposing restrictions and regulations on public adjusters in residential property and condominium association property insurance cases.<sup>17</sup> The legislation restricted public adjuster fees to: 20 percent on non-hurricane claims, 10 percent on hurricane claims filed during the year after the hurricane, and 20 percent on hurricane claims filed later than a year after a hurricane. The 2008 legislation also prohibited a public adjuster from including the amount paid to a policyholder in a previous claim in the fee calculation on a supplemental claim.

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<sup>10</sup> Information obtained from the DFS dated 2/25/11, on file with staff of the Insurance & Banking Subcommittee.

<sup>11</sup> According to DFS, there are 15,010 licensed resident independent adjusters (13,847 non-resident independent adjusters); 15,399 licensed resident company employee adjusters (30,675 non-resident company employee adjusters).

<sup>12</sup> Similar qualifications apply to independent and company adjusters.

<sup>13</sup> s. 626.865(2), F.S.

<sup>14</sup> Rule 69B-220.201(4) and (5), F.A.C.

<sup>15</sup> Rule 69B-220.051, F.A.C.

<sup>16</sup> s. 626.878, F.S.

<sup>17</sup> Ch. 2008-220, L.O.F. The 2008 legislation resulted from findings of the Task Force on Citizens Property Insurance Claims Handling and Resolution created in 2007 to make recommendations to the legislative and executive branches relating to the appropriate handling, service and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens). During review of Citizens' hurricane claims, the Task Force became aware of the impact public adjusters have on the claims process. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the laws in place in 2007 did not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, these adjusters charged exorbitant fees which oftentimes were not apparent to insureds because the fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters. In an effort to remedy concerns expressed about abuses by some public adjusters, the Task Force proposed legislation in 2008.

The legislation in 2008 made numerous changes relating to public adjuster client solicitation and business practices. The legislation prohibited public adjusters from soliciting directly or indirectly between the hours of 8:00 pm and 8:00 am Monday through Saturday and all day on Sunday. Public adjusters were also prohibited from directly or indirectly contacting any policyholder until 48 hours after an event that triggered a claim, unless contacted by the policyholder. However, this provision was recently struck down by the First District Court of Appeal which ruled the restriction on soliciting customers within 48 hours of a disaster or other insurance claims event violated commercial speech protected by the state Constitution.<sup>18</sup> The First District Court of Appeal decision was appealed to the Florida Supreme Court and is currently pending.<sup>19</sup>

In 2008, public adjusters were prohibited from giving or offering to give a monetary loan or advance to a client or prospective client and were prohibited from giving or offering to give anything with a value in excess of \$25 for advertising or as an inducement to enter into a contract with the public adjuster. In addition, the 2008 legislation enacted time periods for cancellation a public adjuster contract without penalty. The legislation also made public adjuster circulation or dissemination of untrue, deceptive, or misleading information relating to insurance an unfair and deceptive insurance trade practice.

Changes to public adjuster licensure, the creation of a public adjuster apprenticeship program and license, and amendments to continuing education requirements for public adjusters were also enacted in 2008.

### **2009 Legislation Relating to Public Adjusters**

In 2009, the Legislature enacted further changes related to the activity of public adjusters.<sup>20</sup> The 2009 legislation prohibited public adjusters or public adjuster apprentices from paying fees for referrals of business to the public adjuster. The legislation also required public adjuster apprentices to obtain a certain claims adjuster designation before applying for an apprentice license. Furthermore, the number of active apprentices employed by a public adjusting firm was limited to 12 and the number of apprentices supervised by a public adjuster limited to three.

The 2009 legislation also required the Office of Program Policy Analysis and Government Accountability (OPPAGA) to do a study on public adjusters. This report was completed in January 2010 (Report 10-06) with the following primary findings:<sup>21</sup>

- The number of licensed public adjuster in Florida has grown significantly in the last six years, and the incidence of complaints, regulatory actions, and allegations of fraud involving public adjusters is generally low;
- Florida's public adjuster laws are comparable to and in some cases more restrictive than those of other similar states;
- According to Citizens' claims data, cases took longer to reach a settlement but received higher payments when policyholders used public adjusters for claims file in 2008 and 2009; and
- Public adjusters represented policyholders in 26 percent of non-catastrophe and 39 percent of catastrophe claims filed in 2008 and 2009 against Citizens.

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<sup>18</sup> *Kortum v. Sink*, 2010 WL 5381934 (Fla. 1st DCA 2010). In the lawsuit challenging the constitutionality of the 48 hour restriction, the plaintiff, a public adjuster, argued the first 48 hours are of vital importance because policyholders may make decisions that affect how much they could receive from an insurer during this time.

<sup>19</sup> *Atwater v. Kortum*, Case number SC11-133

<sup>20</sup> Ch. 2009-87, L.O.F.

<sup>21</sup> <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-06> (last viewed March 4, 2011).



## Proposed Changes Relating to Public Adjusters

The bill makes significant changes to the regulation of public adjusters in residential property and condominium unit owner property insurance claims.

### *Advertising or Solicitation by Public Adjusters*

Section 626.854(8), F.S., makes public adjuster circulation or dissemination of advertisements, statements, or announcements that contain untrue, deceptive, or misleading assertions, representations, or statements relating to insurance an unfair and deceptive trade practice. The bill sets forth specific statements that are deceptive or misleading if the statements are contained in advertising or solicitation of public adjusters. Thus, if a public adjuster uses these statements in advertising or solicitation, the adjuster commits an unfair and deceptive trade practice. The penalty for commission of an unfair and deceptive trade practice is found in s. 626.9521, F.S., and is a fine no more than \$5,000 for each nonwillful violation and a fine no more than \$40,000 for each willful violation.<sup>22</sup>

The bill provides the following statements by a public adjuster are an unfair and deceptive trade practice:

- Statement inviting a policyholder to file a property insurance claim when the policyholder may not have property damage covered by an insurance policy;
- Statement inviting a policyholder to file a property insurance claim by offering monetary or other valuable inducement to a policyholder;
- Statement inviting a policyholder to file a property insurance claim by stating there is “no risk” to a policyholder to file a property insurance claim; and
- Statement or use of a logo or shield that implies or could be construed to mean the adjuster’s solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

The bill also requires any written advertisements<sup>23</sup> by public adjusters to contain a specific disclaimer in bold print and capital letters in a specific typeface. The disclaimer identifies the advertisement as a solicitation for business.

### *Public Adjuster Fees*

*Initial Claims:* The bill clarifies current law relating to public adjuster fees on initial residential and condominium association property insurance claims. Starting June 1, 2011, public adjusters can be paid a maximum of ten percent of the insurance claim payment for claims resulting from a declaration of a state of emergency (i.e., claims from a hurricane) if the initial claim is made in the year after the declaration. Public adjusters can be paid a maximum of 20 percent of the claim payment for claims from a hurricane if the claim is made anytime in the year after the declaration. The bill applies these fee caps to condominium unit owner claims, rather than condominium association claims.

Current law allowing public adjusters to be paid a maximum of 20 percent of a claim payment for claims not resulting from hurricanes is not changed by the bill. However, the bill applies the current law relating to fee caps on non-hurricane related claims to condominium unit owner claims, rather than condominium association claims, starting June 1, 2011.

*Reopened or Supplemental Claims:* The only restriction in current law relating to public adjuster fees on reopened or supplemental claims against residential and condominium association property insurance policies is in s. 626.854(11)(a), F.S. This statute allows a public adjuster to be paid a fee only on the amount paid on the reopened or supplemental claim. Thus, the claim payment amount on the initial claim is not included in the public adjuster fee on a reopened or supplemental claim. There is no cap in current law, however, on the public adjuster fee that can be paid on reopened or supplemental claims. The fee amount is negotiated between the public adjuster and the policyholder.

<sup>22</sup> The total amount of fines that can be assessed is \$50,000 for all nonwillful violations arising out of the same action or \$250,000 for all willful violations arising out of the same action (s. 626.9521(3)(c), F.S.).

<sup>23</sup> “Written advertisement” is defined in the bill as newspapers, magazines, flyers, brochures, and bulk mailers.

Starting June 1, 2011, the bill adds a fee cap to reopened or supplemental claims on residential and condominium unit owner policies, rather than condominium association policies, involving public adjusters. The public adjuster fee on these types of claims cannot exceed 20 percent of the claim payment obtained on the reopened or supplemental claim.

#### *Action Required of Public Adjusters and Insurance Companies*

When a public adjuster becomes involved in certain types of property insurance claims, the bill requires the public adjuster to ensure:

- prompt notice of the claim is given to the insurance company;
- the public adjuster contract is timely given to the insurance company;
- the property insured is made available to the insurance company for inspection; and
- the insurance company is allowed to interview the policyholder about the claim.

The insurance company must also be allowed to obtain information required to investigate or respond to the claim and must meet or communicate with the public adjuster in order to reach an agreement on the claim.

The public adjuster cannot restrict the insurance company, or anyone acting on the company's behalf, from reasonable access to the policyholder or the damaged property. The insurance company, or anyone acting on the company's behalf, must give the policyholder or public adjuster 48 hours' notice before meeting with the policyholder or inspecting the damaged property. If the required notice is not given, the policyholder can deny access to the property. Both parties can waive the 48 hour notice requirement. The insurance company cannot exclude the public adjuster from its in-person meetings with the policyholder.

Public adjusters are forbidden from obstructing or preventing the insurance company or the company's adjuster from timely inspection of the damaged property. Public adjusters are allowed to be present when an insurance company inspects a damaged property. However, the insurance company is allowed access to the property for an inspection even if the public adjuster or policyholder is not able to be at the property for the inspection, if waiting for the adjuster or policyholder to attend the inspection delays a timely inspection.

#### *Actions by Contractors and Subcontractors*

Contractors licensed by the Department of Business and Professional Regulation or subcontractors are not allowed to adjust property insurance claims unless the contractor is also licensed as a public adjuster and is compliant with the public adjuster licensing requirements. Contractors, however, are allowed to prepare or submit a bid to repair damaged property and to discuss the bid with the policyholder or the insurance company if the contractor is preparing or submitting a bid at the request of the insurance company or the policyholder and the contractor is doing the bid submission for the contractor's usual and customary fee.

#### **Adjuster Licensure**

The bill exempts persons providing claims adjusting services solely to institutions holding or guaranteeing mortgages<sup>24</sup> from the insurance adjuster licensing law as long as the claims adjusting services are provided to mortgage properties.

Under current law, because the definition of "public adjuster" is so broad, persons who assist financial institutions in pursuing property insurance claims for financial institutions arising from damage or losses to foreclosed properties must be licensed as public adjusters.<sup>25</sup> In the property insurance context, generally, public adjusters represent homeowners, rather than represent financial institutions.

<sup>24</sup> Fannie Mac guarantees mortgages.

<sup>25</sup> In a pending case in United States District Court, Northern District of Florida, a out of state company providing insurance claim review and adjusting to large financial institutions that hold mortgages on property located in Florida sued the CFO of Florida for declaratory and injunctive relief to prevent application of the Florida non-resident public adjuster law to the company due to the law's disparate treatment between Florida residents and residents of other states applying for Florida licensure as a public adjuster. A preliminary injunction was entered in the case on August 25, 2010 preventing the DFS from enforcing any requirements of s. 626.8732, F.S. (the non-resident public adjuster law) that are not included in s.

## **Filing Time Frame for Windstorm or Hurricane Claims**

Although no time frame for filing property insurance claims is found in the Insurance Code,<sup>26</sup> s. 95.11, F.S., requires actions on contracts to be brought within five years. An insurance policy is a contract so the five year statute of limitations in s. 95.11, F.S., applies to insurance policies. Thus, when an insurance company breaches the insurance contract, the policyholder has five years from the breach to file suit.

Starting June 1, 2011, the bill requires notice of any claim, supplemental claim, or reopened claim resulting from windstorm or a hurricane event to be filed with the insurance company within three years after the event first made landfall or caused the damage resulting in the claim. This claim filing deadline applies only to personal lines residential policies.<sup>27</sup> The bill specifies the three year claim filing time frame added by the bill does not affect the five year statute of limitations under s. 95.11, F.S. Thus, policyholders still have five years after the insurance company breaches the insurance contract, which is typically denial of a property insurance claim, to file suit for breach of the insurance contract<sup>28</sup>

## **Payment of Acquisition Costs by Insurance Companies**

An insurer's acquisition costs are typically costs associated with acquiring, maintaining and renewing insurance business. These costs include agent commissions, company sales expenses, and other related expenses. Agent commissions may vary based on numerous factors - the line of business, the agent's expertise, the functions the agent must perform, and competition among other insurers. Agents are prohibited from charging the policyholder any part of their commission. Agent commissions are typically based on a percentage of the total premium; however, insurers can apply the agent's percentage to only a portion of the premium (for example, the non-catastrophe portion).

Under current law the OIR cannot prohibit any insurer from paying acquisition costs based on the full amount of the premium or prohibit an insurer from including the full amount of acquisition costs in a rate filing, however, representatives of insurance agents allege the OIR has questioned the amount of acquisition costs, namely agent commissions, in recent rate hearings and has encouraged insurers to reduce these costs.<sup>29</sup> Therefore, the bill specifies the OIR cannot directly or indirectly prohibit an insurer from paying acquisition costs that are lawfully paid. The bill also prohibits the OIR from certain actions relating to an insurer's acquisition of policyholders, advertisement, agent commissions or agent appointment for property and casualty insurance.

## **Standard Rating Territories**

The bill repeals language requiring the OIR to develop a proposed standard rating territory plan and submit the plan to the Legislature by January 15, 2006. Language in current law restricting implementation of the standard rating territory plan unless authorized by the Legislature is also repealed. The plan required by law was submitted to the Legislature in 2006 and the Legislature has not authorized implementation of standard rating territories since the plan submission.

## **Certification of Rate Filings**

Current law requires all property insurance rate filings to include a certification from the insurance company's chief executive officer or chief financial officer and the chief actuary of the insurance company. The certification must be under oath, subject to the penalty of perjury, and on a form

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626.865, F.S. (the public adjuster qualifications law). The injunction only applies to only persons providing public adjuster services solely to financial institutions for foreclosed property. (See *Dimont & Associates, Inc. v. Alex Sink, CFO*, Civil Action No. 4:10-CV-181-SPM-WCS)

<sup>26</sup> The Insurance Code is comprised of chapters 624-632, 634, 635, 636, 641, 642, 648, and 651.

<sup>27</sup> Personal lines residential policies include homeowner, mobile homeowner, dwelling, tenant's, condominium unit owner's, and cooperative unit owner's policies.

<sup>28</sup> See *Saenz v. State Farm Fire and Casualty Company et al*, 861 So.2d 64 (Fla. 3<sup>rd</sup> DCA 2003); *Passman v. State Farm Fire and Casualty Company*, 779 So.2d 323 (Fla. 2<sup>nd</sup> DCA 1999).

<sup>29</sup> s. 627.062(2)(i), F.S.

approved by the Financial Services Commission.<sup>30</sup> Contents of the certification are provided in s. 627.062(9)(a), F.S. Knowingly making a false certification subjects the officer and actuary to penalties under the Insurance Code. A property insurance rate filing must be disapproved if the filing does not contain a certification. The bill provides a rate filing certification is not rendered false if the insurance company, at the request of the OIR, provides the OIR with additional or supplementary information after the rate filing is submitted for approval. The bill further requires the insurer actuary submitting the additional information, rather than the chief actuary, the CEO, or the CFO, to provide the same certification for the additional information that is required under current law for all property insurance rate filings. The actuary certifying the additional information is subject to the same penalties under current law relating to the certification.

### **Nonrenewal Notice For Property Insurance**

Under current law,<sup>31</sup> personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination. The notice period is extended to 180 days if the property has been insured for at least a five year period immediately prior to the date of the notice. Further, for any cancellation, nonrenewal, or termination that takes effect between June 1<sup>st</sup> and November 30<sup>th</sup>, an insurer must provide at least 100 days written notice, or notice by June 1<sup>st</sup>, whichever is earlier.

The bill allows a 45-day notice of cancellation or nonrenewal, rather than the 100-day or 180-day notice required under current law, if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. The OIR must approve the insurer's plan for early cancellation or nonrenewal in order for the 45 day notice to apply. The OIR may base its finding on the insurer's financial condition, reinsurance inadequacy, or other relevant factor. The OIR's finding may be conditioned on the insurer's consent to be placed in administrative supervision or its consent to the appointment of a receiver.

### **Hurricane Mitigation Discounts and Premium Credits**

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.<sup>32</sup> In 2003, the Office of Insurance Regulation (OIR) computed suggested mitigation discount amounts to apply to each mitigation feature installed on the property. Insurers must use the discount amounts computed by the OIR unless the insurer provides detailed alternate studies supporting modification of the discount amounts suggested by the OIR.<sup>33</sup>

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.<sup>34</sup> In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the OIR to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.<sup>35</sup> Thus, the OIR amended the mitigation discount administrative rule<sup>36</sup> to require insurers to provide mitigation discount amounts equal to 100 percent of the mitigation discount amount.<sup>37</sup> In 2008, the OIR obtained

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<sup>30</sup> The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.)

<sup>31</sup> s. 627.4133(2), F.S.

<sup>32</sup> s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).

<sup>33</sup> Rule 690-170.017, F.A.C.

<sup>34</sup> In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of the 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

<sup>35</sup> Section 14, Ch. 2006-12, L.O.F.

<sup>36</sup> Rule 690-170.017, F.A.C.

<sup>37</sup> The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification.

a new study to evaluate the appropriate mitigation discount amounts, however, the OIR has not changed the mitigation discount amounts due to the results of the 2008 study.

Section 627.711, F.S., requires insurers to clearly notify an applicant for or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers can require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.<sup>38</sup> The bill allows the insurer to also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents. The bill maintains current law requiring the insurer to incur the costs associated with independent verification of mitigation forms.

### **Change of Policy Terms In Insurance Policies**

Under the 5<sup>th</sup> District Court of Appeals' holding in the case of U.S. Fire Insurance Co. and Hartford Insurance Company of the Southeast v. Southern Security Life Insurance Co., 710 So.2d 130 (Fla. 5<sup>th</sup> DCA 1998), when an insurance company changes a term or terms of a policy, the change constitutes a nonrenewal of the entire policy by the insurer and thus the insurer must send notice of the policy's nonrenewal to the policyholder in accordance with s. 627.4133, F.S. According to the court, providing the policyholder with a new policy that contains the changed policy term is not sufficient notice of the policy changes.

In response to the court's decision in this case, the bill allows insurance companies to change terms contained in a personal lines insurance policies or casualty policy without nonrenewing the entire policy and thus having to send a notice of nonrenewal in accordance with current law. To effectuate a change in policy terms, the insurer must give the policyholder a written "Notice of Change in Policy Terms" with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide a "Notice of Change in Policy Terms" to the policyholder, the terms of the insurance policy are not changed. The OIR still must approve the change in policy terms via a form filing.<sup>39</sup>

### **Payment of Replacement Costs In Property Insurance Claims**

Property insurance claims are adjusted on the basis of replacement costs or actual cash value, whichever method is provided in the property insurance policy. Property insurers must offer policyholders an option for replacement cost coverage.<sup>40</sup> If a claim is adjusted by the actual cash value method, the policyholder is paid the depreciated value of the property damaged or lost that is being replaced or repaired.

Until 2005, if a claim was adjusted by the replacement cost method, insurers could make an initial payment on the claim based on the actual cash value of the claim and require the policyholder to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the actual cash value of the property damaged or lost, but could not afford to fund the balance necessary to make the repairs or replacements. In 2005, the Legislature addressed this issue by requiring if a claim was adjusted by the replacement cost method, the insurer must pay the full replacement cost up front, whether or not the policyholder replaces or repairs the damaged property.

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<sup>38</sup> s. 627.711(8), F.S.

<sup>39</sup> With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company.

<sup>40</sup> s. 627.7011, F.S.

Requiring insurers to pay the full replacement cost under replacement cost policies, without holding back depreciated value until the property is replaced or repaired, benefits policyholders who can collect such payments and then decide whether to actually replace or repair the property. But, this also likely increases loss payments by insurers and could cause an increase in fraudulent claims, both of which may increase premiums. Paying replacement costs whether the dwelling or property is replaced may also result in damaged property not being repaired, which could negatively impact financial institutions that hold mortgages and the secondary mortgage market.

The bill changes current law relating to the payment of replacement costs. For partial dwelling losses, the insurer must initially pay at least the actual cash value of the claim, less any insurance deductible. After receiving payment for actual cash value, the policyholder must enter into a repair contract to repair the damage to the dwelling. The remaining amount owed on the claim (i.e., the difference between the initial amount paid and the replacement cost) is paid by the insurer periodically as the repair work is done and expenses are incurred by the policyholder. The policyholder has one year after the payment of actual cash value to make a claim for replacement cost for the damaged property. The bill prohibits an insurer, contractor, or subcontractor from requiring the policyholder to make advance payment for dwelling repairs. However, a policyholder is responsible for payment of incidental expenses to mitigate further damage to the dwelling. An insurer has the option to waive the requirement a policyholder enter into a repair contract.

For total dwelling losses, the bill maintains current law which requires the insurer to pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces the dwelling.

For personal property losses (i.e., contents), the bill maintains current law which requires the insurer to pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces or repairs the personal property damaged or destroyed.

### **Payment of Property Insurance Claims**

With limited exceptions, s. 627.70131(5), F.S., requires insurance companies to pay or deny property insurance claims or portions of claims within 90 days of receipt of a notice of the claim from the policyholder. Insurance companies are excused from the 90-day claims payment requirement if factors beyond the control of the insurance company reasonably prevent payment within the 90-day period. The bill clarifies that the 90-day claims payment or denial requirement in current law applies to initial, reopened, or supplemental property insurance<sup>41</sup> claims. Current law does not specify whether the claim payment or denial provision applies to only initial claims, only to reopened claims, only to supplemental claims, or to all three types of claims.

### **Sinkholes**

#### **Background**

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.<sup>42</sup> Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.<sup>43</sup> In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base

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<sup>41</sup> Though not defined in law, initial claims are the first claim filed for a loss. Supplemental or reopened claims are claims derived from the same loss, but that are filed after the initial claim.

<sup>42</sup> s. 627.706(2)(b), F.S.

<sup>43</sup> Ch. 1981-280, L.O.F.

property insurance policy.<sup>44</sup> However, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.<sup>45</sup> Sinkhole loss coverage includes repairing the home, repairing the foundation, and stabilizing the underlying land.

Generally, insurers that currently offer sinkhole loss coverage in the base property insurance policy must nonrenew all their property insurance policies in order to change the policy to only include catastrophic ground cover collapse in the base policy and to offer sinkhole loss coverage for an additional premium. Current law, however, provides one exception to this nonrenewal rule. Property insurers can nonrenew policies in only Pasco and Hernando counties that contain sinkhole loss coverage in the base property insurance policy and offer policyholders in these two counties a base policy containing coverage for only catastrophic ground cover collapse and offer coverage for sinkhole loss as an endorsement to the base policy for an additional premium.

### **Effect of Proposed Changes**

The bill maintains current law requiring coverage for catastrophic ground cover collapse in the base property insurance policy and requiring insurers to offer sinkhole loss coverage for an additional premium. However, the bill allows insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. The bill also allows insurers to require an inspection of the property before the insurer provides sinkhole loss coverage.

In addition, in all counties, the bill allows insurers to nonrenew policies that contain sinkhole loss coverage in the base policy and offer the policyholder a policy covering only catastrophic ground cover collapse in the base policy but also offer the policyholder an endorsement providing insurance coverage for sinkhole loss for an additional premium. Thus, the provision in current law on this issue that applies only to policies in Pasco and Hernando counties is extended statewide.

### **Increase in Sinkhole Claims**

Sinkhole insurance claims have increased substantially in number and cost over the last several years.<sup>46</sup> Both increases negatively impact the financial stability of property insurers, including Citizens, and have been used by property insurers to justify recent property insurance rate increases.<sup>47</sup>

### **Frequency and Cost of Sinkhole Claims on the Insurance Industry**

In 2010, because of anecdotal evidence of increasing sinkhole claims and costs in recent years, the OIR conducted a data call to collect specific information about sinkhole claims from 211 insurers, including Citizens. The OIR compiled and analyzed the data collected to determine claim payment trends and other related data.

On November 8, 2010, the OIR reported its findings from the data call.<sup>48</sup> The report indicates the OIR received information on 8,959 open sinkhole claims and 15,712 closed sinkhole claims (24,671 total claims) for 2006-2009. Specifically, the data showed:

- Total sinkhole claims increased from 2,360 in 2006 to 6,694 in 2010.<sup>49</sup>
- Total sinkhole costs for open and closed claims combined increased from \$209 million in 2006 to \$406 million in 2009.<sup>50</sup>
- Total costs for open and closed claims exceeded \$1.4 billion over the 4-year period.<sup>51</sup>
- One percent of the closed claims were for catastrophic ground collapse.<sup>52</sup>

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<sup>44</sup> Section 30, Ch. 2007-1, L.O.F.

<sup>45</sup> s. 627.706, F.S.

<sup>46</sup> The increase in claims frequency and severity is based on data collected from 211 insurers by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report)).

<sup>47</sup> Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.

<sup>48</sup> [http://www.florid.com/pdf/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.florid.com/pdf/2010_Sinkhole_Data_Call_Report.pdf) (last viewed February 12, 2011).

<sup>49</sup> 2010 Sinkhole Data Call Report pg. 6.

<sup>50</sup> 2010 Sinkhole Data Call Report pg. 5.

<sup>51</sup> 2010 Sinkhole Data Call Report pg. 5.

<sup>52</sup> 2010 Sinkhole Data Call Report pg. 8.

The data indicates a wide variation in the frequency of claims, depending on the geographic region. Over 88 percent of the sinkhole claims reported to the OIR occurred in eleven counties: Hernando, Pasco, Hillsborough, Pinellas, Marion, Polk, Orange, Alachua, Citrus, Miami-Dade, and Broward, with 66 percent (11,872) of the claims are concentrated in three counties: Hernando, Pasco and Hillsborough.<sup>53</sup> Sinkhole claims are increasing in Miami-Dade and Broward counties, according to the data collected by the OIR. These counties represented 2.9 percent of total sinkhole claims from 2006-2009, but increased to 4.2 percent through the third quarter of 2010. This is significant because sinkhole activity is not typically found in these counties.<sup>54</sup>

Sinkhole testing under Florida law includes an inspection and a report by a geologist or engineer. The data collected by the OIR indicates insurers incur testing costs for most sinkhole claims. Insurers conducted testing procedures in order to adjust a sinkhole claim in over 80 percent of the sinkhole claims and more than one testing procedure was used to test for sinkhole activity in most claims. In 2006, insurers incurred expenses of \$20.4 million for the sinkhole inspection and engineering report. By 2009, that amount increased to almost \$58 million. This increase is likely due to the increase in the number of sinkhole claims from 2006 to 2009. Despite the large increase in the aggregate amount of expenses for inspections and engineering reports from 2006-2009, these expenses on a per claim basis were fairly steady during the time period (approximately \$8,000 – 9,300 per claim).<sup>55</sup>

#### Frequency and Severity of Sinkhole Claims Filed Against Citizens

Like insurers in the private market, Citizens has seen an increase in the number of sinkhole claims filed in recent years. Statewide, the number of sinkhole claims filed on personal residential policies insured by Citizens increased from 660 in 2005 to 1,519 in 2009 and 1,145 in 2010.<sup>56</sup> The increase in sinkhole claims is the primary cost driver for Citizens' significant sinkhole losses. In 2009, Citizens incurred almost \$84 million in sinkhole losses plus adjustment expenses, yet obtained a little over \$22 million in earned sinkhole premium to cover those losses.<sup>57</sup>

The increase in Citizens' sinkhole claims has occurred even though significant numbers of Citizens' policyholders dropped sinkhole loss coverage after it became an optional endorsement in 2007. The percent of Citizens' statewide policies with sinkhole loss coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009 and 60 percent in 2010.<sup>58</sup> In 2009, only 37 percent of policyholders in Hernando County and 22 percent of policyholders in Pasco County purchased Citizens' policies with sinkhole loss coverage. In 2010, these percentages increased slightly to 40 percent and 23 percent respectively.<sup>59</sup>

Of the sinkhole claims reported in the OIR data call in Hernando, Pasco, and Hillsborough counties, Citizens insured 36 percent of the claims (4,261). Citizens' data shows the sinkhole loss ratio for Hernando County in 2009 is about 647 percent, meaning for every \$1 in premium Citizens collects in Hernando County, \$6.47 is paid for a sinkhole claim in the county. Citizens' 2009 loss ratio is almost 285 percent in Pasco County and is almost 526 percent in Hillsborough County. The loss ratio for all other counties combined is 175 percent.

#### Impact on Property Value of Increase in Sinkhole Claims

Sinkholes negatively impact property values. Sinkhole claims reduce the property value of the land which contains the alleged sinkhole and on neighboring property, even if the sinkhole is stabilized or repaired and even if the sinkhole is not verified.<sup>60</sup> For example, the Pasco County Property Appraiser's office indicated a property which contains a repaired sinkhole has a five percent reduction in value and

<sup>53</sup> 2010 Sinkhole Data Call Report pg. 12.

<sup>54</sup> 2010 Sinkhole Data Call Report pg. 13.

<sup>55</sup> 2010 Sinkhole Data Call Report pg. 10.

<sup>56</sup> Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee. In 2009, Citizens received 118 sinkhole claims on commercial residential and commercial nonresidential policies located outside the wind zones and in 2010 received 57 claims on these policies.

<sup>57</sup> Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

<sup>58</sup> Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

<sup>59</sup> Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

<sup>60</sup> Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.



in some cases, neighboring property has a three percent reduction in value.<sup>61</sup> Pasco County has a total property value loss of almost \$55 million due to unrepaired sinkholes, a total property value loss of over \$14 million to stabilized sinkholes, and a total property value loss of over \$4 million to unverified sinkhole loss.<sup>62</sup> Reductions in property value directly reduce local government revenue.

### **Effect of Proposed Changes**

The bill provides legislative findings relating to sinkhole issues and the impact of the increasing number of sinkhole claims and the severity of the claims on the property insurance market, on the local property tax base, and on the real estate market. Legislative intent is also proposed.

In addition, the bill requires notice of all sinkhole claims, including initial, reopened, or supplemental claims to be given to the insurer in accordance with policy terms within three years of the policyholder knowing about the sinkhole loss or within three years from when the policyholder reasonably should have known about the sinkhole loss. Although no time frame for filing property insurance claims, which includes sinkhole claims, is found in the Insurance Code,<sup>63</sup> s. 95.11, F.S., requires actions on contracts to be brought within five years. An insurance policy is a contract so the five year statute of limitations in s. 95.11, F.S., applies to insurance policies. Thus, when an insurance company breaches the insurance contract, the policyholder has five years from the breach to file suit. The three year time period to file notice of a sinkhole claim is consistent with the time period provided in the bill for filing notice of claims resulting from windstorms or hurricanes.

### **Insurance Adjusting of Sinkhole Claims**

The Legislature in 2005 and 2006 substantially amended the laws on sinkhole claims in response to a continuing crisis regarding the availability and affordability of sinkhole coverage. Prior to 2005, the law governing sinkhole claims was very general. The 2005 and 2006 legislation enacted a specific process for investigation of sinkhole claims by insurance companies according to standards in the law, for completion and utilization of sinkhole reports in the adjusting and settling of sinkhole claims, for reporting sinkhole claims to the county clerk of courts for recording and to future buyers of the property subject to the sinkhole claim, and for utilization of an alternative dispute procedure for resolution of sinkhole insurance claims.

Under current law, when a claim is made for sinkhole loss, the insurer must inspect the premises and determine whether there has been physical damage to a structure that may be the result of sinkhole activity. "Sinkhole loss" is defined by statute as "structural damage to the building, including the foundation, caused by sinkhole activity." "Sinkhole activity," used in the definition of "sinkhole loss," is defined in statute, but "structural damage" used in the definition is not. The lack of a statutory definition of "structural damage" has led to disparate definitions of the term being used in sinkhole claims and has led to litigation over the meaning of the term.<sup>64</sup>

Following the insurer's initial inspection, the insurer must provide written notice to the policyholder that details the insurer's initial determination, when the insurer is required to engage a professional engineer or professional geologist to perform testing, and a statement of the policyholder's right to demand certain testing to be conducted by a geologist or engineer. If the insurer is unable to determine the cause of the damage during the inspection or if the inspection reveals damage consistent with sinkhole loss, then the insurer must retain a qualified engineer or geologist to perform testing on the property.

Testing standards for sinkholes are established in s. 627.7072, F.S. The professional geologist or engineer must perform whatever tests are sufficient to determine the presence or absence of sinkhole loss within reasonable professional probability and to allow the engineer to make recommendations

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<sup>61</sup> Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.

<sup>62</sup> Information received from the Pasco County Property Appraiser's office for the Insurance & Banking Subcommittee Meeting on February 9, 2011, available at

[http://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2607&Session=2011&DocumentType=Meeting Packets&FileName=IBS 02\\_9\\_2011\\_online.pdf](http://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2607&Session=2011&DocumentType=Meeting%20Packets&FileName=IBS%2002_09_2011_online.pdf). (last viewed March 13, 2011).

<sup>63</sup> The Insurance Code is comprised of chapters 624-632, 634, 635, 636, 641, 642, 648, and 651.

<sup>64</sup> For example, see Thomas Harris and Richard Braunschweig v. Homewise Preferred Insurance Company, CA-10-153 (Fla. Cir. Ct, Hernando County).

regarding any necessary building stabilization and foundation repair. The most common testing procedures used in the closed sinkhole claims reported to the OIR during the data call were shallow boring, ground penetrating radar, and deep boring.

Once testing is complete, the engineer or geologist performing the testing issues a report and certification to the insurance company and policyholder verifying sinkhole loss or eliminating sinkhole activity as the cause of damage to the property.<sup>65</sup> Florida law specifies the contents of the sinkhole report and gives the findings of the report a presumption of correctness.

Currently on appeal before the Florida Supreme Court is *Warfel v. Universal Ins. Co. of N.A.*,<sup>66</sup> in which the Supreme Court will determine whether the presumption of correctness for sinkhole reports shifts the burden of proof to the policyholder or merely requires the policyholder to produce evidence regarding the facts at issue, at which point the presumption disappears. The Second District Court of Appeal's decision in *Warfel*,<sup>67</sup> which is on appeal to the Florida Supreme Court, eliminated the presumption in favor of the insurer when the report was challenged in court. The Second District Court of Appeal (DCA) held the sinkhole report presumption was a "vanishing" or "bursting bubble" presumption, rather than a public policy-related presumption that shifted the burden of proof to the policyholder. Thus, the Second DCA determined the sinkhole report's presumption of correctness vanished when the homeowner in the case presented credible evidence contradicting facts giving rise to the presumption. With vanishing presumptions, the jury is not told of the presumption and must decide the case based on the evidence presented by the parties as though no presumption ever existed.

If the insurer determines there is no sinkhole loss, the insurer can deny the sinkhole claim. If the insurer denies the sinkhole claim without performing testing, the policyholder can demand testing and the insurer must provide testing.

If the insurer verifies there is a sinkhole loss, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer and in consultation with the policyholder.<sup>68</sup> The insurer must pay for repairs to the structure and contents as required in the insurance policy.

In cases of a verified sinkhole loss, the insurer can limit its payment for the sinkhole loss to actual cash value of the loss until the policyholder enters into a contract for building stabilization or foundation repairs. However, payment for the underpinning or grouting or other repair technique performed below the foundation cannot be limited to actual cash value.<sup>69</sup> Once the policyholder enters into a contract for stabilization or repair of the damaged property, the insurer can pay the repair costs as the repair work is completed. The insurer cannot require the policyholder to advance any funds for the repair work. Repair payments may be paid by the insurer directly to the repair contractor, if written approval is obtained from the policyholder or property lienholder. If the required sinkhole repairs are started, but a determination is made before the repairs are complete that the repair costs will exceed the property insurance policy limits, the insurer must either complete the repair work recommended by the engineer or tender policy limits to the policyholder, without reducing the amount tendered for the repair costs already incurred. Accordingly, insurers can pay over policy limits for sinkhole claims.

Although current law requires the homeowner to repair the property affected by a verified sinkhole, often times the insurer and homeowner settle the sinkhole claim before repair work is started. The OIR and insurers believe sinkhole claims are increasing because homeowners that settle sinkhole claims

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<sup>65</sup> s. 627.7073, F.S.

<sup>66</sup> SC 10-948 (oral argument held on February 11, 2011).

<sup>67</sup> 36 So.3d 136 (2<sup>nd</sup> DCA 2010).

<sup>68</sup> The meaning of the term "in consultation with the policyholder" has caused confusion as to its meaning which has resulted in litigation. Insurers assert that the phrase means providing notice to the policyholder regarding payment of claim proceeds to conduct repairs. Some policyholders and their representatives assert the phrase requires the insurer and policyholder to essentially agree on the method of repair to be used to remediate the confirmed sinkhole.

<sup>69</sup> Under the grouting procedure, a grout mixture (composed of cement, sand, fly ash, and water) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by densifying the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation.

are not required to use claim settlements to repair or remediate the home and land.<sup>70</sup> Thus, homeowners are incentivized to file sinkhole claims, reach a settlement with the insurer, and use the settlement proceeds for something other than repair and replacement of the sinkhole and resulting damage. The OIR noted in its data call repairs were initiated in only 20 percent of the total claims reported.

Insurers cannot nonrenew a property insurance policy because a sinkhole claim was filed as long as the property was repaired in accordance with the engineer's recommendation, the claim filed was for partial loss, and the total payment for the sinkhole claim or claims did not exceed the policy limits of the property insurance policy.

Insurers who pay a claim for sinkhole loss must file a copy of the engineer or geologist report and a certification, including the legal description of the property, with the county clerk of court. The clerk must record the report and certification. When property that is the subject of a paid sinkhole claim is sold, the seller who filed the sinkhole claim must disclose to the buyer that a sinkhole claim has been paid. In addition, the seller must disclose whether or not the full amount of claim payment was used to repair the sinkhole damage.

### **Effect of Proposed Changes**

#### *Changes to Definitions Applying in Sinkhole Claims*

The bill limits the current definition of "catastrophic ground cover collapse" to structural damage to the covered building, rather than any building. Similarly, the bill limits the current definition of "sinkhole loss" to structural damage to the covered building, rather than any building. The current definition of "sinkhole activity" is amended to require weakening of the earth supporting property due to contemporaneous movement or raveling of soils, sediments, or rock materials. The current definition does not include contemporaneous movement.

The qualifications of professional engineers and professional geologists that are used in sinkhole claims are revised by the bill. For professional engineers, the bill requires successful completion of at least five courses in geotechnical engineering, structural engineering, soil mechanics, foundations, or geology, instead of a specialty in geotechnical engineering. For professional geologists, the bill removes the requirement that the geologist have expertise in the geology of Florida in order to be qualified to opine in sinkhole claims.

The bill provides a definition of "structural damage." The definition provided is based on descriptions of structural damage in the Florida Building Code that are applicable to sinkholes. Current law does not have a definition of "structural damage," even though the definitions of "catastrophic ground cover collapse" and "sinkhole loss" in current law are conditioned on structural damage. The lack of a definition of "structural damage" has led to disparate definitions being used in sinkhole claims and has resulted in litigation.<sup>71</sup>

#### *Changes to Insurance Adjusting of Sinkhole Claims and Payment of Sinkhole Testing and Sinkhole Report Fees and Costs*

When a sinkhole claim is filed, the bill requires the insurer to inspect the property to determine if there is structural damage resulting from sinkhole activity. Current law requires an inspection to determine if there is physical damage to the structure, instead of structural damage.

The bill maintains current law providing if the insurer's inspection of damaged property confirms damage to the property but does not identify the cause of the damage or if the damage seen on inspection is consistent with sinkhole loss, the insurer must hire, and pay for, an engineer or geologist to conduct sinkhole testing to determine the cause of the damage to the property. However, the bill adds testing in these circumstances is required only if the insurance policy covers sinkhole loss. Current law does not require sinkhole loss to be covered by the policy in order for testing to occur. Thus, a policyholder can demand testing for sinkhole damage paid for by the insurer even if the

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<sup>70</sup> Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.

<sup>71</sup> See footnote #64.

policyholder would not be covered for sinkhole damage if the testing revealed sinkhole damage was present.

If an insurer determines there is no sinkhole loss and denies the sinkhole claim without sinkhole testing, current law allows the policyholder to demand testing. In such case, the bill requires the policyholder's demand for testing to be communicated to the insurer within 60 days after the receipt of the denial of the sinkhole claim. Current law does not include a time period during which the policyholder must demand testing. In addition, before the testing can occur, the policyholder demanding testing must pay the lesser of 50 percent of the sinkhole testing and sinkhole reporting costs or \$2,500. But, the policyholder can be reimbursed for these testing costs by the insurer if the testing reveals a sinkhole loss. Current law requires the policyholder to reimburse the insurer the lesser of 50 percent of the testing costs or \$2,500 if the policyholder submitted the sinkhole claim without good faith grounds. This requirement is not changed by the bill and occurs after the testing requested by the policyholder is completed. Finally, the bill allows the policyholder to demand testing only if the insurance policy covers sinkhole loss to prevent insurers from having to pay for sinkhole testing if the policy would not cover sinkhole damage.

The bill adds a requirement to the sinkhole report and certification rendered after and based upon sinkhole testing. Current requirements of the report and certification are found in s. 627.703(1), F.S. If sinkhole loss is verified in the sinkhole report and certification, in addition to the other statements required by law, the sinkhole report and certification issued by the engineer or geologist must state structural damage to the covered building has been identified within a reasonable professional probability. In addition to other statements required by current law, if there is no structural damage or if sinkhole activity is eliminated as the cause of damage to a covered building, the sinkhole report and certification must state there is no structural damage or the cause of structural damage found is not sinkhole activity within a reasonable professional probability.

In addition to the information about sinkhole claims required to be filed under current law by the insurer with the clerk of court, the bill also requires the insurer to file with the clerk of court the neutral evaluation report verifying sinkhole activity as the cause of the damage to the property, a copy of the certification indicating sinkhole stabilization has been completed, and the amount paid on a sinkhole claim. The bill also requires the policyholder to file a copy of any sinkhole report prepared for the policyholder with the clerk of court before accepting payment from the insurer on a sinkhole claim.

#### *Changes to the Sinkhole Repair Requirement*

The bill also makes changes to current law relating to the repair of sinkholes paid for by the insurer. The bill maintains current law allowing the insurer to initially pay actual cash value of the sinkhole claim, except for the underpinning and other below foundation repair costs, until the policyholder enters into a contract to repair the sinkhole damage. However, the bill requires the insurer to pay for only repairs recommended in the sinkhole report prepared by the insurer's geologist or engineer. The insurer must obtain approval of only the property lienholder, rather than the policyholder and the lienholder, in order to pay repair costs directly to the repair contractor.

The bill requires the policyholder to enter into a contract to repair the sinkhole damage within 90 days after the insurer confirms coverage for the sinkhole loss and notifies the policyholder of the confirmation. The 90-day time period is tolled during the neutral evaluation and begins again 10 days after the neutral evaluation is completed. Current law does not prescribe a time period for the policyholder to enter into a repair contract for sinkhole damage.

Sinkhole repairs must be complete within 12 months after the repair contract is entered into. The exceptions to this 12-month limitation are: mutual agreement between the insurer and the policyholder, neutral evaluation of the claim, litigation of the claim, or appraisal or mediation of the claim. Current law does not prescribe a time period for completing sinkhole repairs.

The bill prohibits the homeowner from accepting a rebate from any person doing sinkhole repair on the property, makes the homeowner's property insurance coverage void if a rebate is accepted, and

provides offering or accepting a rebate is insurance fraud punishable as a third degree felony. The homeowner must also refund the rebate to the insurer.

## **Alternative Dispute Resolution Process for Sinkhole Claims**

### Background on the Alternative Dispute Resolution Process

Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims. The process supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S. The process begins once an insurer receives the sinkhole report under s. 627.7073, F.S., or denies a sinkhole claim. When either occurs, the insurer must notify the policyholder of the right to participate in the neutral evaluation process. The insurer must also send a pamphlet on the neutral evaluation process prepared by the DFS to the policyholder.

Participation in the neutral evaluation process is optional and nonbinding. Either the policyholder or insurer can decline to participate. If either party desires neutral evaluation, the request for neutral evaluation must be filed with the DFS on the appropriate form. The request must state the reason why neutral evaluation is being sought and include an explanation of all issues in dispute. The filing of a request for neutral evaluation tolls the time period for filing suit for 60 days following the conclusion of neutral evaluation or the time prescribed in s. 95.11, F.S., whichever is later.<sup>72</sup>

Once the DFS receives a request for neutral evaluation, the department provides each party with a list of certified neutral evaluators. The neutral evaluators are professional engineers or professional geologists who have completed an alternative dispute resolution course designed or approved by the DFS. The evaluators are fair and impartial and attempt to resolve the dispute at issue. The parties mutually select a neutral evaluator from the list, with the DFS choosing the evaluator if the parties cannot agree.

Because the neutral evaluation is an informal process, the formal rules of evidence and procedure do not apply and rules of procedure adopted by the DFS apply. All parties must participate in the neutral evaluation process in good faith. The neutral evaluation conference must be held within 45 days of the department's receipt of a request. The neutral evaluator must notify the policyholder and insurer when and where the neutral evaluation conference will be conducted. The conference may be held by telephone. A party does not have to attend the neutral evaluation if a representative attends and has the authority to make a binding decision on behalf of the party. If a policyholder is not represented by an attorney, a consumer affairs specialist of the DFS or an employee of the DFS designated as the primary contact for consumers on issues related to sinkholes must be available to consult with the policyholder.

For matters not resolved by the parties during the neutral evaluation, the neutral evaluator must prepare a report stating whether the sinkhole loss has been verified or eliminated. If a sinkhole loss is verified, the report must include the evaluator's opinion regarding the need for and estimated costs of stabilizing the land and any covered structures as well as appropriate remediation or structural repairs. The evaluator's report must be sent to all parties in attendance at the neutral evaluation and to the DFS. The recommendation of the neutral evaluator is admissible in any subsequent action or proceeding relating to the sinkhole claim.

Evidence of an offer to settle a sinkhole claim during the neutral evaluation process, or other relevant conduct or statements made concerning an offer to settle are inadmissible to prove or disprove liability or a sinkhole claim's value. However, the recommendation of the neutral evaluator is admissible in any subsequent action or proceeding, but only for a determination regarding the award of attorney's fees.

If a policyholder does not follow the recommendations of the neutral evaluator, the insurer is not liable for attorney's fees under the Insurance Code or s. 627.428, F.S., unless the policyholder obtains a judgment that is more favorable than the neutral evaluator's recommendation. Further, the insurance company is not liable for extra contractual damages on a sinkhole claim related to the issues

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<sup>72</sup> Section 95.11, F.S., requires all suits filed for breach of contract to be filed within five years of the breach. Because insurance policies are contracts, a policyholder must file a lawsuit within five years of the insurance company's breach of the policy.

determined by the neutral evaluator. If the neutral evaluator verifies a sinkhole and recommends costs that exceed the amount the insurer has offered to pay the policyholder, the insurer is liable for up to \$2,500 in attorney's fees for the policyholder's attorney's participation in the neutral evaluation.

### **Effect of Proposed Changes**

#### *Appraisal Clause*

An appraisal clause is found in all insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.<sup>73</sup>
- Once the umpire has been chosen, the appraisers each present their loss assessment.
- The umpire will subsequently provide a written decision to both parties.

If the two parties agree to the amount of the loss, that amount becomes the claim amount. However, if one of the parties does not agree, then the case can still be litigated in court.

Although the neutral evaluation used in sinkhole claims supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S.,<sup>74</sup> the bill specifies the neutral evaluation will not invalidate the appraisal clause in the property insurance policy. Thus, a sinkhole claim can go to appraisal and neutral evaluation.

#### *Changes to the Neutral Evaluation Process*

The bill makes the alternative dispute resolution process for sinkhole claims available to either party if a sinkhole report is issued. The bill also requires any court proceeding related to the sinkhole claim to be stayed during the neutral evaluation and for five days after the neutral evaluation report is filed with the court.

The bill allows either party to request disqualification of the neutral evaluators on the list provided to the parties by the DFS. Two neutral evaluators can be disqualified without cause by either party. Furthermore, the bill allows disqualification of a neutral evaluator for cause and specifies what grounds constitute cause. The DFS must appoint a neutral evaluator from the neutral evaluator list if the parties cannot agree to a neutral evaluator within 14 days of receiving the neutral evaluator list.

The neutral evaluator must notify the parties of the specifics of the neutral evaluation within 7, rather than 5, business days after the referral of the sinkhole claim to neutral evaluation. The neutral evaluation must be held within 90, rather than 45, days after the DFS receives the request for neutral evaluation from either party. Neutral evaluation of a sinkhole claim can still be held outside the 90 day time period.

The bill sets forth issues that must be decided by the neutral evaluator. The bill allows the neutral evaluator access to inspect the property alleged to be damaged by a sinkhole. The homeowner or

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<sup>73</sup> An umpire must also be a disinterested party, and must be impartial, of good moral character and possessing a good reputation. No umpire should be chosen that has any financial interest in the outcome of the appraisal. If the two appraisers cannot agree on the selection of an umpire, either side may appeal to the local court for the appointment of someone to serve in that capacity.

<sup>74</sup> This mediation procedure is run by the Department of Financial Services and is a nonbinding process for the insurance company and the policyholder to meet with an neutral third party (the mediator) to discuss their property insurance claim disputes. The mediation facilitates discussions and negotiations between the insurance company and the policyholder but does not render an opinion or determine a resolution of the issues in dispute.

homeowner's agent must provide all sinkhole reports received to the neutral evaluator before the neutral evaluator inspects the damaged property.

If a neutral evaluator who is not qualified to determine all the issues in dispute in the sinkhole claim is chosen, the evaluator can obtain assistance from another neutral evaluator on the neutral evaluator list, as long as the evaluator to provide assistance has not been disqualified. The evaluator chosen to assist the original evaluator must be qualified to decide the issues in dispute the original evaluator is not qualified to decide. Professional engineers and geologists and building contractors can also assist the original neutral evaluator, even if these professionals are not certified neutral evaluators. However, professional engineers and geologists and building contractors can be disqualified from assisting the neutral evaluator on the claim for the same reasons a neutral evaluator can be disqualified.

The bill provides what issues must be contained and decided by the neutral evaluator in the neutral evaluation report. The neutral evaluation report must be sent to all parties and to the DFS within 14 days of the completion of the neutral evaluation conference.

The bill provides neutral evaluators immunity from suit as agents of the state under s. 44.107, F.S. This is consistent with current law relating to mediators.

### **The Florida Geological Survey and the Florida Sinkhole Database**

The Florida Geological Survey (Survey) within the Department of Environmental Protection (DEP) is the state agency responsible for identifying, tracking, and investigating mines, minerals, sinkholes, the water supply, and other natural resources in the state. The State Geologist, a registered professional geologist, is designated as the head of the Survey.<sup>75</sup>

There is currently no single state agency in Florida with responsibility and authority for sinkhole inspections, although the Survey maintains a database of reported sinkholes. This database is available through the website of the Department of Environmental Protection (DEP), along with a form to be used to report suspected new sinkholes. The Survey reports that it lacks sufficient staff to visit all new sinkholes, although some of the state's water management districts have staff available to check local sinkholes, particularly if they contain water.<sup>76</sup>

The sinkhole database maintained by the Survey dates to the early 1950s, but it contains only those sinkholes officially reported by observers. As a result, the Survey notes the sinkholes reported and included in the database tend to cluster in populated areas where they are readily seen and commonly affect roads and dwellings. However, sinkholes also occur in more remote and less populated areas, and are unseen and unreported.<sup>77</sup>

Section 627.7065, F.S., enacted in 2005,<sup>78</sup> creates a sinkhole information database for the purpose of tracking sinkhole claims made against property insurance policies. The Department of Financial Services (DFS) is primarily responsible for the development of this database, with input from the DEP and the Survey. The DEP must investigate reports of sinkhole activity and report its findings to the DFS sinkhole database.

The DFS can require insurers to report past and present sinkhole claims to the DFS sinkhole database. Administrative rules requiring property insurers to report sinkhole and catastrophic ground cover collapse claim information to the DFS database were promulgated by the DFS in 2009. The rules require all sinkhole and catastrophic ground cover collapse claim information for claims closed by the insurer from January 1, 2005 – April 28, 2010 to be reported to the database by April 28, 2011. In addition, for claims closed after April 28, 2010, insurers must report claim information to the DFS

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<sup>75</sup> s. 377.075, F.S.

<sup>76</sup> Florida Geological Survey; Department of Environmental Protection; *Sinkholes: Frequently Asked Questions*, available at <http://www.dep.state.fl.us/geology/feedback/faq.htm#9>, (last viewed February 27, 2011).

<sup>77</sup> *Id.*

<sup>78</sup> Section 18, Ch. 2005-111, L.O.F.

database within 60 days after the claim is closed.<sup>79</sup> According to a representative of the DFS, insurers are complying with the rules and reporting claim information on sinkhole and catastrophic ground cover collapse claims for the DFS sinkhole database.

Although the DFS sinkhole database is not yet available on the internet, information about claims in the database can be obtained by calling the DFS or by filing a public records request with DFS for sinkhole claim information.

This bill repeals the DFS sinkhole database. Accordingly, insurers will no longer have to report sinkhole information to the sinkhole database and information relating to sinkhole and catastrophic ground cover collapse claims filed against property insurance policies will no longer be compiled and kept by the DFS and available to the public.

### **Guaranty Associations - Background**

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.<sup>80</sup> Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in the DFS is responsible for rehabilitating or liquidating insurance companies.<sup>81</sup>

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.<sup>82</sup> A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums<sup>83</sup> to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance.

### **Florida Insurance Guaranty Association (FIGA)**

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

By law, FIGA is divided into two accounts:

- the auto liability account and auto physical damage account; and

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<sup>79</sup> A Notice of Development of Rulemaking to change the time period for claim reporting to the database was filed on October 8, 2010 with a rule workshop held on October 27, 2010. No proposed rule changes have been published to date.

<sup>80</sup> The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

<sup>81</sup> Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

<sup>82</sup> The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

<sup>83</sup> The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.



- the account for all other included insurance lines (the all-other account).<sup>84</sup>

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will pay is \$300,000 but special limits apply to damages to structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims FIGA pays an additional \$200,000, for a total of \$500,000. For condominium and homeowners' association claims FIGA pays the lesser of policy limits or \$100,000 multiplied by the number of units in the association. All claims are subject to a \$100 FIGA deductible, in addition to any deductible in the insurance policy.

FIGA obtains funds to pay claims of insolvent insurance companies primarily from the liquidation of assets of these companies done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency<sup>85</sup> assessments. FIGA assesses member insurance companies directly for both assessments and the insurance company is allowed by law (s. 631.57(3)(a), F.S.) to pass the assessment on to their policyholders.

FIGA only pays "covered claims" as defined by s. 631.54(3), F.S. Current law provides two exceptions to the definition of "covered claims." One prevents FIGA from paying subrogation, contribution, or indemnification claims of the insolvent insurer. The other exception prevents FIGA from paying claims that have been rejected by another state's guaranty fund for payment because the policyholder's net worth is more than what is allowed under the other state's guaranty law. FIGA cannot pay these claims even if the claim otherwise meets the definition of "covered claim" in Florida law.

The bill adds another exception to the definition of "covered claim" for FIGA. The added exception prevents FIGA from paying sinkhole claims of insolvent insurers but allows payment of sinkhole testing or sinkhole repair up to policy limits. The bill further prohibits FIGA from paying attorney's fees or public adjuster fees associated with sinkhole claims.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

**Section 2:** Provides application for the changes made in Section 1 of the bill.

**Section 3:** Amends s. 624.407, F.S., relating to surplus required of new insurers.

**Section 4:** Amends s. 624.408, F.S., relating to surplus required for current insurers.

**Section 5:** Amends s. 626.852, F.S., providing an exception for adjuster licensure.

**Section 6:** Amends s. 626.854, F.S., relating to public adjusters, effective June 1, 2011.

**Section 7:** Amends s. 626.854, F.S., relating to public adjusters, effective January 1, 2012.

**Section 8:** Creates s. 626.70132, F.S., relating to notice of windstorm or hurricane claim, effective June 1, 2011.

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<sup>84</sup> s. 631.55(2), F.S.

<sup>85</sup> Emergency assessments can only be issued to pay claims of insurers rendered insolvent due to a hurricane.

**Section 9:** Amends s. 627.062, relating to rate standards, including repealing obsolete language relating to use of “use and file” rate filings for property insurance, to the OIR developing a plan for standard rating territories, and to a presumed factor for medical malpractice insurance rates due to legislative changes made during the 2003 Special Session D.

**Section 10:** Amends s. 627.0629, F.S., relating to residential property insurance rate filings to repeal obsolete language relating to a rate filing for mitigation credits, discounts, or other rate differentials or reductions in deductibles and to repeal obsolete language relating to the development of a method to correlate mitigation discounts, credits, or other rate differentials to the uniform home grading scale by the OIR.

**Section 11:** Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

**Section 12:** Creates s. 627.43141, F.S., relating to a Notice of change in policy terms.

**Section 13:** Amends s. 627.7011, F.S., relating to replacement cost coverage for homeowners’ policies.

**Section 14:** Amends s. 627.70131, F.S., relating to insurer’s duty to acknowledge communications regarding claims and investigation of claims.

**Section 15:** Provides legislative intent and findings relating to sinkholes and sinkhole insurance.

**Section 16:** Amends s. 627.706, F.S., relating to sinkhole insurance, catastrophic ground cover collapse, and definitions applicable to catastrophic ground cover collapse and sinkhole loss claims.

**Section 17:** Repeals s. 627.7065, relating to the sinkhole database established by DFS.

**Section 18:** Amends s. 627.707, F.S., relating to investigation of sinkhole claims, insurer payment of sinkhole claims, and nonrenewals of property insurance due to sinkhole claims.

**Section 19:** Amends s. 627.7073, F.S., relating to sinkhole reports.

**Section 20:** Amends s. 627.704, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

**Section 21:** Amends s. 627.711, F.S., relating to the uniform mitigation verification form.

**Section 22:** Amends s. 631.54, relating to the definitions used for FIGA.

**Section 23:** Provides a severability clause.

**Section 24:** Provides an effective date of upon becoming a law, unless provided otherwise in the bill. Sections 6 and 8 of the bill are effective June 1, 2011, and section 7 of the bill is effective January 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

### **Repeal of Sinkhole Database**

Repeal of the sinkhole database should not have a fiscal impact on the DFS. The DFS receives no funding or FTEs for the database and implements the database within existing resources.<sup>86</sup>

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

##### **Impact of Increased Surplus To Obtain And Keep A Certificate of Authority**

Certain insurance companies will need more funds to start an insurance company. Likewise, certain licensed insurance companies will need more funds to maintain their licensure. Increased surplus means companies have more funds to pay claims.

##### **Impact of Revisions to Procedure and Payment of Replacement Costs**

Revising the procedures relating to payment of replacement costs for property insurance claims for partial dwelling losses ensures policyholders make necessary repairs to their dwellings that are partially damaged in order to receive full payment on the claim. However, policyholders who do not repair their dwelling will not receive the full replacement cost for the dwelling, even though the policyholder purchased full replacement cost.

If the revisions to the procedure and payment of replacement costs reduce the amount of losses paid by insurers on property claims, rates should correspondingly decrease given the loss reduction.

##### **Impact of Allowing Insurers To Pay Acquisition Costs Without OIR Interference**

Insurance agents should benefit under the bill because the OIR is precluded from directly or indirectly impeding or compromising an insurer's right to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions, during a rate filing procedure for property and casualty insurance.

If the OIR has questioned the amount an insurer is paying in acquisition costs and pressured insurers to cut these costs, as representatives of insurance agents allege, and OIR's questioning has resulted in lower costs, then prohibiting OIR from interfering with the payment of these costs may result in higher costs which are included in an insurer's rate filing and correspondingly lead to increased insurance rates.

##### **Impact of Repeal of the Sinkhole Database**

The repeal of the sinkhole database will prevent insurance companies from having to expend funds to collect and report the required sinkhole claim information to the database.

##### **Impact of Restricting Public Adjuster Fees**

The fee restrictions on reopened or supplemental claims contained in the bill could reduce the income of public adjusters.

The restrictions on public adjuster solicitation could deter policyholders from obtaining the claims adjusting services provided by public adjusters which could reduce the claim payment obtained by the policyholder.

##### **Impact of Time Frame for Windstorm or Hurricane Claims**

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<sup>86</sup> Conversation with representative from DFS on March 2, 2011.

Imposing a 3-year time period for claims from a windstorm or hurricane to be filed with the insurer will help insurers quantify the amount of exposure on these claims.

### **Impact of Changing Sinkhole Laws**

Taken as a whole, the revisions to the sinkhole laws provided by the bill should reduce the number of sinkhole claims and disputes, ultimately reducing the costs associated with such claims. The revisions also provide for a more thorough and meaningful neutral evaluation which may cause more resolution of sinkhole claims by neutral evaluation.

Policyholders who elect to drop sinkhole loss coverage from the base property insurance policy and have only catastrophic ground cover collapse coverage in the base policy should incur reduced premium costs for property insurance.

In limited instances, policyholders could incur fees and costs associated with sinkhole testing and reports.

Policyholders have to abide by the 90-day and 12-month time periods for sinkhole repair provided in the bill.

Adding a definition of "structural damage" to the sinkhole law should reduce sinkhole claims and give insurers more certainty regarding whether a sinkhole claim is covered.

Allowing catastrophic ground cover collapse and sinkhole loss coverage to apply to only principal buildings should reduce sinkhole claim costs and sinkhole exposure for insurers.

#### **D. FISCAL COMMENTS:**

None.

### **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:**

#### **B. RULE-MAKING AUTHORITY:**

##### **Repeal of Correlation of Mitigation Discounts to the Home Grading Scale**

The bill repeals current law requiring the Financial Services Commission to adopt rules requiring insurers to make rate filings to correlate mitigation discounts to the home grading scale by October 1, 2011. The rulemaking is repealed because the substantive law requiring the correlation of mitigation discounts to the home grading scale is repealed.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

HB 7181 also repeals the correlation of mitigation discounts to the home grading scale.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2       An act relating to property and casualty insurance;  
 3       amending s. 215.555, F.S.; providing exceptions to  
 4       definitions; providing application of exceptions to  
 5       definitions; amending s. 624.407, F.S.; revising the  
 6       amount of surplus funds required for domestic insurers  
 7       applying for a certificate of authority after a certain  
 8       date; amending s. 624.408, F.S.; revising the minimum  
 9       surplus that must be maintained by certain insurers;  
 10      authorizing the Office of Insurance Regulation to reduce  
 11      the surplus requirement under specified circumstances;  
 12      amending s. 626.852, F.S.; limiting the scope of adjuster  
 13      licensure; amending s. 626.854, F.S.; providing  
 14      limitations on the amount of compensation that may be  
 15      received by a public adjuster for a reopened or  
 16      supplemental claim; providing statements that may be  
 17      considered deceptive or misleading if made in any public  
 18      adjuster's advertisement or solicitation; providing a  
 19      definition for the term "written advertisement"; requiring  
 20      that a disclaimer be included in any public adjuster's  
 21      written advertisement; providing requirements for such  
 22      disclaimer; requiring certain persons who act on behalf of  
 23      an insurer to provide notice to the insurer, claimant,  
 24      public adjuster, or legal representative for an onsite  
 25      inspection of the insured property; authorizing the  
 26      insured or claimant to deny access to the property if  
 27      notice is not provided; requiring the public adjuster to  
 28      ensure prompt notice of certain property loss claims;

29 providing that an insurer be allowed to interview the  
 30 insured directly about the loss claim; prohibiting the  
 31 insurer from obstructing or preventing the public adjuster  
 32 from communicating with the insured; requiring that the  
 33 insurer communicate with the public adjuster in an effort  
 34 to reach an agreement as to the scope of the covered loss  
 35 under the insurance policy; prohibiting a public adjuster  
 36 from restricting or preventing persons acting on behalf of  
 37 the insured from having reasonable access to the insured  
 38 or the insured's property; prohibiting a public adjuster  
 39 from restricting or preventing the insured's adjuster from  
 40 having reasonable access to or inspecting the insured's  
 41 property; authorizing the insured's adjuster to be present  
 42 for the inspection; prohibiting a licensed contractor or  
 43 subcontractor from adjusting a claim on behalf of an  
 44 insured if such contractor or subcontractor is not a  
 45 licensed public adjuster; providing an exception; creating  
 46 s. 626.70132, F.S.; requiring that notice of a claim,  
 47 supplemental claim, or reopened claim be given to the  
 48 insurer within a specified period after a windstorm or  
 49 hurricane occurs; providing a definition for the terms  
 50 "supplemental claim" or "reopened claim"; providing  
 51 applicability; amending s. 627.062, F.S.; deleting an  
 52 obsolete provision; prohibiting the Office of Insurance  
 53 Regulation from, directly or indirectly, impeding the  
 54 right of an insurer to acquire policyholders, advertise or  
 55 appoint agents, or regulate agent commissions for property  
 56 and casualty insurance; deleting obsolete provisions

57 relating to legislation enacted during the 2003 Special  
 58 Session D of the Legislature; amending s. 627.0629, F.S.;  
 59 deleting obsolete provisions; deleting a requirement that  
 60 the Office of Insurance Regulation propose a method for  
 61 correlating discounts, credits, and other rate  
 62 differentials for hurricane mitigation to the uniform home  
 63 grading scale by a certain date; deleting a requirement  
 64 that the Financial Services Commission adopt rules  
 65 correlating discounts, credits, and other rate  
 66 differentials for hurricane mitigation to the uniform home  
 67 grading scale by a certain date; conforming provisions to  
 68 changes made by the act; amending s. 627.4133, F.S.;  
 69 authorizing an insurer to cancel policies after 45 days'  
 70 notice if the Office of Insurance Regulation determines  
 71 that the cancellation of policies is necessary to protect  
 72 the interests of the public or policyholders; creating s.  
 73 627.43141, F.S.; providing definitions; requiring the  
 74 delivery of a "Notice of Change in Policy Terms" under  
 75 certain circumstances; specifying requirements for such  
 76 notice; specifying actions constituting proof of notice;  
 77 authorizing policy renewals to contain a change in policy  
 78 terms; providing that receipt of payment by an insurer is  
 79 deemed acceptance of new policy terms by an insured;  
 80 providing that the original policy remains in effect until  
 81 the occurrence of specified events if an insurer fails to  
 82 provide notice; providing intent; amending s. 627.7011,  
 83 F.S.; requiring that an insurer pay the actual cash value  
 84 of an insured loss for a dwelling, less any applicable



85 deductible, under certain circumstances; requiring that a  
 86 policyholder enter into a contract for the performance of  
 87 building and structural repairs in order to receive  
 88 payment; requiring that an insurer pay certain remaining  
 89 amounts; restricting insurers and contractors from  
 90 requiring advance payments for certain repairs and  
 91 expenses; providing an exception to requiring advance  
 92 payments; requiring an insurer to pay the replacement  
 93 costs if a total loss occurs; amending s. 627.70131, F.S.;  
 94 specifying application of certain time periods to initial  
 95 or supplemental property insurance claim notices and  
 96 payments; providing legislative findings with respect to  
 97 2005 statutory changes relating to sinkhole insurance  
 98 coverage and statutory changes in this act; amending s.  
 99 627.706, F.S.; authorizing an insurer to limit coverage  
 100 for catastrophic ground cover collapse and sinkhole loss  
 101 coverage to the principal building; allowing insurers to  
 102 inspect property before issuing sinkhole loss coverage;  
 103 revising definitions; defining the term "structural  
 104 damage"; placing a 3-year statute of repose on claims for  
 105 sinkhole coverage; repealing s. 627.7065, F.S., relating  
 106 the establishment of a sinkhole database; amending s.  
 107 627.707, F.S.; revising provisions relating to the  
 108 investigation of sinkholes by insurers; providing a time  
 109 limitation for demanding sinkhole testing by a  
 110 policyholder and entering into a contract for repairs;  
 111 requiring the policyholder to incur the costs of certain  
 112 analyses and services; providing for reimbursement of

113 costs incurred by the policyholder; requiring all repairs  
 114 to be completed within a certain time; providing  
 115 exceptions; prohibiting rebates to policyholders from  
 116 persons performing repairs; voiding coverage if a rebate  
 117 is received; requiring policyholders to refund rebates  
 118 from persons performing repairs to insurers; providing a  
 119 criminal penalty on a policyholder for accepting rebates  
 120 from persons performing repairs; limiting a policyholder's  
 121 liability for reimbursement of the costs related to  
 122 certain analyses and services; amending s. 627.7073, F.S.;  
 123 revising provisions relating to inspection reports;  
 124 requiring an insurer to file a neutral evaluator's report  
 125 and other specific information; requiring the policyholder  
 126 to file certain reports as a precondition to accepting  
 127 payment; requiring certain filing and recording costs to  
 128 be borne by a policyholder; specifying that a  
 129 policyholder's recording of a report does not legally  
 130 affect title or create certain causes of action relating  
 131 to real property; amending s. 627.7074, F.S.; revising  
 132 provisions relating to neutral evaluation; requiring  
 133 evaluation in order to make certain determinations;  
 134 requiring that the neutral evaluator be allowed access to  
 135 structures being evaluated; providing grounds for  
 136 disqualifying an evaluator; allowing the Department of  
 137 Financial Services to appoint an evaluator if the parties  
 138 cannot come to agreement; revising the timeframes for  
 139 scheduling a neutral evaluation conference; authorizing an  
 140 evaluator to enlist another evaluator or other

141 professionals; providing a time certain for issuing a  
 142 report; providing that the evaluator is an agent of the  
 143 department for the purposes of immunity from suit;  
 144 requiring the department to adopt rules; amending s.  
 145 627.711, F.S.; allowing insurer to independently verify  
 146 mitigation forms from additional sources; amending s.  
 147 631.54, F.S.; revising the definition of a covered claim;  
 148 providing severability; providing effective dates.

149  
 150 Be It Enacted by the Legislature of the State of Florida:

151  
 152 Section 1. Paragraph (d) of subsection (2) of section  
 153 215.555, Florida Statutes, is amended to read:

154 215.555 Florida Hurricane Catastrophe Fund.—

155 (2) DEFINITIONS.—As used in this section:

156 (d) "Losses" means direct incurred losses under covered  
 157 policies, including ~~which shall include losses for~~ additional  
 158 living expenses not to exceed 40 percent of the insured value of  
 159 a residential structure and ~~or~~ its contents and shall exclude  
 160 loss adjustment expenses. The term "Losses" does not include:

161 1. Losses for fair rental value, loss of rent or rental  
 162 income, or business interruption losses;

163 2. Losses under liability coverages;

164 3. Property losses that are proximately caused by any  
 165 peril other than a covered event, including, but not limited to,  
 166 fire, theft, flood or rising water, or a windstorm that does not  
 167 constitute a covered event;

168 4. Amounts paid as the result of a voluntary expansion of

169 coverage by the insurer, including, but not limited to, a waiver  
 170 of an applicable deductible;

171 5. Amounts paid to reimburse a policyholder for  
 172 condominium association or homeowners' association loss  
 173 assessments or under similar coverages for contractual  
 174 liabilities;

175 6. Amounts paid as bad faith awards, punitive damage  
 176 awards, or other court-imposed fines, sanctions, or penalties;

177 7. Amounts in excess of the coverage limits under the  
 178 covered policy; or

179 8. Allocated or unallocated loss adjustment expenses.

180 Section 2. The amendments made by this act to s. 215.555,  
 181 Florida Statutes, apply first to the Florida Hurricane  
 182 Catastrophe Fund reimbursement contract that takes effect on  
 183 June 1, 2011.

184 Section 3. Section 624.407, Florida Statutes, is amended  
 185 to read:

186 624.407 Surplus Capital funds required; new insurers.-

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

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

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

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

200 (d) For all insurers other than life insurers and life and  
 201 health insurers, 10 percent of the insurer's total liabilities;  
 202 or

203 (e) Notwithstanding paragraph (a) or paragraph (d), for a  
 204 domestic insurer that transacts residential property insurance  
 205 and is:

206 1. Not a wholly owned subsidiary of an insurer domiciled  
 207 in any other state, \$15 million.

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

212 (2) Notwithstanding subsection (1), a new insurer may not  
 213 be required, but no insurer shall be required under this  
 214 ~~subsection~~ to have surplus as to policyholders greater than \$100  
 215 million.

216 (3)-(2) The requirements of this section shall be based  
 217 upon all the kinds of insurance actually transacted or to be  
 218 transacted by the insurer in any and all areas in which it  
 219 operates, whether or not only a portion of such kinds of  
 220 insurance are ~~to be~~ transacted in this state.

221 (4)-(3) As to surplus as to policyholders required for  
 222 qualification to transact one or more kinds of insurance,  
 223 domestic mutual insurers are governed by chapter 628, and  
 224 domestic reciprocal insurers are governed by chapter 629.

225        (5)~~(4)~~ For the purposes of this section, liabilities do  
 226 ~~shall~~ not include liabilities required under s. 625.041(4). For  
 227 purposes of computing minimum surplus as to policyholders  
 228 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities  
 229 required under s. 625.041(4).

230        (6)~~(5)~~ The provisions of this section, as amended by  
 231 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to  
 232 insurers applying for a certificate of authority on or after  
 233 October 1, 1989 ~~the effective date of this act~~.

234        Section 4. Section 624.408, Florida Statutes, is amended  
 235 to read:

236        624.408 Surplus ~~as to policyholders~~ required; current new  
 237 ~~and existing~~ insurers.-

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

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

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

247        (c)~~3-~~ For life and health insurers, 4 percent of the  
 248 insurer's total liabilities plus 6 percent of the insurer's  
 249 liabilities relative to health insurance.† ~~or~~

250        (d)~~4-~~ For all insurers other than mortgage guaranty  
 251 insurers, life insurers, and life and health insurers, 10  
 252 percent of the insurer's total liabilities.

253 (e)5- For property and casualty insurers, \$4 million,  
 254 except for property and casualty insurers authorized to  
 255 underwrite any line of residential property insurance.

256 (f)(b) For residential any property insurers not and  
 257 casualty insurer holding a certificate of authority before July  
 258 1, 2011 on December 1, 1993, \$15 million. the

259 (g) For residential property insurers holding a  
 260 certificate of authority before July 1, 2011, and until June 30,  
 261 2016, \$5 million; on or after July 1, 2016, and until June 30,  
 262 2021, \$10 million; on or after July 1, 2021, \$15 million.

263 (h) The office may reduce the surplus requirement in  
 264 paragraphs (f) and (g) if the insurer is not writing new  
 265 business, has premiums in force of less than \$1 million per year  
 266 in residential property insurance, or is a mutual insurance  
 267 company. following amounts apply instead of the \$4 million  
 268 required by subparagraph (a)5.:

269 1. On December 31, 2001, and until December 30, 2002, \$3  
 270 million.

271 2. On December 31, 2002, and until December 30, 2003,  
 272 \$3.25 million.

273 3. On December 31, 2003, and until December 30, 2004, \$3.6  
 274 million.

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

276 (2) For purposes of this section, liabilities do shall not  
 277 include liabilities required under s. 625.041(4). For purposes  
 278 of computing minimum surplus as to policyholders pursuant to s.  
 279 625.305(1), liabilities shall include liabilities required under  
 280 s. 625.041(4).

281 (3) This section does not require an ~~Ne~~ insurer ~~shall be~~  
 282 ~~required under this section~~ to have surplus as to policyholders  
 283 greater than \$100 million.

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

286 Section 5: Subsection (7) is added to section 626.852,  
 287 Florida Statutes, to read:

288 626.852 Scope of this part.—

289 (7) Notwithstanding any other provision of law, a person  
 290 providing claims adjusting services solely to institutions  
 291 servicing or guaranteeing mortgages shall be exempt from  
 292 licensure as an adjuster for services provided to the mortgage  
 293 institution with regards to policies covering the mortgaged  
 294 properties.

295 Section 6. Effective June 1, 2011, subsection (11) of  
 296 section 626.854, Florida Statutes, is amended to read:

297 626.854 "Public adjuster" defined; prohibitions.—The  
 298 Legislature finds that it is necessary for the protection of the  
 299 public to regulate public insurance adjusters and to prevent the  
 300 unauthorized practice of law.

301 (11) (a) If a public adjuster enters into a contract with  
 302 an insured or claimant to reopen a claim or ~~to~~ file a  
 303 supplemental claim that seeks additional payments for a claim  
 304 that has been previously paid in part or in full or settled by  
 305 the insurer, the public adjuster may not charge, agree to, or  
 306 accept any compensation, payment, commission, fee, or other  
 307 thing of value based on a previous settlement or previous claim  
 308 payments by the insurer for the same cause of loss. The charge,



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309 compensation, payment, commission, fee, or other thing of value  
 310 may be based only on the claim payments or settlement obtained  
 311 through the work of the public adjuster after entering into the  
 312 contract with the insured or claimant. Compensation for the  
 313 reopened or supplemental claim may not exceed 20 percent of the  
 314 reopened or supplemental claim payment. The contracts described  
 315 in this paragraph are not subject to the limitations in  
 316 paragraph (b).

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

320 1. Ten percent of the amount of insurance claim payments  
 321 made by the insurer for claims based on events that are the  
 322 subject of a declaration of a state of emergency by the  
 323 Governor. This provision applies to claims made during the  
 324 period of 1 year after the declaration of emergency. After that  
 325 year, 20 percent of the amount of insurance claim payments made  
 326 by the insurer.

327 2. Twenty percent of the amount of ~~all other~~ insurance  
 328 claim payments made by the insurer for claims that are not based  
 329 on events that are the subject of a declaration of a state of  
 330 emergency by the Governor.

331  
 332 The provisions of subsections (5)-(13) apply only to residential  
 333 property insurance policies and condominium unit owner  
 334 ~~association~~ policies as defined in s. 718.111(11).

335 Section 7. Effective January 1, 2012, section 626.854,  
 336 Florida Statutes, as amended by this act, is amended to read:

337           626.854 "Public adjuster" defined; prohibitions.—The  
 338 Legislature finds that it is necessary for the protection of the  
 339 public to regulate public insurance adjusters and to prevent the  
 340 unauthorized practice of law.

341           (1) A "public adjuster" is any person, except a duly  
 342 licensed attorney at law as exempted under ~~hereinafter in s.~~  
 343 626.860 ~~provided~~, who, for money, commission, or any other thing  
 344 of value, prepares, completes, or files an insurance claim form  
 345 for an insured or third-party claimant or who, for money,  
 346 commission, or any other thing of value, acts ~~or aids in any~~  
 347 ~~manner~~ on behalf of, or aids an insured or third-party claimant  
 348 in negotiating for or effecting the settlement of a claim or  
 349 claims for loss or damage covered by an insurance contract or  
 350 who advertises for employment as an adjuster of such claims. The  
 351 term, ~~and~~ also includes any person who, for money, commission,  
 352 or any other thing of value, solicits, investigates, or adjusts  
 353 such claims on behalf of a ~~any such~~ public adjuster.

354           (2) This definition does not apply to:

355           (a) A licensed health care provider or employee thereof  
 356 who prepares or files a health insurance claim form on behalf of  
 357 a patient.

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

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

364           (4) For purposes of this section, the term "insured"

365 includes only the policyholder and any beneficiaries named or  
 366 similarly identified in the policy.

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

372 (6) A public adjuster may not directly or indirectly  
 373 through any other person or entity initiate contact or engage in  
 374 face-to-face or telephonic solicitation or enter into a contract  
 375 with any insured or claimant under an insurance policy until at  
 376 least 48 hours after the occurrence of an event that may be the  
 377 subject of a claim under the insurance policy unless contact is  
 378 initiated by the insured or claimant.

379 (7) An insured or claimant may cancel a public adjuster's  
 380 contract to adjust a claim without penalty or obligation within  
 381 3 business days after the date on which the contract is executed  
 382 or within 3 business days after the date on which the insured or  
 383 claimant has notified the insurer of the claim, by phone or in  
 384 writing, whichever is later. The public adjuster's contract must  
 385 ~~shall~~ disclose to the insured or claimant his or her right to  
 386 cancel the contract and advise the insured or claimant that  
 387 notice of cancellation must be submitted in writing and sent by  
 388 certified mail, return receipt requested, or other form of  
 389 mailing that ~~which~~ provides proof thereof, to the public  
 390 adjuster at the address specified in the contract; provided,  
 391 during any state of emergency as declared by the Governor and  
 392 for a ~~period of~~ 1 year after the date of loss, the insured or

393 claimant has ~~shall~~ have 5 business days after the date on which  
 394 the contract is executed to cancel a public adjuster's contract.

395 (8) It is an unfair and deceptive insurance trade practice  
 396 pursuant to s. 626.9541 for a public adjuster or any other  
 397 person to circulate or disseminate any advertisement,  
 398 announcement, or statement containing any assertion,  
 399 representation, or statement with respect to the business of  
 400 insurance which is untrue, deceptive, or misleading.

401 (a) The following statements, made in any public  
 402 adjuster's advertisement or solicitation, are considered  
 403 deceptive or misleading:

404 1. A statement or representation that invites an insured  
 405 policyholder to submit a claim when the policyholder does not  
 406 have covered damage to insured property.

407 2. A statement or representation that invites an insured  
 408 policyholder to submit a claim by offering monetary or other  
 409 valuable inducement.

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

413 4. A statement or representation, or use of a logo or  
 414 shield, that implies or could mistakenly be construed to imply  
 415 that the solicitation was issued or distributed by a  
 416 governmental agency or is sanctioned or endorsed by a  
 417 governmental agency.

418 (b) For purposes of this paragraph, the term "written  
 419 advertisement" includes only newspapers, magazines, flyers, and  
 420 bulk mailers. The following disclaimer, which is not required to

421 be printed on standard size business cards, must be added in  
 422 bold print and capital letters in typeface no smaller than the  
 423 typeface of the body of the text to all written advertisements  
 424 by a public adjuster:

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

429  
 430 (9) A public adjuster, a public adjuster apprentice, or  
 431 any person or entity acting on behalf of a public adjuster or  
 432 public adjuster apprentice may not give or offer to give a  
 433 monetary loan or advance to a client or prospective client.

434 (10) A public adjuster, public adjuster apprentice, or any  
 435 individual or entity acting on behalf of a public adjuster or  
 436 public adjuster apprentice may not give or offer to give,  
 437 directly or indirectly, any article of merchandise having a  
 438 value in excess of \$25 to any individual for the purpose of  
 439 advertising or as an inducement to entering into a contract with  
 440 a public adjuster.

441 (11)(a) If a public adjuster enters into a contract with  
 442 an insured or claimant to reopen a claim or to file a  
 443 supplemental claim that seeks additional payments for a claim  
 444 that has been previously paid in part or in full or settled by  
 445 the insurer, the public adjuster may not charge, agree to, or  
 446 accept any compensation, payment, commission, fee, or other  
 447 thing of value based on a previous settlement or previous claim  
 448 payments by the insurer for the same cause of loss. The charge,

449 compensation, payment, commission, fee, or other thing of value  
 450 may be based only on the claim payments or settlement obtained  
 451 through the work of the public adjuster after entering into the  
 452 contract with the insured or claimant. Compensation for the  
 453 reopened or supplemental claim may not exceed 20 percent of the  
 454 reopened or supplemental claim payment. The contracts described  
 455 in this paragraph are not subject to the limitations in  
 456 paragraph (b).

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

460 1. Ten percent of the amount of insurance claim payments  
 461 made by the insurer for claims based on events that are the  
 462 subject of a declaration of a state of emergency by the  
 463 Governor. This provision applies to claims made during the  
 464 period of 1 year after the declaration of emergency. After that  
 465 year, 20 percent of the amount of insurance claim payments made  
 466 by the insurer.

467 2. Twenty percent of the amount of insurance claim  
 468 payments made by the insurer for claims that are not based on  
 469 events that are the subject of a declaration of a state of  
 470 emergency by the Governor.

471 (12) Each public adjuster must ~~shall~~ provide to the  
 472 claimant or insured a written estimate of the loss to assist in  
 473 the submission of a proof of loss or any other claim for payment  
 474 of insurance proceeds. The public adjuster shall retain such  
 475 written estimate for at least 5 years and shall make the ~~such~~  
 476 estimate available to the claimant or insured and the department

477 upon request.

478 (13) A public adjuster, public adjuster apprentice, or any  
 479 person acting on behalf of a public adjuster or apprentice may  
 480 not accept referrals of business from any person with whom the  
 481 public adjuster conducts business if there is any form or manner  
 482 of agreement to compensate the person, ~~whether~~ directly or  
 483 indirectly, for referring business to the public adjuster. A  
 484 public adjuster may not compensate any person, except for  
 485 another public adjuster, ~~whether~~ directly or indirectly, for the  
 486 principal purpose of referring business to the public adjuster.

487 (14) A company employee adjuster, independent adjuster,  
 488 attorney, investigator, or other persons acting on behalf of an  
 489 insurer that needs access to an insured or claimant or to the  
 490 insured property that is the subject of a claim must provide at  
 491 least 48 hours' notice to the insured or claimant, public  
 492 adjuster, or legal representative before scheduling a meeting  
 493 with the claimant or an onsite inspection of the insured  
 494 property. The insured or claimant may deny access to the  
 495 property if the notice has not been provided. The insured or  
 496 claimant may waive the 48-hour notice.

497 (15) A public adjuster must ensure prompt notice of  
 498 property loss claims submitted to an insurer by or through a  
 499 public adjuster or on which a public adjuster represents the  
 500 insured at the time the claim or notice of loss is submitted to  
 501 the insurer. The public adjuster must ensure that notice is  
 502 given to the insurer, the public adjuster's contract is provided  
 503 to the insurer, the property is available for inspection of the  
 504 loss or damage by the insurer, and the insurer is given an

505 opportunity to interview the insured directly about the loss and  
 506 claim. The insurer must be allowed to obtain necessary  
 507 information to investigate and respond to the claim.

508 (a) The insurer may not exclude the public adjuster from  
 509 its in-person meetings with the insured. The insurer shall meet  
 510 or communicate with the public adjuster in an effort to reach  
 511 agreement as to the scope of the covered loss under the  
 512 insurance policy. This section does not impair the terms and  
 513 conditions of the insurance policy in effect at the time the  
 514 claim is filed.

515 (b) A public adjuster may not restrict or prevent an  
 516 insurer, company employee adjuster, independent adjuster,  
 517 attorney, investigator, or other person acting on behalf of the  
 518 insurer from having reasonable access at reasonable times to an  
 519 insured or claimant or to the insured property that is the  
 520 subject of a claim.

521 (c) A public adjuster may not act or fail to reasonably  
 522 act in any manner that obstructs or prevents an insurer or  
 523 insurer's adjuster from timely conducting an inspection of any  
 524 part of the insured property for which there is a claim for loss  
 525 or damage. The public adjuster representing the insured may be  
 526 present for the insurer's inspection, but if the unavailability  
 527 of the public adjuster otherwise delays the insurer's timely  
 528 inspection of the property, the public adjuster or the insured  
 529 must allow the insurer to have access to the property without  
 530 the participation or presence of the public adjuster or insured  
 531 in order to facilitate the insurer's prompt inspection of the  
 532 loss or damage.



533       (16) A licensed contractor under part I of chapter 489, or  
 534 a subcontractor, may not adjust a claim on behalf of an insured  
 535 unless licensed and compliant as a public adjuster under this  
 536 chapter. However, the contractor may discuss or explain a bid  
 537 for construction or repair of covered property with the  
 538 residential property owner who has suffered loss or damage  
 539 covered by a property insurance policy, or the insurer of such  
 540 property, if the contractor is doing so for the usual and  
 541 customary fees applicable to the work to be performed as stated  
 542 in the contract between the contractor and the insured.

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

546       Section 8. Effective June 1, 2011, section 626.70132,  
 547 Florida Statutes, is created to read:

548       626.70132 Notice of windstorm or hurricane claim.—A claim,  
 549 supplemental claim, or reopened claim under an insurance policy  
 550 that provides personal lines residential coverage, as defined in  
 551 s. 627.4025, for loss or damage caused by the peril of windstorm  
 552 or hurricane is barred unless notice of the claim, supplemental  
 553 claim, or reopened claim was given to the insurer in accordance  
 554 with the terms of the policy within 3 years after the hurricane  
 555 first made landfall or the windstorm caused the covered damage.  
 556 For purposes of this section, the term "supplemental claim" or  
 557 "reopened claim" means any additional claim for recovery from  
 558 the insurer for losses from the same hurricane or windstorm  
 559 which the insurer has previously adjusted pursuant to the  
 560 initial claim. This section does not affect any applicable

561 limitation on civil actions provided in s. 95.11 for claims,  
 562 supplemental claims, or reopened claims timely filed under this  
 563 section.

564 Section 9. Section 627.062, Florida Statutes, is amended  
 565 to read:

566 627.062 Rate standards.—

567 (1) The rates for all classes of insurance to which the  
 568 provisions of this part are applicable may ~~shall~~ not be  
 569 excessive, inadequate, or unfairly discriminatory.

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

571 (a) Insurers or rating organizations shall establish and  
 572 use rates, rating schedules, or rating manuals that ~~to~~ allow the  
 573 insurer a reasonable rate of return on the ~~such~~ classes of  
 574 insurance written in this state. A copy of rates, rating  
 575 schedules, rating manuals, premium credits or discount  
 576 schedules, and surcharge schedules, and changes thereto, must  
 577 ~~shall~~ be filed with the office under one of the following  
 578 procedures ~~except as provided in subparagraph 3.:~~

579 1. If the filing is made at least 90 days before the  
 580 proposed effective date and ~~the filing~~ is not implemented during  
 581 the office's review of the filing and any proceeding and  
 582 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file  
 583 and use" filing. In such case, the office shall finalize its  
 584 review by issuance of a notice of intent to approve or a notice  
 585 of intent to disapprove within 90 days after receipt of the  
 586 filing. The notice of intent to approve and the notice of intent  
 587 to disapprove constitute agency action for purposes of the  
 588 Administrative Procedure Act. Requests for supporting

589 information, requests for mathematical or mechanical  
 590 corrections, or notification to the insurer by the office of its  
 591 preliminary findings does ~~shall~~ not toll the 90-day period  
 592 during any such proceedings and subsequent judicial review. The  
 593 rate shall be deemed approved if the office does not issue a  
 594 notice of intent to approve or a notice of intent to disapprove  
 595 within 90 days after receipt of the filing.

596 2. If the filing is not made in accordance with ~~the~~  
 597 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as  
 598 soon as practicable, but within ~~no later than~~ 30 days after the  
 599 effective date, and is ~~shall be~~ considered a "use and file"  
 600 filing. An insurer making a "use and file" filing is potentially  
 601 subject to an order by the office to return to policyholders  
 602 those portions of rates found to be excessive, as provided in  
 603 paragraph (h).

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

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

616 1. Past and prospective loss experience within and without

617 | this state.

618 |       2. Past and prospective expenses.

619 |       3. The degree of competition among insurers for the risk

620 | insured.

621 |       4. Investment income reasonably expected by the insurer,

622 | consistent with the insurer's investment practices, from

623 | investable premiums anticipated in the filing, plus any other

624 | expected income from currently invested assets representing the

625 | amount expected on unearned premium reserves and loss reserves.

626 | The commission may adopt rules using reasonable techniques of

627 | actuarial science and economics to specify the manner in which

628 | insurers ~~shall~~ calculate investment income attributable to ~~such~~

629 | classes of insurance written in this state and the manner in

630 | which ~~such~~ investment income is ~~shall be~~ used to calculate

631 | insurance rates. Such manner must ~~shall~~ contemplate allowances

632 | for an underwriting profit factor and full consideration of

633 | investment income which produce a reasonable rate of return;

634 | however, investment income from invested surplus may not be

635 | considered.

636 |       5. The reasonableness of the judgment reflected in the

637 | filing.

638 |       6. Dividends, savings, or unabsorbed premium deposits

639 | allowed or returned to Florida policyholders, members, or

640 | subscribers.

641 |       7. The adequacy of loss reserves.

642 |       8. The cost of reinsurance. The office may ~~shall~~ not

643 | disapprove a rate as excessive solely due to the insurer having

644 | obtained catastrophic reinsurance to cover the insurer's

645 estimated 250-year probable maximum loss or any lower level of  
 646 loss.

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

649 10. Conflagration and catastrophe hazards, if applicable.

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

654 12. A reasonable margin for underwriting profit and  
 655 contingencies.

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

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

659 (c) In the case of fire insurance rates, consideration  
 660 must shall be given to the availability of water supplies and  
 661 the experience of the fire insurance business during a period of  
 662 not less than the most recent 5-year period for which such  
 663 experience is available.

664 (d) If conflagration or catastrophe hazards are considered  
 665 ~~given consideration~~ by an insurer in its rates or rating plan,  
 666 including surcharges and discounts, the insurer shall establish  
 667 a reserve for that portion of the premium allocated to such  
 668 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.  
 669 ~~Any~~ Removal of such premiums from the reserve for purposes other  
 670 than paying claims associated with a catastrophe or purchasing  
 671 reinsurance for catastrophes must be approved by shall be  
 672 ~~subject to approval of~~ the office. Any ceding commission

673 received by an insurer purchasing reinsurance for catastrophes  
 674 must ~~shall~~ be placed in the catastrophe reserve.

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

679 1. Rates shall be deemed excessive if they are likely to  
 680 produce a profit from Florida business which ~~that~~ is  
 681 unreasonably high in relation to the risk involved in the class  
 682 of business or if expenses are unreasonably high in relation to  
 683 services rendered.

684 2. Rates shall be deemed excessive if, among other things,  
 685 the rate structure established by a stock insurance company  
 686 provides for replenishment of surpluses from premiums, if ~~when~~  
 687 the replenishment is attributable to investment losses.

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

692 4. A rating plan, including discounts, credits, or  
 693 surcharges, shall be deemed unfairly discriminatory if it fails  
 694 to clearly and equitably reflect consideration of the  
 695 policyholder's participation in a risk management program  
 696 adopted pursuant to s. 627.0625.

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

701 of risks.

702 6. A rate shall be deemed unfairly discriminatory as to a  
 703 risk or group of risks if the application of premium discounts,  
 704 credits, or surcharges among such risks does not bear a  
 705 reasonable relationship to the expected loss and expense  
 706 experience among the various risks.

707 (f) In reviewing a rate filing, the office may require the  
 708 insurer to provide, at the insurer's expense, all information  
 709 necessary to evaluate the condition of the company and the  
 710 reasonableness of the filing according to the criteria  
 711 enumerated in this section.

712 (g) The office may at any time review a rate, rating  
 713 schedule, rating manual, or rate change; the pertinent records  
 714 of the insurer; and market conditions. If the office finds on a  
 715 preliminary basis that a rate may be excessive, inadequate, or  
 716 unfairly discriminatory, the office shall initiate proceedings  
 717 to disapprove the rate and shall so notify the insurer. However,  
 718 the office may not disapprove as excessive any rate for which it  
 719 has given final approval or which has been deemed approved for a  
 720 ~~period of~~ 1 year after the effective date of the filing unless  
 721 the office finds that a material misrepresentation or material  
 722 error was made by the insurer or was contained in the filing.  
 723 Upon being ~~so~~ notified, the insurer or rating organization  
 724 shall, within 60 days, file with the office all information that  
 725 ~~which,~~ in the belief of the insurer or organization, proves the  
 726 reasonableness, adequacy, and fairness of the rate or rate  
 727 change. The office shall issue a notice of intent to approve or  
 728 a notice of intent to disapprove pursuant to ~~the procedures of~~

729 paragraph (a) within 90 days after receipt of the insurer's  
 730 initial response. In such instances and in any administrative  
 731 proceeding relating to the legality of the rate, the insurer or  
 732 rating organization shall carry the burden of proof by a  
 733 preponderance of the evidence to show that the rate is not  
 734 excessive, inadequate, or unfairly discriminatory. After the  
 735 office notifies an insurer that a rate may be excessive,  
 736 inadequate, or unfairly discriminatory, unless the office  
 737 withdraws the notification, the insurer may ~~shall~~ not alter the  
 738 rate except to conform to with the office's notice until the  
 739 earlier of 120 days after the date the notification was provided  
 740 or 180 days after the date of implementing ~~the implementation of~~  
 741 the rate. The office ~~may~~, subject to chapter 120, may disapprove  
 742 without the 60-day notification any rate increase filed by an  
 743 insurer within the prohibited time period or during the time  
 744 that the legality of the increased rate is being contested.

745 (h) ~~If In the event~~ the office finds that a rate or rate  
 746 change is excessive, inadequate, or unfairly discriminatory, the  
 747 office shall issue an order of disapproval specifying that a new  
 748 rate or rate schedule, which responds to the findings of the  
 749 office, be filed by the insurer. The office shall further order,  
 750 for any "use and file" filing made in accordance with  
 751 subparagraph (a)2., that premiums charged each policyholder  
 752 constituting the portion of the rate above that which was  
 753 actuarially justified be returned to the ~~such~~ policyholder in  
 754 the form of a credit or refund. If the office finds that an  
 755 insurer's rate or rate change is inadequate, the new rate or  
 756 rate schedule filed with the office in response to such a



757 | finding is ~~shall be~~ applicable only to new or renewal business  
 758 | of the insurer written on or after the effective date of the  
 759 | responsive filing.

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

762 | 1. Prohibit any insurer, including any residual market  
 763 | plan or joint underwriting association, from paying acquisition  
 764 | costs based on the full amount of premium, as defined in s.  
 765 | 627.403, applicable to any policy, or prohibit any such insurer  
 766 | from including the full amount of acquisition costs in a rate  
 767 | filing; or-

768 | 2. Impede, abridge, or otherwise compromise an insurer's  
 769 | right to acquire policyholders, advertise, or appoint agents,  
 770 | including the calculation, manner, or amount of such agent  
 771 | commissions, if any, in property and casualty insurance.

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

775 | (k)1. An insurer may make a separate filing limited solely  
 776 | to an adjustment of its rates for reinsurance or financing costs  
 777 | incurred in the purchase of reinsurance or financing products to  
 778 | replace or finance the payment of the amount covered by the  
 779 | Temporary Increase in Coverage Limits (TICL) portion of the  
 780 | Florida Hurricane Catastrophe Fund including replacement  
 781 | reinsurance for the TICL reductions made pursuant to s.  
 782 | 215.555(17)(e); the actual cost paid due to the application of  
 783 | the TICL premium factor pursuant to s. 215.555(17)(f); and the  
 784 | actual cost paid due to the application of the cash build-up

785 factor pursuant to s. 215.555(5)(b) if the insurer:

786 a. Elects to purchase financing products such as a  
 787 liquidity instrument or line of credit, in which case the cost  
 788 included in the filing for the liquidity instrument or line of  
 789 credit may not result in a premium increase exceeding 3 percent  
 790 for any individual policyholder. All costs contained in the  
 791 filing may not result in an overall premium increase of more  
 792 than 10 percent for any individual policyholder.

793 b. Includes in the filing a copy of all of its  
 794 reinsurance, liquidity instrument, or line of credit contracts;  
 795 proof of the billing or payment for the contracts; and the  
 796 calculation upon which the proposed rate change is based  
 797 demonstrates that the costs meet the criteria of this section  
 798 and are not loaded for expenses or profit for the insurer making  
 799 the filing.

800 c. Includes no other changes to its rates in the filing.

801 d. Has not implemented a rate increase within the 6 months  
 802 immediately preceding the filing.

803 e. Does not file for a rate increase under any other  
 804 paragraph within 6 months after making a filing under this  
 805 paragraph.

806 f. That purchases reinsurance or financing products from  
 807 an affiliated company in compliance with this paragraph does so  
 808 only if the costs for such reinsurance or financing products are  
 809 charged at or below charges made for comparable coverage by  
 810 nonaffiliated reinsurers or financial entities making such  
 811 coverage or financing products available in this state.

812 2. An insurer may only make one filing in any 12-month

813 period under this paragraph.

814 3. An insurer that elects to implement a rate change under  
 815 this paragraph must file its rate filing with the office at  
 816 least 45 days before the effective date of the rate change.  
 817 After an insurer submits a complete filing that meets all of the  
 818 requirements of this paragraph, the office has 45 days after the  
 819 date of the filing to review the rate filing and determine if  
 820 the rate is excessive, inadequate, or unfairly discriminatory.

821  
 822 The provisions of this subsection do ~~shall~~ not apply to workers'  
 823 compensation, and employer's liability insurance, and ~~to~~ motor  
 824 vehicle insurance.

825 (3)(a) For individual risks that are not rated in  
 826 accordance with the insurer's rates, rating schedules, rating  
 827 manuals, and underwriting rules filed with the office and that  
 828 ~~which~~ have been submitted to the insurer for individual rating,  
 829 the insurer must maintain documentation on each risk subject to  
 830 individual risk rating. The documentation must identify the  
 831 named insured and specify the characteristics and classification  
 832 of the risk supporting the reason for the risk being  
 833 individually risk rated, including any modifications to existing  
 834 approved forms to be used on the risk. The insurer must maintain  
 835 these records for ~~a period of~~ at least 5 years after the  
 836 effective date of the policy.

837 (b) Individual risk rates and modifications to existing  
 838 approved forms are not subject to this part or part II, except  
 839 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
 840 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,

841 | 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
 842 | 627.4265, 627.427, and 627.428, but are subject to all other  
 843 | applicable provisions of this code and rules adopted thereunder.

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

846 |       (d)1. The following categories or kinds of insurance and  
 847 | types of commercial lines risks are not subject to paragraph  
 848 | (2) (a) or paragraph (2) (f):

849 |       a. Excess or umbrella.

850 |       b. Surety and fidelity.

851 |       c. Boiler and machinery and leakage and fire extinguishing  
 852 | equipment.

853 |       d. Errors and omissions.

854 |       e. Directors and officers, employment practices, and  
 855 | management liability.

856 |       f. Intellectual property and patent infringement  
 857 | liability.

858 |       g. Advertising injury and Internet liability insurance.

859 |       h. Property risks rated under a highly protected risks  
 860 | rating plan.

861 |       i. Any other commercial lines categories or kinds of  
 862 | insurance or types of commercial lines risks that the office  
 863 | determines should not be subject to paragraph (2) (a) or  
 864 | paragraph (2) (f) because of the existence of a competitive  
 865 | market for such insurance, similarity of such insurance to other  
 866 | categories or kinds of insurance not subject to paragraph (2) (a)  
 867 | or paragraph (2) (f), or to improve the general operational  
 868 | efficiency of the office.

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

873           3. An insurer must notify the office of any changes to  
 874 rates for insurance and risks described in subparagraph 1.  
 875 within no later than 30 days after the effective date of the  
 876 change. The notice must include the name of the insurer, the  
 877 type or kind of insurance subject to rate change, total premium  
 878 written during the immediately preceding year by the insurer for  
 879 the type or kind of insurance subject to the rate change, and  
 880 the average statewide percentage change in rates. Underwriting  
 881 files, premiums, losses, and expense statistics with regard to  
 882 such insurance and risks ~~described in subparagraph 1.~~ written by  
 883 an insurer must ~~shall~~ be maintained by the insurer and subject  
 884 to examination by the office. Upon examination, the office  
 885 ~~shall~~, in accordance with generally accepted and reasonable  
 886 actuarial techniques, shall consider the rate factors in  
 887 paragraphs (2)(b), (c), and (d) and the standards in paragraph  
 888 (2)(e) to determine if the rate is excessive, inadequate, or  
 889 unfairly discriminatory.

890           4. A rating organization must notify the office of any  
 891 changes to loss cost for insurance and risks described in  
 892 subparagraph 1. within no later than 30 days after the effective  
 893 date of the change. The notice must include the name of the  
 894 rating organization, the type or kind of insurance subject to a  
 895 loss cost change, loss costs during the immediately preceding  
 896 year for the type or kind of insurance subject to the loss cost

897 change, and the average statewide percentage change in loss  
 898 cost. Loss and exposure statistics with regard to risks  
 899 applicable to loss costs for a rating organization not subject  
 900 to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained  
 901 by the rating organization and are subject to examination by the  
 902 office. Upon examination, the office ~~shall~~, in accordance with  
 903 generally accepted and reasonable actuarial techniques, shall  
 904 consider the rate factors in paragraphs (2) (b)-(d) and the  
 905 standards in paragraph (2) (e) to determine if the rate is  
 906 excessive, inadequate, or unfairly discriminatory.

907 5. In reviewing a rate, the office may require the insurer  
 908 to provide, at the insurer's expense, all information necessary  
 909 to evaluate the condition of the company and the reasonableness  
 910 of the rate according to the applicable criteria described in  
 911 this section.

912 (4) The establishment of any rate, rating classification,  
 913 rating plan or schedule, or variation thereof in violation of  
 914 part IX of chapter 626 is also in violation of this section. ~~In~~  
 915 ~~order to enhance the ability of consumers to compare premiums~~  
 916 ~~and to increase the accuracy and usefulness of rate-comparison~~  
 917 ~~information provided by the office to the public, the office~~  
 918 ~~shall develop a proposed standard rating territory plan to be~~  
 919 ~~used by all authorized property and casualty insurers for~~  
 920 ~~residential property insurance. In adopting the proposed plan,~~  
 921 ~~the office may consider geographical characteristics relevant to~~  
 922 ~~risk, county lines, major roadways, existing rating territories~~  
 923 ~~used by a significant segment of the market, and other relevant~~  
 924 ~~factors. Such plan shall be submitted to the President of the~~

925 ~~Senate and the Speaker of the House of Representatives by~~  
 926 ~~January 15, 2006. The plan may not be implemented unless~~  
 927 ~~authorized by further act of the Legislature.~~

928 (5) With respect to a rate filing involving coverage of  
 929 the type for which the insurer is required to pay a  
 930 reimbursement premium to the Florida Hurricane Catastrophe Fund,  
 931 the insurer may fully recoup in its property insurance premiums  
 932 any reimbursement premiums paid to the ~~Florida Hurricane~~  
 933 ~~Catastrophe~~ fund, together with reasonable costs of other  
 934 reinsurance; however, ~~but~~ except as otherwise provided in this  
 935 section, the insurer may not recoup reinsurance costs that  
 936 duplicate coverage provided by the ~~Florida Hurricane Catastrophe~~  
 937 fund. An insurer may not recoup more than 1 year of  
 938 reimbursement premium at a time. Any under-recoupment from the  
 939 prior year may be added to the following year's reimbursement  
 940 premium, and any over-recoupment must ~~shall~~ be subtracted from  
 941 the following year's reimbursement premium.

942 (6) (a) If an insurer requests an administrative hearing  
 943 pursuant to s. 120.57 related to a rate filing under this  
 944 section, the director of the Division of Administrative Hearings  
 945 shall expedite the hearing and assign an administrative law  
 946 judge who shall commence the hearing within 30 days after the  
 947 receipt of the formal request and ~~shall~~ enter a recommended  
 948 order within 30 days after the hearing or within 30 days after  
 949 receipt of the hearing transcript by the administrative law  
 950 judge, whichever is later. Each party shall have ~~be allowed~~ 10  
 951 days in which to submit written exceptions to the recommended  
 952 order. The office shall enter a final order within 30 days after

953 the entry of the recommended order. The provisions of this  
 954 paragraph may be waived upon stipulation of all parties.

955 (b) Upon entry of a final order, the insurer may request a  
 956 expedited appellate review pursuant to the Florida Rules of  
 957 Appellate Procedure. It is the intent of the Legislature that  
 958 the First District Court of Appeal grant an insurer's request  
 959 for an expedited appellate review.

960 (7)~~(a)~~ The provisions of this subsection apply only ~~with~~  
 961 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~  
 962 control to the extent of any conflict with other provisions of  
 963 this section.

964 (a)~~(b)~~ Any portion of a judgment entered or settlement  
 965 paid as a result of a statutory or common-law bad faith action  
 966 and any portion of a judgment entered which awards punitive  
 967 damages against an insurer may not be included in the insurer's  
 968 rate base, and ~~shall not be~~ used to justify a rate or rate  
 969 change. Any common-law bad faith action identified as such, any  
 970 portion of a settlement entered as a result of a statutory or  
 971 common-law action, or any portion of a settlement wherein an  
 972 insurer agrees to pay specific punitive damages may not be used  
 973 to justify a rate or rate change. The portion of the taxable  
 974 costs and attorney's fees which is identified as being related  
 975 to the bad faith and punitive damages ~~in these judgments and~~  
 976 ~~settlements~~ may not be included in the insurer's rate base and  
 977 used ~~may not be utilized~~ to justify a rate or rate change.

978 (b)~~(c)~~ Upon reviewing a rate filing and determining  
 979 whether the rate is excessive, inadequate, or unfairly  
 980 discriminatory, the office shall consider, in accordance with



981 generally accepted and reasonable actuarial techniques, past and  
 982 present prospective loss experience, ~~either~~ using loss  
 983 experience solely for this state or giving greater credibility  
 984 to this state's loss data after applying actuarially sound  
 985 methods of assigning credibility to such data.

986 (c)~~(d)~~ Rates shall be deemed excessive if, among other  
 987 standards established by this section, the rate structure  
 988 provides for replenishment of reserves or surpluses from  
 989 premiums when the replenishment is attributable to investment  
 990 losses.

991 (d)~~(e)~~ The insurer must apply a discount or surcharge  
 992 based on the health care provider's loss experience or ~~shall~~  
 993 establish an alternative method giving due consideration to the  
 994 provider's loss experience. The insurer must include in the  
 995 filing a copy of the surcharge or discount schedule or a  
 996 description of the alternative method used, and ~~must~~ provide a  
 997 copy ~~of such schedule or description~~, as approved by the office,  
 998 to policyholders at the time of renewal and to prospective  
 999 policyholders at the time of application for coverage.

1000 (e)~~(f)~~ Each medical malpractice insurer must make a rate  
 1001 filing under this section, sworn to by at least two executive  
 1002 officers of the insurer, at least once each calendar year.

1003 ~~(8)(a)1. No later than 60 days after the effective date of~~  
 1004 ~~medical malpractice legislation enacted during the 2003 Special~~  
 1005 ~~Session D of the Florida Legislature, the office shall calculate~~  
 1006 ~~a presumed factor that reflects the impact that the changes~~  
 1007 ~~contained in such legislation will have on rates for medical~~  
 1008 ~~malpractice insurance and shall issue a notice informing all~~

1009 ~~insurers writing medical malpractice coverage of such presumed~~  
 1010 ~~factor. In determining the presumed factor, the office shall use~~  
 1011 ~~generally accepted actuarial techniques and standards provided~~  
 1012 ~~in this section in determining the expected impact on losses,~~  
 1013 ~~expenses, and investment income of the insurer. To the extent~~  
 1014 ~~that the operation of a provision of medical malpractice~~  
 1015 ~~legislation enacted during the 2003 Special Session D of the~~  
 1016 ~~Florida Legislature is stayed pending a constitutional~~  
 1017 ~~challenge, the impact of that provision shall not be included in~~  
 1018 ~~the calculation of a presumed factor under this subparagraph.~~

1019       ~~2. No later than 60 days after the office issues its~~  
 1020 ~~notice of the presumed rate change factor under subparagraph 1.,~~  
 1021 ~~each insurer writing medical malpractice coverage in this state~~  
 1022 ~~shall submit to the office a rate filing for medical malpractice~~  
 1023 ~~insurance, which will take effect no later than January 1, 2004,~~  
 1024 ~~and apply retroactively to policies issued or renewed on or~~  
 1025 ~~after the effective date of medical malpractice legislation~~  
 1026 ~~enacted during the 2003 Special Session D of the Florida~~  
 1027 ~~Legislature. Except as authorized under paragraph (b), the~~  
 1028 ~~filing shall reflect an overall rate reduction at least as great~~  
 1029 ~~as the presumed factor determined under subparagraph 1. With~~  
 1030 ~~respect to policies issued on or after the effective date of~~  
 1031 ~~such legislation and prior to the effective date of the rate~~  
 1032 ~~filing required by this subsection, the office shall order the~~  
 1033 ~~insurer to make a refund of the amount that was charged in~~  
 1034 ~~excess of the rate that is approved.~~

1035       ~~(b) Any insurer or rating organization that contends that~~  
 1036 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~

1037 ~~or unfairly discriminatory shall separately state in its filing~~  
 1038 ~~the rate it contends is appropriate and shall state with~~  
 1039 ~~specificity the factors or data that it contends should be~~  
 1040 ~~considered in order to produce such appropriate rate. The~~  
 1041 ~~insurer or rating organization shall be permitted to use all of~~  
 1042 ~~the generally accepted actuarial techniques provided in this~~  
 1043 ~~section in making any filing pursuant to this subsection. The~~  
 1044 ~~office shall review each such exception and approve or~~  
 1045 ~~disapprove it prior to use. It shall be the insurer's burden to~~  
 1046 ~~actuarially justify any deviations from the rates required to be~~  
 1047 ~~filed under paragraph (a). The insurer making a filing under~~  
 1048 ~~this paragraph shall include in the filing the expected impact~~  
 1049 ~~of medical malpractice legislation enacted during the 2003~~  
 1050 ~~Special Session D of the Florida Legislature on losses,~~  
 1051 ~~expenses, and rates.~~

1052 ~~(c) If any provision of medical malpractice legislation~~  
 1053 ~~enacted during the 2003 Special Session D of the Florida~~  
 1054 ~~Legislature is held invalid by a court of competent~~  
 1055 ~~jurisdiction, the office shall permit an adjustment of all~~  
 1056 ~~medical malpractice rates filed under this section to reflect~~  
 1057 ~~the impact of such holding on such rates so as to ensure that~~  
 1058 ~~the rates are not excessive, inadequate, or unfairly~~  
 1059 ~~discriminatory.~~

1060 ~~(d) Rates approved on or before July 1, 2003, for medical~~  
 1061 ~~malpractice insurance shall remain in effect until the effective~~  
 1062 ~~date of a new rate filing approved under this subsection.~~

1063 ~~(e) The calculation and notice by the office of the~~  
 1064 ~~presumed factor pursuant to paragraph (a) is not an order or~~

1065 ~~rule that is subject to chapter 120. If the office enters into a~~  
 1066 ~~contract with an independent consultant to assist the office in~~  
 1067 ~~calculating the presumed factor, such contract shall not be~~  
 1068 ~~subject to the competitive solicitation requirements of s.~~  
 1069 ~~287.057.~~

1070 (8)~~(9)~~(a) The chief executive officer or chief financial  
 1071 officer of a property insurer and the chief actuary of a  
 1072 property insurer must certify under oath and subject to the  
 1073 penalty of perjury, on a form approved by the commission, the  
 1074 following information, which must accompany a rate filing:

1075 1. The signing officer and actuary have reviewed the rate  
 1076 filing;

1077 2. Based on the signing officer's and actuary's knowledge,  
 1078 the rate filing does not contain any untrue statement of a  
 1079 material fact or omit to state a material fact necessary ~~in~~  
 1080 ~~order~~ to make the statements made, in light of the circumstances  
 1081 under which such statements were made, not misleading;

1082 3. Based on the signing officer's and actuary's knowledge,  
 1083 the information and other factors described in paragraph (2)(b),  
 1084 including, but not limited to, investment income, fairly present  
 1085 in all material respects the basis of the rate filing for the  
 1086 periods presented in the filing; and

1087 4. Based on the signing officer's and actuary's knowledge,  
 1088 the rate filing reflects all premium savings that are reasonably  
 1089 expected to result from legislative enactments and are in  
 1090 accordance with generally accepted and reasonable actuarial  
 1091 techniques.

1092 (b) A signing officer or actuary who knowingly makes

1093 ~~making~~ a false certification under this subsection commits a  
 1094 violation of s. 626.9541(1)(e) and is subject to the penalties  
 1095 under s. 626.9521.

1096 (c) Failure to provide such certification by the officer  
 1097 and actuary shall result in the rate filing being disapproved  
 1098 without prejudice to be refiled.

1099 (d) The certification made pursuant to paragraph (a) is  
 1100 not rendered false if, after making the subject rate filing, the  
 1101 insurer provides the office with additional or supplementary  
 1102 information pursuant to a formal or informal request from the  
 1103 office. However, the actuary primarily responsible for  
 1104 preparing and submitting the additional or supplementary  
 1105 information shall certify the information consistent with the  
 1106 certification required in paragraph (a) and the penalties in  
 1107 paragraph (b), except that the chief executive officer or chief  
 1108 financial officer or chief actuary is not required to certify to  
 1109 the additional or supplementary information.

1110 ~~(e)-(d)~~ The commission may adopt rules and forms pursuant  
 1111 ~~to ss. 120.536(1) and 120.54~~ to administer this subsection.

1112 ~~(9)-(10)~~ The burden is on the office to establish that  
 1113 rates are excessive for personal lines residential coverage with  
 1114 a dwelling replacement cost of \$1 million or more or for a  
 1115 single condominium unit with a combined dwelling and contents  
 1116 replacement cost of \$1 million or more. Upon request of the  
 1117 office, the insurer shall provide ~~to the office~~ such loss and  
 1118 expense information as the office reasonably needs to meet this  
 1119 burden.

1120 ~~(10)-(11)~~ Any interest paid pursuant to s. 627.70131(5) may

1121 not be included in the insurer's rate base and may not be used  
 1122 to justify a rate or rate change.

1123 Section 10. Subsections (1) and (5) and paragraph (b) of  
 1124 subsection (8) of section 627.0629, Florida Statutes, are  
 1125 amended to read:

1126 627.0629 Residential property insurance; rate filings.-

1127 (1)(a) It is the intent of the Legislature that insurers  
 1128 ~~must~~ provide savings to consumers who install or implement  
 1129 windstorm damage mitigation techniques, alterations, or  
 1130 solutions to their properties to prevent windstorm losses. A  
 1131 rate filing for residential property insurance must include  
 1132 actuarially reasonable discounts, credits, or other rate  
 1133 differentials, or appropriate reductions in deductibles, for  
 1134 properties on which fixtures or construction techniques  
 1135 demonstrated to reduce the amount of loss in a windstorm have  
 1136 been installed or implemented. The fixtures or construction  
 1137 techniques must ~~shall~~ include, but not be limited to, fixtures  
 1138 or construction techniques that ~~which~~ enhance roof strength,  
 1139 roof covering performance, roof-to-wall strength, wall-to-floor-  
 1140 to-foundation strength, opening protection, and window, door,  
 1141 and skylight strength. Credits, discounts, or other rate  
 1142 differentials, or appropriate reductions in deductibles, for  
 1143 fixtures and construction techniques that ~~which~~ meet the minimum  
 1144 requirements of the Florida Building Code must be included in  
 1145 the rate filing. ~~All insurance companies must make a rate filing~~  
 1146 ~~which includes the credits, discounts, or other rate~~  
 1147 ~~differentials or reductions in deductibles by February 28, 2003.~~  
 1148 ~~By July 1, 2007, the office shall reevaluate the discounts,~~

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1149 | ~~credits, other rate differentials, and appropriate reductions in~~  
 1150 | ~~deductibles for fixtures and construction techniques that meet~~  
 1151 | ~~the minimum requirements of the Florida Building Code, based~~  
 1152 | ~~upon actual experience or any other loss relativity studies~~  
 1153 | ~~available to the office.~~ The office shall determine the  
 1154 | discounts, credits, other rate differentials, and appropriate  
 1155 | reductions in deductibles that reflect the full actuarial value  
 1156 | of such revaluation, which may be used by insurers in rate  
 1157 | filings.

1158 | ~~(b) By February 1, 2011, the Office of Insurance~~  
 1159 | ~~Regulation, in consultation with the Department of Financial~~  
 1160 | ~~Services and the Department of Community Affairs, shall develop~~  
 1161 | ~~and make publicly available a proposed method for insurers to~~  
 1162 | ~~establish discounts, credits, or other rate differentials for~~  
 1163 | ~~hurricane mitigation measures which directly correlate to the~~  
 1164 | ~~numerical rating assigned to a structure pursuant to the uniform~~  
 1165 | ~~home grading scale adopted by the Financial Services Commission~~  
 1166 | ~~pursuant to s. 215.55865, including any proposed changes to the~~  
 1167 | ~~uniform home grading scale. By October 1, 2011, the commission~~  
 1168 | ~~shall adopt rules requiring insurers to make rate filings for~~  
 1169 | ~~residential property insurance which revise insurers' discounts,~~  
 1170 | ~~credits, or other rate differentials for hurricane mitigation~~  
 1171 | ~~measures so that such rate differentials correlate directly to~~  
 1172 | ~~the uniform home grading scale. The rules may include such~~  
 1173 | ~~changes to the uniform home grading scale as the commission~~  
 1174 | ~~determines are necessary, and may specify the minimum required~~  
 1175 | ~~discounts, credits, or other rate differentials. Such rate~~  
 1176 | ~~differentials must be consistent with generally accepted~~

1177 ~~actuarial principles and wind-loss mitigation studies. The rules~~  
 1178 ~~shall allow a period of at least 2 years after the effective~~  
 1179 ~~date of the revised mitigation discounts, credits, or other rate~~  
 1180 ~~differentials for a property owner to obtain an inspection or~~  
 1181 ~~otherwise qualify for the revised credit, during which time the~~  
 1182 ~~insurer shall continue to apply the mitigation credit that was~~  
 1183 ~~applied immediately prior to the effective date of the revised~~  
 1184 ~~credit. Discounts, credits, and other rate differentials~~  
 1185 ~~established for rate filings under this paragraph shall~~  
 1186 ~~supersede, after adoption, the discounts, credits, and other~~  
 1187 ~~rate differentials included in rate filings under paragraph (a).~~

1188 (5) In order to provide an appropriate transition period,  
 1189 an insurer may, ~~in its sole discretion,~~ implement an approved  
 1190 rate filing for residential property insurance over a period of  
 1191 years. Such ~~An~~ insurer ~~electing to phase in its rate filing~~ must  
 1192 provide an informational notice to the office setting out its  
 1193 schedule for implementation of the phased-in rate filing. The ~~An~~  
 1194 insurer may include in its rate the actual cost of private  
 1195 market reinsurance that corresponds to available coverage of the  
 1196 Temporary Increase in Coverage Limits, TICL, from the Florida  
 1197 Hurricane Catastrophe Fund. The insurer may also include the  
 1198 cost of reinsurance to replace the TICL reduction implemented  
 1199 pursuant to s. 215.555(17)(d)9. However, this cost for  
 1200 reinsurance may not include any expense or profit load or result  
 1201 in a total annual base rate increase in excess of 10 percent.

1202 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL  
 1203 SOUNDNESS.—

1204 (b) To the extent ~~that~~ funds are provided for this purpose



1205 in the General Appropriations Act, ~~the Legislature hereby~~  
 1206 ~~authorizes~~ the establishment of a program to be administered by  
 1207 the Citizens Property Insurance Corporation for homeowners  
 1208 insured in the high-risk account is authorized.

1209 Section 11. Paragraph (b) of subsection (2) of section  
 1210 627.4133, Florida Statutes, is amended to read:

1211 627.4133 Notice of cancellation, nonrenewal, or renewal  
 1212 premium.—

1213 (2) With respect to any personal lines or commercial  
 1214 residential property insurance policy, including, but not  
 1215 limited to, any homeowner's, mobile home owner's, farmowner's,  
 1216 condominium association, condominium unit owner's, apartment  
 1217 building, or other policy covering a residential structure or  
 1218 its contents:

1219 (b) The insurer shall give the named insured written  
 1220 notice of nonrenewal, cancellation, or termination at least 100  
 1221 days before ~~prior to~~ the effective date of the nonrenewal,  
 1222 cancellation, or termination. However, the insurer shall give at  
 1223 least 100 days' written notice, or written notice by June 1,  
 1224 whichever is earlier, for any nonrenewal, cancellation, or  
 1225 termination that would be effective between June 1 and November  
 1226 30. The notice must include the reason or reasons for the  
 1227 nonrenewal, cancellation, or termination, except that:

1228 1. The insurer shall give the named insured written notice  
 1229 of nonrenewal, cancellation, or termination at least 180 days  
 1230 prior to the effective date of the nonrenewal, cancellation, or  
 1231 termination for a named insured whose residential structure has  
 1232 been insured by that insurer or an affiliated insurer for at

1233 least a 5-year period immediately prior to the date of the  
 1234 written notice.

1235 2. If ~~When~~ cancellation is for nonpayment of premium, at  
 1236 least 10 days' written notice of cancellation accompanied by the  
 1237 reason therefor must ~~shall~~ be given. As used in this  
 1238 subparagraph, the term "nonpayment of premium" means failure of  
 1239 the named insured to discharge when due ~~any of~~ her or his  
 1240 obligations in connection with the payment of premiums on a  
 1241 policy or any installment of such premium, whether the premium  
 1242 is payable directly to the insurer or its agent or indirectly  
 1243 under any premium finance plan or extension of credit, or  
 1244 failure to maintain membership in an organization if such  
 1245 membership is a condition precedent to insurance coverage. The  
 1246 term "~~Nonpayment of premium~~" also means the failure of a  
 1247 financial institution to honor an insurance applicant's check  
 1248 after delivery to a licensed agent for payment of a premium,  
 1249 even if the agent has previously delivered or transferred the  
 1250 premium to the insurer. If a dishonored check represents the  
 1251 initial premium payment, the contract and all contractual  
 1252 obligations are ~~shall be~~ void ab initio unless the nonpayment is  
 1253 cured within the earlier of 5 days after actual notice by  
 1254 certified mail is received by the applicant or 15 days after  
 1255 notice is sent to the applicant by certified mail or registered  
 1256 mail, and if the contract is void, any premium received by the  
 1257 insurer from a third party must ~~shall~~ be refunded to that party  
 1258 in full.

1259 3. If ~~When~~ such cancellation or termination occurs during  
 1260 the first 90 days ~~during which~~ the insurance is in force and the

1261 insurance is canceled or terminated for reasons other than  
 1262 nonpayment of premium, at least 20 days' written notice of  
 1263 cancellation or termination accompanied by the reason therefor  
 1264 must ~~shall~~ be given unless ~~except where~~ there has been a  
 1265 material misstatement or misrepresentation or failure to comply  
 1266 with the underwriting requirements established by the insurer.

1267 4. The requirement for providing written notice ~~of~~  
 1268 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective  
 1269 between June 1 and November 30 does not apply to the following  
 1270 situations, but the insurer remains subject to the requirement  
 1271 to provide such notice at least 100 days before ~~prior to~~ the  
 1272 effective date of nonrenewal:

1273 a. A policy that is nonrenewed due to a revision in the  
 1274 coverage for sinkhole losses and catastrophic ground cover  
 1275 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~  
 1276 ~~2007-1, Laws of Florida.~~

1277 b. A policy that is nonrenewed by Citizens Property  
 1278 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
 1279 that has been assumed by an authorized insurer offering  
 1280 replacement or renewal coverage to the policyholder.

1281  
 1282 After the policy has been in effect for 90 days, the policy may  
 1283 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there  
 1284 has been a material misstatement, a nonpayment of premium, a  
 1285 failure to comply with underwriting requirements established by  
 1286 the insurer within 90 days after ~~of~~ the date of effectuation of  
 1287 coverage, or a substantial change in the risk covered by the  
 1288 policy or if ~~when~~ the cancellation is for all insureds under

1289 such policies for a given class of insureds. This paragraph does  
 1290 not apply to individually rated risks having a policy term of  
 1291 less than 90 days.

1292 4. Notwithstanding any other provision of law, an insurer  
 1293 may cancel or nonrenew a property insurance policy after at  
 1294 least 45 days' notice if the office finds that the early  
 1295 cancellation of some or all of the insurer's policies is  
 1296 necessary to protect the best interests of the public or  
 1297 policyholders and the office approves the insurer's plan for  
 1298 early cancellation or nonrenewal of some or all of its policies.  
 1299 The office may base such finding upon the financial condition of  
 1300 the insurer, lack of adequate reinsurance coverage for hurricane  
 1301 risk, or other relevant factors. The office may condition its  
 1302 finding on the consent of the insurer to be placed under  
 1303 administrative supervision pursuant to s. 624.81 or to the  
 1304 appointment of a receiver under chapter 631.

1305 Section 12. Section 627.43141, Florida Statutes, is  
 1306 created to read:

1307 627.43141 Notice of change in policy terms.-

1308 (1) As used in this section, the term:

1309 (a) "Change in policy terms" means the modification,  
 1310 addition, or deletion of any term, coverage, duty, or condition  
 1311 from the previous policy. The correction of typographical or  
 1312 scrivener's errors or the application of mandated legislative  
 1313 changes is not a change in policy terms.

1314 (b) "Policy" means a written contract of personal lines  
 1315 property and casualty insurance or a written agreement for  
 1316 insurance, or the certificate of such insurance, by whatever

1317 name called, and includes all clauses, riders, endorsements, and  
 1318 papers that are a part of such policy. The term does not include  
 1319 a binder as defined in s. 627.420 unless the duration of the  
 1320 binder period exceeds 60 days.

1321 (c) "Renewal" means the issuance and delivery by an  
 1322 insurer of a policy superseding at the end of the policy period  
 1323 a policy previously issued and delivered by the same insurer or  
 1324 the issuance and delivery of a certificate or notice extending  
 1325 the term of a policy beyond its policy period or term. Any  
 1326 policy that has a policy period or term of less than 6 months or  
 1327 that does not have a fixed expiration date shall, for purposes  
 1328 of this section, be considered as written for successive policy  
 1329 periods or terms of 6 months.

1330 (2) A renewal policy may contain a change in policy terms.  
 1331 If a renewal policy does contains such change, the insurer must  
 1332 give the named insured written notice of the change, which must  
 1333 be enclosed along with the written notice of renewal premium  
 1334 required by ss. 627.4133 and 627.728. Such notice shall be  
 1335 entitled "Notice of Change in Policy Terms."

1336 (3) Although not required, proof of mailing or registered  
 1337 mailing through the United States Postal Service of the Notice  
 1338 of Change in Policy Terms to the named insured at the address  
 1339 shown in the policy is sufficient proof of notice.

1340 (4) Receipt of the premium payment for the renewal policy  
 1341 by the insurer is deemed to be acceptance of the new policy  
 1342 terms by the named insured.

1343 (5) If an insurer fails to provide the notice required in  
 1344 subsection (2), the original policy terms remain in effect until

1345 the next renewal and the proper service of the notice, or until  
 1346 the effective date of replacement coverage obtained by the named  
 1347 insured, whichever occurs first.

1348 (6) The intent of this section is to:

1349 (a) Allow an insurer to make a change in policy terms  
 1350 without nonrenewing those policyholders that the insurer wishes  
 1351 to continue insuring.

1352 (b) Alleviate concern and confusion to the policyholder  
 1353 caused by the required policy nonrenewal for the limited issue  
 1354 if an insurer intends to renew the insurance policy, but the new  
 1355 policy contains a change in policy terms.

1356 (c) Encourage policyholders to discuss their coverages  
 1357 with their insurance agents.

1358 Section 13. Section 627.7011, Florida Statutes, is amended  
 1359 to read:

1360 627.7011 Homeowners' policies; offer of replacement cost  
 1361 coverage and law and ordinance coverage.—

1362 (1) Before ~~Prior to~~ issuing or renewing a homeowner's  
 1363 insurance policy ~~on or after October 1, 2005, or prior to the~~  
 1364 ~~first renewal of a homeowner's insurance policy on or after~~  
 1365 ~~October 1, 2005,~~ the insurer must offer each of the following:

1366 (a) A policy or endorsement providing that any loss that  
 1367 ~~which~~ is repaired or replaced will be adjusted on the basis of  
 1368 replacement costs to the dwelling not exceeding policy limits as  
 1369 ~~to the dwelling,~~ rather than actual cash value, but not  
 1370 including costs necessary to meet applicable laws and ordinances  
 1371 regulating the construction, use, or repair of any property or  
 1372 requiring the tearing down of any property, including the costs

1373 of removing debris.

1374 (b) A policy or endorsement providing that, subject to  
 1375 other policy provisions, any loss that ~~which~~ is repaired or  
 1376 replaced at any location will be adjusted on the basis of  
 1377 replacement costs to the dwelling not exceeding policy limits ~~as~~  
 1378 ~~to the dwelling~~, rather than actual cash value, and also  
 1379 including costs necessary to meet applicable laws and ordinances  
 1380 regulating the construction, use, or repair of any property or  
 1381 requiring the tearing down of any property, including the costs  
 1382 of removing debris. ; However, ~~such~~ additional costs necessary to  
 1383 meet applicable laws and ordinances may be limited to ~~either~~ 25  
 1384 percent or 50 percent of the dwelling limit, as selected by the  
 1385 policyholder, and such coverage applies ~~shall apply~~ only to  
 1386 repairs of the damaged portion of the structure unless the total  
 1387 damage to the structure exceeds 50 percent of the replacement  
 1388 cost of the structure.

1389  
 1390 An insurer is not required to make the offers required by this  
 1391 subsection with respect to the issuance or renewal of a  
 1392 homeowner's policy that contains the provisions specified in  
 1393 paragraph (b) for law and ordinance coverage limited to 25  
 1394 percent of the dwelling limit, except that the insurer must  
 1395 offer the law and ordinance coverage limited to 50 percent of  
 1396 the dwelling limit. This subsection does not prohibit the offer  
 1397 of a guaranteed replacement cost policy.

1398 (2) Unless the insurer obtains the policyholder's written  
 1399 refusal of the policies or endorsements specified in subsection  
 1400 (1), any policy covering the dwelling is deemed to include the

1401 law and ordinance coverage limited to 25 percent of the dwelling  
 1402 limit. The rejection or selection of alternative coverage shall  
 1403 be made on a form approved by the office. The form must ~~shall~~  
 1404 fully advise the applicant of the nature of the coverage being  
 1405 rejected. If this form is signed by a named insured, it is ~~will~~  
 1406 ~~be~~ conclusively presumed that there was an informed, knowing  
 1407 rejection of the coverage or election of the alternative  
 1408 coverage on behalf of all insureds. Unless the policyholder  
 1409 requests in writing the coverage specified in this section, it  
 1410 need not be provided in or supplemental to any other policy that  
 1411 renews, insures, extends, changes, supersedes, or replaces an  
 1412 existing policy if ~~when~~ the policyholder has rejected the  
 1413 coverage specified in this section or has selected alternative  
 1414 coverage. The insurer must provide the ~~such~~ policyholder with  
 1415 notice of the availability of such coverage in a form approved  
 1416 by the office at least once every 3 years. The failure to  
 1417 provide such notice constitutes a violation of this code, but  
 1418 does not affect the coverage provided under the policy.

1419 (3) (a) In the event of a loss for which a dwelling is  
 1420 insured on the basis of replacement costs, the insurer initially  
 1421 must pay at least the actual cash value of the insured loss,  
 1422 less any applicable deductible. An insured shall subsequently  
 1423 enter into a contract for the performance of building and  
 1424 structural repairs. The insurer shall pay any remaining amounts  
 1425 incurred to perform such repairs as the work is performed. With  
 1426 the exception of incidental expenses to mitigate further damage,  
 1427 the insurer or any contractor or subcontractor may not require  
 1428 the policyholder to advance payment for such repairs or



1429 expenses. The insurer may waive the requirement for a contract  
 1430 as provided in this paragraph. An insured shall have a period of  
 1431 one 1 year after the date the insurer pays actual cash value to  
 1432 make a claim for replacement cost. If a total loss of a dwelling  
 1433 occurs, the insurer shall pay the replacement cost coverage  
 1434 without reservation or holdback of any depreciation in value,  
 1435 pursuant to s. 627.702.

1436 (b) In the event of a loss for which a ~~dwelling or~~  
 1437 personal property is insured on the basis of replacement costs,  
 1438 the insurer shall pay the replacement cost without reservation  
 1439 or holdback of any depreciation in value, whether or not the  
 1440 insured replaces or repairs the ~~dwelling or~~ property.

1441 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed~~  
 1442 ~~on or after October 1, 2005,~~ must include in bold type no  
 1443 smaller than 18 points the following statement:

1444  
 1445 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE  
 1446 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO  
 1447 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE  
 1448 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS  
 1449 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE  
 1450 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

1451  
 1452 The intent of this subsection is to encourage policyholders to  
 1453 purchase sufficient coverage to protect them in case events  
 1454 excluded from the standard homeowners policy, such as law and  
 1455 ordinance enforcement and flood, combine with covered events to  
 1456 produce damage or loss to the insured property. The intent is

1457 also to encourage policyholders to discuss these issues with  
 1458 their insurance agent.

1459 (5) ~~Nothing in This section does not: shall be construed~~  
 1460 ~~to~~

1461 (a) Apply to policies not considered to be "homeowners'  
 1462 policies," as that term is commonly understood in the insurance  
 1463 industry. ~~This section specifically does not~~

1464 (b) Apply to mobile home policies. ~~Nothing in this section~~

1465 (c) Limit shall be construed as limiting the ability of an  
 1466 ~~any~~ insurer to reject or nonrenew any insured or applicant on  
 1467 the grounds that the structure does not meet underwriting  
 1468 criteria applicable to replacement cost or law and ordinance  
 1469 policies or for other lawful reasons.

1470 (d) ~~(6) This section does not~~ Prohibit an insurer from  
 1471 limiting its liability under a policy or endorsement providing  
 1472 that loss will be adjusted on the basis of replacement costs to  
 1473 the lesser of:

1474 1. ~~(a)~~ The limit of liability shown on the policy  
 1475 declarations page;

1476 2. ~~(b)~~ The reasonable and necessary cost to repair the  
 1477 damaged, destroyed, or stolen covered property; or

1478 3. ~~(c)~~ The reasonable and necessary cost to replace the  
 1479 damaged, destroyed, or stolen covered property.

1480 (e) ~~(7) This section does not~~ Prohibit an insurer from  
 1481 exercising its right to repair damaged property in compliance  
 1482 with its policy and s. 627.702(7).

1483 Section 14. Paragraph (a) of subsection (5) of section  
 1484 627.70131, Florida Statutes, is amended to read:

1485 627.70131 Insurer's duty to acknowledge communications  
 1486 regarding claims; investigation.-

1487 (5) (a) Within 90 days after an insurer receives notice of  
 1488 an initial, reopened, or supplemental a property insurance claim  
 1489 from a policyholder, the insurer shall pay or deny such claim or  
 1490 a portion of the claim unless the failure to pay ~~such claim or a~~  
 1491 ~~portion of the claim~~ is caused by factors beyond the control of  
 1492 the insurer which reasonably prevent such payment. Any payment  
 1493 of an initial or supplemental a claim or portion of such a claim  
 1494 made paid 90 days after the insurer receives notice of the  
 1495 claim, or made paid more than 15 days after there are no longer  
 1496 factors beyond the control of the insurer which reasonably  
 1497 prevented such payment, whichever is later, bears ~~shall bear~~  
 1498 interest at the rate set forth in s. 55.03. Interest begins to  
 1499 accrue from the date the insurer receives notice of the claim.  
 1500 The provisions of this subsection may not be waived, voided, or  
 1501 nullified by the terms of the insurance policy. If there is a  
 1502 right to prejudgment interest, the insured shall select whether  
 1503 to receive prejudgment interest or interest under this  
 1504 subsection. Interest is payable when the claim or portion of the  
 1505 claim is paid. Failure to comply with this subsection  
 1506 constitutes a violation of this code. However, failure to comply  
 1507 with this subsection does ~~shall~~ not form the sole basis for a  
 1508 private cause of action.

1509 Section 15. The Legislature finds and declares:

1510 (1) There is a compelling state interest in maintaining a  
 1511 viable and orderly private-sector market for property insurance  
 1512 in this state. The lack of a viable and orderly property market

1513 reduces the availability of property insurance coverage to state  
 1514 residents, increases the cost of property insurance, and  
 1515 increases the state's reliance on a residual property insurance  
 1516 market and its potential for imposing assessments on  
 1517 policyholders throughout the state.

1518 (2) In 2005, the Legislature revised ss. 627.706-627.7074,  
 1519 Florida Statutes, to adopt certain geological or technical  
 1520 terms; to increase reliance on objective, scientific testing  
 1521 requirements; and generally to reduce the number of sinkhole  
 1522 claims and related disputes arising under prior law. The  
 1523 Legislature determined that since the enactment of these  
 1524 statutory revisions, both private-sector insurers and Citizens  
 1525 Property Insurance Corporation have, nevertheless, continued to  
 1526 experience high claims frequency and severity for sinkhole  
 1527 insurance claims. In addition, many properties remain unrepaired  
 1528 even after loss payments, which reduces the local property tax  
 1529 base and adversely affects the real estate market. Therefore,  
 1530 the Legislature finds that losses associated with sinkhole  
 1531 claims adversely affect the public health, safety, and welfare  
 1532 of this state and its citizens.

1533 (3) Pursuant to sections 16 through 20 of this act,  
 1534 technical or scientific definitions adopted in the 2005  
 1535 legislation are clarified to implement and advance the  
 1536 Legislature's intended reduction of sinkhole claims and  
 1537 disputes. Certain other revisions to ss. 627.706-627.7074,  
 1538 Florida Statutes, are enacted to advance legislative intent to  
 1539 rely on scientific or technical determinations relating to  
 1540 sinkholes and sinkhole claims, reduce the number and cost of

1541 disputes relating to sinkhole claims, and ensure that repairs  
 1542 are made commensurate with the scientific and technical  
 1543 determinations and insurance claims payments.

1544 Section 16. Section 627.706, Florida Statutes, is  
 1545 reordered and amended to read:

1546 627.706 Sinkhole insurance; catastrophic ground cover  
 1547 collapse; definitions.—

1548 (1) (a) Every insurer authorized to transact property  
 1549 insurance in this state must ~~shall~~ provide coverage for a  
 1550 catastrophic ground cover collapse.

1551 (b) The insurer ~~and~~ shall make available, for an  
 1552 appropriate additional premium, coverage for sinkhole losses on  
 1553 any structure, including the contents of personal property  
 1554 contained therein, to the extent provided in the form to which  
 1555 the coverage attaches. The insurer may require an inspection of  
 1556 the property before issuance of sinkhole loss coverage. A policy  
 1557 for residential property insurance may include a deductible  
 1558 amount applicable to sinkhole losses equal to 1 percent, 2  
 1559 percent, 5 percent, or 10 percent of the policy dwelling limits,  
 1560 with appropriate premium discounts offered with each deductible  
 1561 amount.

1562 (c) The insurer may restrict catastrophic ground cover  
 1563 collapse and sinkhole loss coverage to the principal building,  
 1564 as defined in the applicable policy.

1565 (2) As used in ss. 627.706-627.7074, and as used in  
 1566 connection with any policy providing coverage for a catastrophic  
 1567 ground cover collapse or for sinkhole losses, the term:

1568 (a) "Catastrophic ground cover collapse" means geological

1569 activity that results in all the following:

- 1570 1. The abrupt collapse of the ground cover;
- 1571 2. A depression in the ground cover clearly visible to the
- 1572 naked eye;
- 1573 3. Structural damage to the covered building, including
- 1574 the foundation; and
- 1575 4. The insured structure being condemned and ordered to be
- 1576 vacated by the governmental agency authorized by law to issue
- 1577 such an order for that structure.

1578

1579 Contents coverage applies if there is a loss resulting from a  
 1580 catastrophic ground cover collapse. ~~Structural~~ Damage consisting  
 1581 merely of the settling or cracking of a foundation, structure,  
 1582 or building does not constitute a loss resulting from a  
 1583 catastrophic ground cover collapse.

1584 (b) "Neutral evaluation" means the alternative dispute  
 1585 resolution provided in s. 627.7074.

1586 (c) "Neutral evaluator" means a professional engineer or a  
 1587 professional geologist who has completed a course of study in  
 1588 alternative dispute resolution designed or approved by the  
 1589 department for use in the neutral evaluation process and who is  
 1590 determined to be fair and impartial.

1591 (d)-(b) "Sinkhole" means a landform created by subsidence  
 1592 of soil, sediment, or rock as underlying strata are dissolved by  
 1593 groundwater. A sinkhole forms ~~may form~~ by collapse into  
 1594 subterranean voids created by dissolution of limestone or  
 1595 dolostone or by subsidence as these strata are dissolved.

1596 (e)-(e) "Sinkhole loss" means structural damage to the

1597 | covered building, including the foundation, caused by sinkhole  
 1598 | activity. Contents coverage and additional living expenses ~~shall~~  
 1599 | apply only if there is structural damage to the covered building  
 1600 | caused by sinkhole activity.

1601 |       (f)(d) "Sinkhole activity" means settlement or systematic  
 1602 | weakening of the earth supporting ~~such~~ property only if the ~~when~~  
 1603 | ~~such~~ settlement or systematic weakening results from  
 1604 | contemporaneous movement or raveling of soils, sediments, or  
 1605 | rock materials into subterranean voids created by the effect of  
 1606 | water on a limestone or similar rock formation.

1607 |       (g)(e) "Professional engineer" means a person, as defined  
 1608 | in s. 471.005, who has a bachelor's degree or higher in  
 1609 | engineering and has successfully completed at least five courses  
 1610 | in any combination of the following: geotechnical engineering,  
 1611 | structural engineering, soil mechanics, foundations, or geology  
 1612 | ~~with a specialty in the geotechnical engineering field.~~ A  
 1613 | professional engineer must also have ~~geotechnical~~ experience and  
 1614 | expertise in the identification of sinkhole activity as well as  
 1615 | other potential causes of structural damage ~~to the structure.~~

1616 |       (h)(f) "Professional geologist" means a person, as defined  
 1617 | in ~~by~~ s. 492.102, who has a bachelor's degree or higher in  
 1618 | geology or related earth science and ~~with expertise in the~~  
 1619 | ~~geology of Florida. A professional geologist must have~~  
 1620 | ~~geological~~ experience and expertise in the identification of  
 1621 | sinkhole activity as well as other potential geologic causes of  
 1622 | structural damage ~~to the structure.~~

1623 |       (i) "Structural damage" means a covered building has  
 1624 | experienced:

1625        1. Foundation displacement in excess of acceptable  
 1626 variances or deflections as defined in ACI 117-90 or the Florida  
 1627 Building Code and damage in the primary structural members or  
 1628 primary structural systems that prevents them from supporting  
 1629 the loads and forces they were designed to support as defined in  
 1630 the Florida Building Code;

1631        2. Damage that results in stresses in a primary structural  
 1632 member greater than one and one-third the nominal strength  
 1633 allowed under the Florida Building Code for new buildings of  
 1634 similar structure, purpose, or location;

1635        3. Listing, leaning, or buckling of the exterior load  
 1636 bearing walls or other vertical primary structural members to  
 1637 such an extent that a plumb line passing through the center of  
 1638 gravity does not fall inside the middle one-third of the base as  
 1639 defined within the Florida Building Code;

1640        4. Damage that results in the building, or any portion  
 1641 thereof, being likely to imminently collapse partially or  
 1642 completely because of the movement or instability of the ground  
 1643 within the influence zone of the supporting ground within the  
 1644 sheer plane necessary for the purpose of supporting such  
 1645 building as defined within the Florida Building Code; or

1646        5. Damage that qualifies as "substantial structural  
 1647 damage" as defined in the Florida Building Code.

1648        ~~(3) On or before June 1, 2007, Every insurer authorized to~~  
 1649 ~~transact property insurance in this state shall make a proper~~  
 1650 ~~filing with the office for the purpose of extending the~~  
 1651 ~~appropriate forms of property insurance to include coverage for~~  
 1652 ~~catastrophic ground cover collapse or for sinkhole losses.~~



1653 | ~~coverage for catastrophic ground cover collapse may not go into~~  
 1654 | ~~effect until the effective date provided for in the filing~~  
 1655 | ~~approved by the office.~~

1656 |        (3)~~(4)~~ Insurers offering policies that exclude coverage  
 1657 | for sinkhole losses must ~~shall~~ inform policyholders in bold type  
 1658 | of not less than 14 points as follows: "YOUR POLICY PROVIDES  
 1659 | COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS  
 1660 | IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,  
 1661 | YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU  
 1662 | MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN  
 1663 | ADDITIONAL PREMIUM."

1664 |        (4)~~(5)~~ An insurer offering sinkhole coverage to  
 1665 | policyholders before or after the adoption of s. 30, chapter  
 1666 | 2007-1, Laws of Florida, may nonrenew the policies of  
 1667 | policyholders maintaining sinkhole coverage ~~in Pasco County or~~  
 1668 | ~~Hernando County,~~ at the option of the insurer, and provide an  
 1669 | offer of coverage that ~~to such policyholders which~~ includes  
 1670 | catastrophic ground cover collapse and excludes sinkhole  
 1671 | coverage. Insurers acting in accordance with this subsection are  
 1672 | subject to the following requirements:

1673 |        (a) Policyholders must be notified that a nonrenewal is  
 1674 | for purposes of removing sinkhole coverage, and that the  
 1675 | policyholder is ~~still~~ being offered a policy that provides  
 1676 | coverage for catastrophic ground cover collapse.

1677 |        (b) Policyholders must be provided an actuarially  
 1678 | reasonable premium credit or discount for the removal of  
 1679 | sinkhole coverage and provision of only catastrophic ground  
 1680 | cover collapse.

1681 (c) Subject to the provisions of this subsection and the  
 1682 insurer's approved underwriting or insurability guidelines, the  
 1683 insurer shall provide each policyholder with the opportunity to  
 1684 purchase an endorsement to his or her policy providing sinkhole  
 1685 coverage and may require an inspection of the property before  
 1686 issuance of a sinkhole coverage endorsement.

1687 (d) Section 624.4305 does not apply to nonrenewal notices  
 1688 issued pursuant to this subsection.

1689 (5) Any claim, including, but not limited to, initial,  
 1690 supplemental, and reopened claims under an insurance policy that  
 1691 provides sinkhole coverage is barred unless notice of the claim  
 1692 was given to the insurer in accordance with the terms of the  
 1693 policy within 3 years after the policyholder knew or reasonably  
 1694 should have known about the sinkhole loss.

1695 Section 17. Section 627.7065, Florida Statutes, is  
 1696 repealed.

1697 Section 18. Section 627.707, Florida Statutes, is amended  
 1698 to read:

1699 627.707 ~~Standards for Investigation of sinkhole claims by~~  
 1700 ~~insurers; insurer payment; nonrenewals.~~—Upon receipt of a claim  
 1701 for a sinkhole loss to a covered building, an insurer must meet  
 1702 the following standards in investigating a claim:

1703 (1) The insurer must inspect ~~make an inspection of~~ the  
 1704 policyholder's insured's premises to determine if there is  
 1705 structural ~~has been physical damage that to the structure which~~  
 1706 may be the result of sinkhole activity.

1707 (2) If the insurer confirms that structural damage exists  
 1708 but is unable to identify a valid cause of such damage or

1709 discovers that such damage is consistent with sinkhole loss  
 1710 ~~Following the insurer's initial inspection,~~ the insurer shall  
 1711 engage a professional engineer or a professional geologist to  
 1712 conduct testing as provided in s. 627.7072 to determine the  
 1713 cause of the loss within a reasonable professional probability  
 1714 and issue a report as provided in s. 627.7073, only if sinkhole  
 1715 loss is covered under the policy. Except as provided in  
 1716 subsections (4) and (6), the fees and costs of the professional  
 1717 engineer or professional geologist shall be paid by the  
 1718 insurer.÷

1719 ~~(a) The insurer is unable to identify a valid cause of the~~  
 1720 ~~damage or discovers damage to the structure which is consistent~~  
 1721 ~~with sinkhole loss; or~~

1722 ~~(b) The policyholder demands testing in accordance with~~  
 1723 ~~this section or s. 627.7072.~~

1724 (3) Following the initial inspection of the policyholder's  
 1725 ~~insured~~ premises, the insurer shall provide written notice to  
 1726 the policyholder disclosing the following information:

1727 (a) What the insurer has determined to be the cause of  
 1728 damage, if the insurer has made such a determination.

1729 (b) A statement of the circumstances under which the  
 1730 insurer is required to engage a professional engineer or a  
 1731 professional geologist to verify or eliminate sinkhole loss and  
 1732 to engage a professional engineer to make recommendations  
 1733 regarding land and building stabilization and foundation repair.

1734 (c) A statement regarding the right of the policyholder to  
 1735 request testing by a professional engineer or a professional  
 1736 geologist, ~~and~~ the circumstances under which the policyholder

1737 | may demand certain testing, and the circumstances under which  
 1738 | the policyholder may incur costs associated with testing.

1739 |       (4) (a) If the insurer determines that there is no  
 1740 | sinkhole loss, the insurer may deny the claim.

1741 |       (b) If coverage for sinkhole loss is available and ~~If~~ the  
 1742 | insurer denies the claim, without performing testing under s.  
 1743 | 627.7072, the policyholder may demand testing by the insurer  
 1744 | under s. 627.7072.

1745 |       1. The policyholder's demand for testing must be  
 1746 | communicated to the insurer in writing within 60 days after the  
 1747 | policyholder's receipt of the insurer's denial of the claim.

1748 |       2. The policyholder shall pay 50 percent of the actual  
 1749 | costs of the analyses and services provided under ss. 627.7072  
 1750 | and 627.7073 or \$2,500, whichever is less.

1751 |       3. The insurer shall reimburse the policyholder for the  
 1752 | costs if the insurer obtains pursuant to s. 627.7073, written  
 1753 | certification that there is sinkhole loss.

1754 |       (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is  
 1755 | verified, the insurer shall pay to stabilize the land and  
 1756 | building and repair the foundation in accordance with the  
 1757 | recommendations of the professional engineer retained pursuant  
 1758 | to subsection (2), as provided under s. 627.7073, and in  
 1759 | ~~consultation~~ with notice to the policyholder, subject to the  
 1760 | coverage and terms of the policy. The insurer shall pay for  
 1761 | other repairs to the structure and contents in accordance with  
 1762 | the terms of the policy.

1763 |       (a) (b) The insurer may limit its total claims payment to  
 1764 | the actual cash value of the sinkhole loss, which does not

1765 include ~~including~~ underpinning or grouting or any other repair  
 1766 technique performed below the existing foundation of the  
 1767 building, until the policyholder enters into a contract for the  
 1768 performance of building stabilization or foundation repairs in  
 1769 accordance with the recommendations set forth in the insurer's  
 1770 report issued pursuant to s. 627.7073.

1771 (b) In order to prevent additional damage to the building  
 1772 or structure, the policyholder must enter into a contract for  
 1773 the performance of building stabilization or foundation repairs  
 1774 within 90 days after the insurance company confirms coverage for  
 1775 the sinkhole loss and notifies the policyholder of such  
 1776 confirmation. This time period is tolled if either party invokes  
 1777 the neutral evaluation process and begins again 10 days after  
 1778 the conclusion of the neutral evaluation process.

1779 (c) After the policyholder enters into the contract for  
 1780 the performance of building stabilization or foundation repairs,  
 1781 the insurer shall pay the amounts necessary to begin and perform  
 1782 such repairs as the work is performed and the expenses are  
 1783 incurred. The insurer may not require the policyholder to  
 1784 advance payment for such repairs. If repair covered by a  
 1785 personal lines residential property insurance policy has begun  
 1786 and the professional engineer selected or approved by the  
 1787 insurer determines that the repair cannot be completed within  
 1788 the policy limits, the insurer must ~~either~~ complete the  
 1789 professional engineer's recommended repair or tender the policy  
 1790 limits to the policyholder without a reduction for the repair  
 1791 expenses incurred.

1792 (d) The stabilization and all other repairs to the

1793 structure and contents must be completed within 12 months after  
 1794 entering into the contract for repairs described in paragraph  
 1795 (b) unless:  
 1796 1. There is a mutual agreement between the insurer and the  
 1797 policyholder;  
 1798 2. The claim is involved with the neutral evaluation  
 1799 process;  
 1800 3. The claim is in litigation; or  
 1801 4. The claim is under appraisal or mediation.  
 1802 (e)-(e) Upon the insurer's obtaining the written approval  
 1803 of the policyholder and any lienholder, the insurer may make  
 1804 payment directly to the persons selected by the policyholder to  
 1805 perform the land and building stabilization and foundation  
 1806 repairs. The decision by the insurer to make payment to such  
 1807 persons does not hold the insurer liable for the work performed.  
 1808 The policyholder may not accept a rebate from any person  
 1809 performing the repairs specified in this section. If a  
 1810 policyholder does receive a rebate, coverage is void and the  
 1811 policyholder must refund the amount of the rebate to the  
 1812 insurer. Any person making the repairs specified in this section  
 1813 who offers a rebate, or any policyholder who accepts a rebate  
 1814 for such repairs, commits insurance fraud, a felony of the third  
 1815 degree punishable as provided in s. 775.082, s. 775.083, or s.  
 1816 775.084.  
 1817 ~~(6) Except as provided in subsection (7), the fees and~~  
 1818 ~~costs of the professional engineer or the professional geologist~~  
 1819 ~~shall be paid by the insurer.~~  
 1820 (6)-(7) If the insurer obtains, pursuant to s. 627.7073,

1821 written certification that there is no sinkhole loss or that the  
 1822 cause of the damage was not sinkhole activity, and if the  
 1823 policyholder has submitted the sinkhole claim without good faith  
 1824 grounds for submitting such claim, the policyholder shall  
 1825 reimburse the insurer for 50 percent of the actual costs of the  
 1826 analyses and services provided under ss. 627.7072 and 627.7073;  
 1827 however, a policyholder is not required to reimburse an insurer  
 1828 more than \$2,500 with respect to any claim. A policyholder is  
 1829 required to pay reimbursement under this subsection only if the  
 1830 policyholder requested the analysis and services provided under  
 1831 ss. 627.7072 and 627.7073 and the insurer, before ~~prior to~~  
 1832 ordering the analysis under s. 627.7072, informs the  
 1833 policyholder in writing of the policyholder's potential  
 1834 liability for reimbursement and gives the policyholder the  
 1835 opportunity to withdraw the claim.

1836 ~~(7)(8)~~ An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of  
 1837 property insurance on the basis of filing of claims for partial  
 1838 loss caused by sinkhole damage or clay shrinkage if as long as  
 1839 the total of such payments does not exceed the ~~current~~ policy  
 1840 limits of coverage for the policy in effect on the date of loss,  
 1841 for property damage to the covered building, as set forth on the  
 1842 declarations page, and provided the insured has repaired the  
 1843 structure in accordance with the engineering recommendations  
 1844 made pursuant to subsection (2) upon which any payment or policy  
 1845 proceeds were based.

1846 ~~(8)(9)~~ The insurer may engage a professional structural  
 1847 engineer to make recommendations as to the repair of the  
 1848 structure.

1849 Section 19. Section 627.7073, Florida Statutes, is amended  
 1850 to read:

1851 627.7073 Sinkhole reports.—

1852 (1) Upon completion of testing as provided in s. 627.7072,  
 1853 the professional engineer or professional geologist shall issue  
 1854 a report and certification to the insurer and the policyholder  
 1855 as provided in this section.

1856 (a) Sinkhole loss is verified if, based upon tests  
 1857 performed in accordance with s. 627.7072, a professional  
 1858 engineer or a professional geologist issues a written report and  
 1859 certification stating:

1860 1. That structural damage to the covered building has been  
 1861 identified within a reasonable professional probability.

1862 2.1. That the cause of the ~~actual physical and~~ structural  
 1863 damage is sinkhole activity within a reasonable professional  
 1864 probability.

1865 3.2. That the analyses conducted were of sufficient scope  
 1866 to identify sinkhole activity as the cause of damage within a  
 1867 reasonable professional probability.

1868 4.3. A description of the tests performed.

1869 5.4. A recommendation by the professional engineer of  
 1870 methods for stabilizing the land and building and for making  
 1871 repairs to the foundation.

1872 (b) If there is no structural damage or if sinkhole  
 1873 activity is eliminated as the cause of such damage to the  
 1874 covered building structure, the professional engineer or  
 1875 professional geologist shall issue a written report and  
 1876 certification to the policyholder and the insurer stating:



1877 1. That there is no structural damage or the cause of such  
 1878 ~~the~~ damage is not sinkhole activity within a reasonable  
 1879 professional probability.

1880 2. That the analyses and tests conducted were of  
 1881 sufficient scope to eliminate sinkhole activity as the cause of  
 1882 the structural damage within a reasonable professional  
 1883 probability.

1884 3. A statement of the cause of the structural damage  
 1885 within a reasonable professional probability.

1886 4. A description of the tests performed.

1887 (c) The respective findings, opinions, and recommendations  
 1888 of the professional engineer or professional geologist as to the  
 1889 cause of distress to the property and the findings, opinions,  
 1890 and recommendations of the professional engineer as to land and  
 1891 building stabilization and foundation repair shall be presumed  
 1892 correct.

1893 (2)~~(a)~~ Any insurer that has paid a claim for a sinkhole  
 1894 loss shall file a copy of the report and certification, prepared  
 1895 pursuant to subsection (1), including the legal description of  
 1896 the real property and the name of the property owner, the  
 1897 neutral evaluator's report, if any, that indicates that sinkhole  
 1898 activity caused the damage claimed, a copy of the certification  
 1899 indicating that stabilization has been completed, if applicable,  
 1900 and the amount of the payment, with the county clerk of court,  
 1901 who shall record the report and certification. The insurer shall  
 1902 bear the cost of filing and recording one or more reports and  
 1903 certifications ~~the report and certification~~. There shall be no  
 1904 cause of action or liability against an insurer for compliance

1905 with this section.

1906 (a) The recording of the report and certification does  
 1907 not:

1908 1. Constitute a lien, encumbrance, or restriction on the  
 1909 title to the real property or constitute a defect in the title  
 1910 to the real property;

1911 2. Create any cause of action or liability against any  
 1912 grantor of the real property for breach of any warranty of good  
 1913 title or warranty against encumbrances; or

1914 3. Create any cause of action or liability against any  
 1915 title insurer that insures the title to the real property.

1916 (b) As a precondition to accepting payment for a sinkhole  
 1917 loss, the policyholder must file a copy of any report prepared  
 1918 on behalf or at the request of the policyholder regarding the  
 1919 insured property. The policyholder shall bear the cost of filing  
 1920 and recording such sinkhole report. The recording of the report  
 1921 does not:

1922 1. Constitute a lien, encumbrance, or restriction on the  
 1923 title to the real property or constitute a defect in the title  
 1924 to the real property;

1925 2. Create any cause of action or liability against any  
 1926 grantor of the real property for breach of any warranty of good  
 1927 title or warranty against encumbrances; or

1928 3. Create any cause of action or liability against any  
 1929 title insurer that insures the title to the real property.

1930 (c) ~~(b)~~ The seller of real property upon which a sinkhole  
 1931 claim has been made by the seller and paid by the insurer must  
 1932 ~~shall~~ disclose to the buyer of such property that a claim has

1933 | been paid and whether or not the full amount of the proceeds  
 1934 | were used to repair the sinkhole damage.

1935 |       Section 20. Section 627.7074, Florida Statutes, is amended  
 1936 | to read:

1937 |       627.7074 Alternative procedure for resolution of disputed  
 1938 | sinkhole insurance claims.-

1939 |       ~~(1) As used in this section, the term:~~

1940 |       ~~(a) "Neutral evaluation" means the alternative dispute~~  
 1941 | ~~resolution provided for in this section.~~

1942 |       ~~(b) "Neutral evaluator" means a professional engineer or a~~  
 1943 | ~~professional geologist who has completed a course of study in~~  
 1944 | ~~alternative dispute resolution designed or approved by the~~  
 1945 | ~~department for use in the neutral evaluation process, who is~~  
 1946 | ~~determined to be fair and impartial.~~

1947 |       (1)(2)(a) The department shall:

1948 |       (a) Certify and maintain a list of persons who are neutral  
 1949 | evaluators.

1950 |       ~~(b) The department shall~~ Prepare a consumer information  
 1951 | pamphlet for distribution by insurers to policyholders which  
 1952 | clearly describes the neutral evaluation process and includes  
 1953 | information ~~and forms~~ necessary for the policyholder to request  
 1954 | a neutral evaluation.

1955 |       (2) Neutral evaluation is available to either party if a  
 1956 | sinkhole report has been issued pursuant to s. 627.7073. At a  
 1957 | minimum, neutral evaluation must determine:

1958 |       (a) Causation;

1959 |       (b) All methods of stabilization and repair both above and  
 1960 | below ground;

1961            (c) The costs for stabilization and all repairs; and  
 1962            (d) Information necessary to carry out subsection (12).  
 1963            (3) Following the receipt of the report provided under s.  
 1964 627.7073 or the denial of a claim for a sinkhole loss, the  
 1965 insurer shall notify the policyholder of his or her right to  
 1966 participate in the neutral evaluation program under this  
 1967 section. Neutral evaluation supersedes the alternative dispute  
 1968 resolution process under s. 627.7015, but does not invalidate  
 1969 the appraisal clause of the insurance policy. The insurer shall  
 1970 provide to the policyholder the consumer information pamphlet  
 1971 prepared by the department pursuant to subsection (1)  
 1972 electronically or by United States mail ~~paragraph (2) (b).~~  
 1973            (4) Neutral evaluation is nonbinding, but mandatory if  
 1974 requested by either party. A request for neutral evaluation may  
 1975 be filed with the department by the policyholder or the insurer  
 1976 on a form approved by the department. The request for neutral  
 1977 evaluation must state the reason for the request and must  
 1978 include an explanation of all the issues in dispute at the time  
 1979 of the request. Filing a request for neutral evaluation tolls  
 1980 the applicable time requirements for filing suit for ~~a period of~~  
 1981 60 days following the conclusion of the neutral evaluation  
 1982 process or the time prescribed in s. 95.11, whichever is later.  
 1983            (5) Neutral evaluation shall be conducted as an informal  
 1984 process in which formal rules of evidence and procedure need not  
 1985 be observed. A party to neutral evaluation is not required to  
 1986 attend neutral evaluation if a representative of the party  
 1987 attends and has the authority to make a binding decision on  
 1988 behalf of the party. All parties shall participate in the

1989 | evaluation in good faith. The neutral evaluator must be allowed  
 1990 | reasonable access to the interior and exterior of insured  
 1991 | structures to be evaluated or for which a claim has been made.  
 1992 | Any reports initiated by the policyholder, or an agent of the  
 1993 | policyholder, confirming a sinkhole loss or disputing another  
 1994 | sinkhole report regarding insured structures must be provided to  
 1995 | the neutral evaluator before the evaluator's physical inspection  
 1996 | of the insured property.

1997 |         (6) The insurer shall pay the costs associated with the  
 1998 | neutral evaluation. However, if a party chooses to hire a court  
 1999 | reporter or stenographer to contemporaneously record and  
 2000 | document the neutral evaluation, that party must bear such  
 2001 | costs.

2002 |         (7) Upon receipt of a request for neutral evaluation, the  
 2003 | department shall provide the parties a list of certified neutral  
 2004 | evaluators. ~~The parties shall mutually select a neutral~~  
 2005 | ~~evaluator from the list and promptly inform the department. If~~  
 2006 | ~~the parties cannot agree to a neutral evaluator within 10~~  
 2007 | ~~business days,~~ The department shall allow the parties to submit  
 2008 | requests to disqualify evaluators on the list for cause.

2009 |         (a) The department shall disqualify neutral evaluators for  
 2010 | cause based only on any of the following grounds:

2011 |             1. A familial relationship exists between the neutral  
 2012 | evaluator and either party or a representative of either party  
 2013 | within the third degree.

2014 |             2. The proposed neutral evaluator has, in a professional  
 2015 | capacity, previously represented either party or a  
 2016 | representative of either party, in the same or a substantially

2017 related matter.

2018 3. The proposed neutral evaluator has, in a professional  
 2019 capacity, represented another person in the same or a  
 2020 substantially related matter and that person's interests are  
 2021 materially adverse to the interests of the parties. The term  
 2022 "substantially related matter" means participation by the  
 2023 neutral evaluator on the same claim, property, or adjacent  
 2024 property.

2025 4. The proposed neutral evaluator has, within the  
 2026 preceding 5 years, worked as an employer or employee of any  
 2027 party to the case.

2028 (b) The parties shall appoint a neutral evaluator from the  
 2029 department list and promptly inform the department. If the  
 2030 parties cannot agree to a neutral evaluator within 14 days, the  
 2031 department shall appoint a neutral evaluator from the list of  
 2032 certified neutral evaluators. The department shall allow each  
 2033 party to disqualify two neutral evaluators without cause. Upon  
 2034 selection or appointment, the department shall promptly refer  
 2035 the request to the neutral evaluator.

2036 (c) Within 7 5 business days after the referral, the  
 2037 neutral evaluator shall notify the policyholder and the insurer  
 2038 of the date, time, and place of the neutral evaluation  
 2039 conference. The conférence may be held by telephone, if feasible  
 2040 and desirable. ~~The neutral evaluator shall hold the neutral~~  
 2041 ~~evaluation~~ conference ~~shall be held~~ within 90 45 days after the  
 2042 receipt of the request by the department. Failure of the neutral  
 2043 evaluator to hold the conference within 90 days does not  
 2044 invalidate either party's right to neutral evaluation or to a

2045 neutral evaluation conference held outside this timeframe.

2046 ~~(8) The department shall adopt rules of procedure for the~~  
 2047 ~~neutral evaluation process.~~

2048 ~~(8)(9)~~ For policyholders not represented by an attorney, a  
 2049 consumer affairs specialist of the department or an employee  
 2050 designated as the primary contact for consumers on issues  
 2051 relating to sinkholes under s. 20.121 shall be available for  
 2052 consultation to the extent that he or she may lawfully do so.

2053 ~~(9)(10)~~ Evidence of an offer to settle a claim during the  
 2054 neutral evaluation process, as well as any relevant conduct or  
 2055 statements made in negotiations concerning the offer to settle a  
 2056 claim, is inadmissible to prove liability or absence of  
 2057 liability for the claim or its value, except as provided in  
 2058 subsection (14) ~~(13)~~.

2059 ~~(10)(11)~~ Regardless of when noticed, any court proceeding  
 2060 related to the subject matter of the neutral evaluation shall be  
 2061 stayed pending completion of the neutral evaluation and for 5  
 2062 days after the filing of the neutral evaluator's report with the  
 2063 court.

2064 (11) If, based upon his or her professional training and  
 2065 credentials, a neutral evaluator is qualified to determine only  
 2066 disputes relating to causation or method of repair, the  
 2067 department shall allow the neutral evaluator to enlist the  
 2068 assistance of another professional from the neutral evaluators  
 2069 list not previously stricken, who, based upon his or her  
 2070 professional training and credentials, is able to provide an  
 2071 opinion as to other disputed issues. A professional who would be  
 2072 disqualified for any reason listed in subsection (7) must be

2073 disqualified. The neutral evaluator may also use the services of  
 2074 professional engineers and professional geologists who are not  
 2075 certified as neutral evaluators, as well as licensed building  
 2076 contractors, in order to ensure that all items in dispute are  
 2077 addressed and the neutral evaluation can be completed. Any  
 2078 professional engineer, professional geologist, or licensed  
 2079 building contractor retained may be disqualified for any of the  
 2080 reasons listed in subsection (7).

2081 (12) ~~At For matters that are not resolved by the parties~~  
 2082 ~~at~~ the conclusion of the neutral evaluation, the neutral  
 2083 evaluator shall prepare a report describing all matters that are  
 2084 the subject of the neutral evaluation, including whether,  
 2085 ~~stating that~~ in his or her opinion, the sinkhole loss has been  
 2086 verified or eliminated within a reasonable degree of  
 2087 professional probability and, if verified, whether the sinkhole  
 2088 activity caused structural damage to the covered building, and  
 2089 if so, the need for an estimated costs of stabilizing the land  
 2090 and any covered ~~structures or~~ buildings and other appropriate  
 2091 remediation or necessary building structural repairs due to the  
 2092 sinkhole loss. The evaluator's report shall be sent to all  
 2093 parties ~~in attendance at the neutral evaluation~~ and to the  
 2094 department, within 14 days after completing the neutral  
 2095 evaluation conference.

2096 (13) The recommendation of the neutral evaluator is not  
 2097 binding on any party, and the parties retain access to the  
 2098 court. The neutral evaluator's written recommendation is  
 2099 admissible in any subsequent action or proceeding relating to  
 2100 the claim or to the cause of action giving rise to the claim.



2101 (14) If the neutral evaluator ~~first~~ verifies the existence  
 2102 of a sinkhole that caused structural damage and, ~~second,~~  
 2103 recommends the need for and estimates costs of stabilizing the  
 2104 land and any covered ~~structures or~~ buildings and other  
 2105 appropriate remediation or building structural repairs, which  
 2106 ~~costs~~ exceed the amount that the insurer has offered to pay the  
 2107 policyholder, the insurer is liable to the policyholder for up  
 2108 to \$2,500 in attorney's fees for the attorney's participation in  
 2109 the neutral evaluation process. For purposes of this subsection,  
 2110 the term "offer to pay" means a written offer signed by the  
 2111 insurer or its legal representative and delivered to the  
 2112 policyholder within 10 days after the insurer receives notice  
 2113 that a request for neutral evaluation has been made under this  
 2114 section.

2115 (15) If the insurer timely agrees in writing to comply and  
 2116 timely complies with the recommendation of the neutral  
 2117 evaluator, but the policyholder declines to resolve the matter  
 2118 in accordance with the recommendation of the neutral evaluator  
 2119 pursuant to this section:

2120 (a) The insurer is not liable for extracontractual damages  
 2121 related to a claim for a sinkhole loss but only as related to  
 2122 the issues determined by the neutral evaluation process. This  
 2123 section does not affect or impair claims for extracontractual  
 2124 damages unrelated to the issues determined by the neutral  
 2125 evaluation process contained in this section; and

2126 (b) The insurer is not liable for attorney's fees under s.  
 2127 627.428 or other provisions of the insurance code unless the  
 2128 policyholder obtains a judgment that is more favorable than the

2129 recommendation of the neutral evaluator.

2130 (16) Neutral evaluators are deemed to be agents of the  
 2131 department and have immunity from suit as provided in s. 44.107.

2132 (17) The department shall adopt rules of procedure for the  
 2133 neutral evaluation process.

2134 Section 21. Subsection (8) of section 627.711, Florida  
 2135 Statutes, is amended to read:

2136 627.711 Notice of premium discounts for hurricane loss  
 2137 mitigation; uniform mitigation verification inspection form.—

2138 (8) At its expense, the insurer may require that any  
 2139 uniform mitigation verification form provided by a policyholder,  
 2140 policyholder's agent, ~~an~~ authorized mitigation inspector, or  
 2141 inspection company be independently verified by an inspector, an  
 2142 inspection company, or an independent third-party quality  
 2143 assurance provider which does possess a quality assurance  
 2144 program before ~~prior to~~ accepting the uniform mitigation  
 2145 verification form as valid.

2146 Section 22. Subsection (3) of section 631.54, Florida  
 2147 Statutes, is amended to read:

2148 631.54 Definitions.—As used in this part:

2149 (3) "Covered claim" means an unpaid claim, including one  
 2150 of unearned premiums, which arises out of, and is within the  
 2151 coverage, and not in excess of, the applicable limits of an  
 2152 insurance policy to which this part applies, issued by an  
 2153 insurer, if such insurer becomes an insolvent insurer and the  
 2154 claimant or insured is a resident of this state at the time of  
 2155 the insured event or the property from which the claim arises is  
 2156 permanently located in this state. For entities other than

2157 individuals, the residence of a claimant, insured, or  
 2158 policyholder is the state in which the entity's principal place  
 2159 of business is located at the time of the insured event. The  
 2160 term does ~~"Covered claim"~~ shall not include:

2161 (a) Any amount due any reinsurer, insurer, insurance  
 2162 pool, or underwriting association, sought directly or indirectly  
 2163 through a third party, as subrogation, contribution,  
 2164 indemnification, or otherwise; ~~or~~

2165 (b) Any claim that would otherwise be a covered claim  
 2166 under this part that has been rejected by any other state  
 2167 guaranty fund on the grounds that an insured's net worth is  
 2168 greater than that allowed under that state's guaranty law.

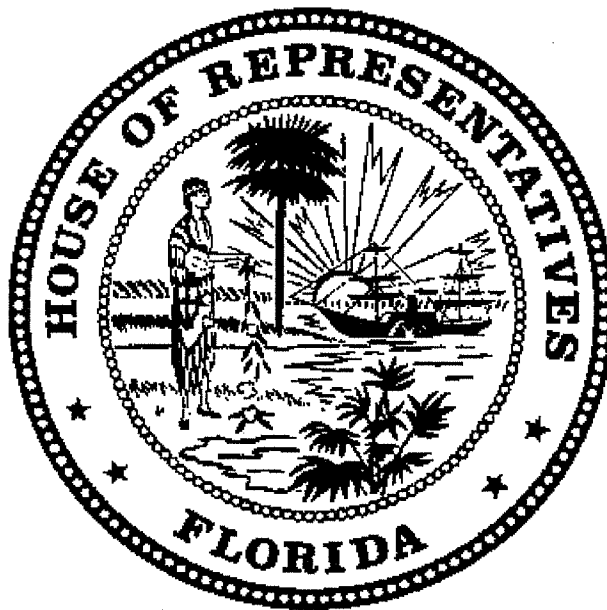
2169 ~~Member insurers shall~~ have no right of subrogation,  
 2170 contribution, indemnification, or otherwise, sought directly or  
 2171 indirectly through a third party, against the insured of any  
 2172 insolvent member; or

2173 (c) Any amount payable for a sinkhole loss other than  
 2174 testing deemed appropriate by the association or payable for the  
 2175 actual repair of the loss, except that the association may not  
 2176 pay for attorney's fees or public adjuster's fees in connection  
 2177 with a sinkhole loss or pay the policyholder. The association  
 2178 may pay for actual repairs to the property, but is not liable  
 2179 for amounts in excess of policy limits.

2180 Section 23. If any provision of this act, or the  
 2181 application thereof to any person or circumstance is held  
 2182 invalid, such invalidity shall not affect other provisions or  
 2183 applications of this act which can be given effect without the  
 2184 invalid provision or application. It is the express intent of

2185 the Legislature to enact multiple important, but independent,  
 2186 reforms to Florida law relating to sinkhole insurance coverage  
 2187 and related claims. The Legislature further intends that the  
 2188 multiple reforms in the act could and should be enforced if one  
 2189 or more provisions are held invalid. To this end, the provisions  
 2190 of this act are declared to be severable.

2191 Section 24. Except as otherwise expressly provided in this  
 2192 act and except for this section, which shall take effect June 1,  
 2193 2011, this act shall take effect upon becoming a law.



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# **Insurance & Banking Subcommittee**

**Tuesday, April 5, 2011  
4:00 PM - 6:00 PM  
404 HOB**

## **AMENDMENT PACKET**

## INSURANCE & BANKING SUBCOMMITTEE

### PCS for HB 803 by Rep. Wood Property and Casualty Insurance

#### AMENDMENT SUMMARY April 5, 2011

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**Amendment 1** by Rep. \_\_\_\_\_ (Line 159):

- Technical amendment to correct a scrivener's error in the PCS.

**Amendment 2** by Rep. Jenne (lines 286-294):

- Removes exemption from adjuster licensure for persons adjusting property claims on foreclosed properties for financial institutions from the PCS.

**Amendment 3** by Rep. Jenne (lines 312-330):

- Restores public adjuster fees to current law.

**Amendment 4** by Rep. Jenne (lines 401-428):

- Removes restrictions on advertisement and solicitation for public adjusters.

**Amendment 5** by Rep. Jenne (lines 487-563):

- Removes restrictions on conduct of public adjusters.
- Removes restriction of licensed contractor adjusting property insurance claims as a public adjuster.
- Removes the 3-year time period for filing a notice of claim, supplemental claim, or re-opened claims due to hurricanes or windstorms.

**Amendment 6** by Rep. Abruzzo (Lines 545-546):

- Adds two alternative adjuster designations to the designation required under current law in order to be licensed as a public adjuster apprentice.

**Amendment 7** by Rep. Jenne (lines 546-563):

- Removes the 3-year time period for filing a notice of claim, supplemental claim, or re-opened claims due to hurricanes or windstorms.

**Amendment 8** by Rep. Jenne (lines 570-610):

- Requires the OIR to issue an approval of a rate filing, rather than a notice of intent to approve.
- Prohibits insurers from using a "use and file" rate filing for property insurance.

**Amendment 9** by Rep. Jenne (lines 761-771):

- Removes the prohibition for OIR interference with an insurer's payment of acquisition costs by insurance companies

**Amendment 10** by Rep. Jenne (lines 1003-1069):

- Removes the repeal of provisions relating to rate filings required for medical malpractice due to the medical malpractice reforms enacted in 2003 Special Session D.

**Amendment 11** by Rep. Jenne (lines 1099-1110):

- Removes the requirement for rate certification by the actuary submitting additional or supplemental information for property insurance rate filing, rather than the CEO, CFO, or chief actuary of the insurer.

**Amendment 12** by Rep. Jenne (lines 1145-1187):

- Restores obsolete provisions. Removes the deleting of requirements regarding the correlation of discounts, credits, and other rate differentials for hurricane mitigation to the uniform home grading scale, thereby restoring current law.

**Amendment 13** by Rep. Jenne (lines 1292-1304):

- Removes the provision allowing property insurers to give reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition.

**Amendment 14** by Rep. Jenne (lines 1305-1357):

- Removes provisions allowing insurers to change policy terms of property or casualty insurance by insurers at policy renewal under specified conditions.

**Amendment 15** by Rep. Jenne (lines 1419-1440):

- Restores current law regarding replacement costs.

**Amendment 16** by Rep. Bernard (Lines 1509-1543):

- Provides different legislative findings and intent for the sinkhole changes provided in the PCS.
- Restricts application of the changes to the sinkhole law provided in the PCS to claims under policies issued on or after July 1, 2011.

**Amendment 17** by Rep. Jenne (lines 1623-1647):

- Removes the definition of "structural damage" and does not provide for an alternative definition. Thus, "structural damage" will not be defined in law.

**Amendment 18** by Rep. Jenne (lines 1689-1694):

- Removes a 3-year statute of repose on claims for sinkhole coverage.

**Amendment 19** by Rep. Jenne (lines 1695-1696):

- Removes the repeal of the sinkhole database.

**Amendment 20** by Rep. Jenne (lines 1808-1816):

- Removes the prohibition of rebates to policyholders from persons performing sinkhole repairs and voiding coverage if rebates are received.
- Removes a requirement that policyholders refund rebates and the imposition of criminal penalties for accepting rebates.

**Amendment 21** by Rep. Jenne (lines 1916-1929):

- Removes the provisions requiring the policyholder to file certain reports as a pre-condition to accepting payment for sinkhole losses.

**Amendment 22** by Rep. Jenne (lines 2018-2024):

- Removes one of the grounds for disqualification of a neutral evaluator by DFS.

**Amendment 23** by Rep. Jenne (lines 2130-2131):

- Removes the designation of neutral evaluators as agents of DFS and the granting of immunity.



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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative(s) \_\_\_\_\_ offered the following:

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5 **Amendment**

6 Remove line 159 and insert:

7 a residential structure or its contents ~~and shall exclude~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

2

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 286-294

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**T I T L E A M E N D M E N T**

Remove line(s) 12-13 and insert:  
 amending s. 626.854, F.S.; providing

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking

2 Subcommittee

3 Representative Jenne offered the following:

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5 **Amendment (with title amendment)**

6 Remove lines 312-330 and insert:

7 contract with the insured or claimant. The contracts described  
8 in this paragraph are not subject to the limitations in  
9 paragraph (b).

10 (b) A public adjuster may not charge, agree to, or accept  
11 any compensation, payment, commission, fee, or other thing of  
12 318 value in excess of:

13 1. Ten percent of the amount of insurance claim payments  
14 made by the insurer for claims based on events that are the  
15 subject of a declaration of a state of emergency by the  
16 Governor. This provision applies to claims made during the  
17 period of 1 year after the declaration of emergency.

18 2. Twenty percent of the amount of all other insurance  
19 claim payments.  
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Amendment No.

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**T I T L E   A M E N D M E N T**

Remove line(s) 13-16 and insert:

Licensure; amending s. 626.854, F.S.; providing application;  
providing statements that may be

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 401-428.

14 -----  
 15 **T I T L E A M E N D M E N T**

16 Remove line(s) 16-22 and insert:  
 17 supplemental claim; requiring certain persons who act on behalf  
 18 of  
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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with directory and title amendments)**

Remove lines 487-563 and insert:

7 (14) The provisions of subsections (5)-(13) apply only to  
 8 residential property insurance policies and condominium unit  
 9 owner policies as defined in s. 718.111(11).

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**T I T L E A M E N D M E N T**

Remove line(s) 22-51 and insert:  
 disclaimer; amending s. 627.062, F.S.; deleting an

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No.PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative(s) Abruzzo offered the following:

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**Amendment (with title amendment)**

Between lines 545 and 546, insert:

Section 8. Subsection (4) of section 626.8651, is amended to read:

(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA) ), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No.PCS for HB 803 (2011)

Amendment No.

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**T I T L E   A M E N D M E N T**

Remove line 45 and insert:

licensed public adjuster; providing an exception; amending s.  
626.8651, F.S.; revising requirements for a public adjuster  
apprentice license to add additional designations; creating



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 546 - 563

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**T I T L E A M E N D M E N T**

Remove line(s) 45-51 and insert:  
 licensed public adjuster; providing an exception; amending s.  
 627.062, F.S.; deleting an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED                                 \_\_\_ (Y/N)  
ADOPTED AS AMENDED                 \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION             \_\_\_ (Y/N)  
FAILED TO ADOPT                     \_\_\_ (Y/N)  
WITHDRAWN                            \_\_\_ (Y/N)  
OTHER                                   \_\_\_

1 Council/Committee hearing bill: Insurance & Banking  
2 Subcommittee  
3 Representative Jenne offered the following:  
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**Amendment (with title amendment)**

Remove lines 570 - 610 and insert:

(2) As to all such classes of insurance:

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

1. If the filing is made at least 90 days before the proposed effective date and ~~the filing~~ is not implemented during the office's review of the filing and any proceeding and judicial review, ~~then such filing is shall be~~ considered a "file and use" filing. In such case, the office shall finalize its review by issuance of an approval ~~a notice of intent to approve~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

22 or a notice of intent to disapprove within 90 days after receipt  
 23 of the filing. The approval ~~notice of intent to approve~~ and the  
 24 notice of intent to disapprove constitute agency action for  
 25 purposes of the Administrative Procedure Act. Requests for  
 26 supporting information, requests for mathematical or mechanical  
 27 corrections, or notification to the insurer by the office of its  
 28 preliminary findings does ~~shall~~ not toll the 90-day period  
 29 during any such proceedings and subsequent judicial review. The  
 30 rate shall be deemed approved if the office does not issue an  
 31 approval ~~a notice of intent to approve~~ or a notice of intent to  
 32 disapprove within 90 days after receipt of the filing.

33 2. If the filing is not made in accordance with ~~the~~  
 34 ~~provisions~~ of subparagraph 1., such filing must ~~shall~~ be made as  
 35 soon as practicable, but within ~~no later than~~ 30 days after the  
 36 effective date, and is ~~shall be~~ considered a "use and file"  
 37 filing. An insurer making a "use and file" filing is potentially  
 38 subject to an order by the office to return to policyholders  
 39 those portions of rates found to be excessive, as provided in  
 40 paragraph (h).

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

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Amendment No.

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**T I T L E   A M E N D M E N T**

Remove line(s) 51 and insert:  
applicability; amending s. 627.062, F.S.; requiring an approval  
of a rate filing by the office; requiring insurers to use a  
"file and use" rate filing for property insurance; deleting an

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking

2 Subcommittee

3 Representative Jenne offered the following:

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**Amendment (with title amendment)**

Remove lines 761-771 and insert:

chapter, the office may shall not, directly or indirectly  
prohibit any insurer, including any residual market plan or  
joint underwriting association, from paying acquisition costs  
based on the full amount of premium, as defined in s. 627.403,  
applicable to any policy, or prohibit any such insurer from  
including the full amount of acquisition costs in a rate filing.

Amendment No.

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**T I T L E   A M E N D M E N T**

Remove line(s) 53-56 and insert:

Regulation from, directly or indirectly, prohibiting any insurer  
from paying acquisition costs or including acquisition costs in  
a rate filing; deleting obsolete provisions

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 1003-1069.

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**T I T L E   A M E N D M E N T**

Remove line(s) 56-58 and insert:  
and casualty insurance;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment**

Remove lines 1099-1110 and insert:

(d) The commission may adopt rules and forms pursuant

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COMMITTEE/SUBCOMMITTEE AMENDMENT  
Bill No. PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

- ADOPTED \_\_\_\_\_ (Y/N)
- ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)
- ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)
- FAILED TO ADOPT \_\_\_\_\_ (Y/N)
- WITHDRAWN \_\_\_\_\_ (Y/N)
- OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative(s) Jenne offered the following:  
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**Amendment (with title amendment)**

6 Remove lines 1145-1187 and insert:

7 the rate filing. All insurance companies must make a rate filing  
8 which includes the credits, discounts, or other rate  
9 differentials or reductions in deductibles by February 28, 2003.  
10 By July 1, 2007, the office shall reevaluate the discounts,  
11 credits, other rate differentials, and appropriate reductions in  
12 deductibles for fixtures and construction techniques that meet  
13 the minimum requirements of the Florida Building Code, based  
14 upon actual experience or any other loss relativity studies  
15 available to the office. The office shall determine the  
16 discounts, credits, other rate differentials, and appropriate  
17 reductions in deductibles that reflect the full actuarial value  
18 of such revaluation, which may be used by insurers in rate  
19 filings.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

20 (b) By February 1, 2011, the Office of Insurance  
 21 Regulation, in consultation with the Department of Financial  
 22 Services and the Department of Community Affairs, shall develop  
 23 and make publicly available a proposed method for insurers to  
 24 establish discounts, credits, or other rate differentials for  
 25 hurricane mitigation measures which directly correlate to the  
 26 numerical rating assigned to a structure pursuant to the uniform  
 27 home grading scale adopted by the Financial Services Commission  
 28 pursuant to s. 215.55865, including any proposed changes to the  
 29 uniform home grading scale. By October 1, 2011, the commission  
 30 shall adopt rules requiring insurers to make rate filings for  
 31 residential property insurance which revise insurers' discounts,  
 32 credits, or other rate differentials for hurricane mitigation  
 33 measures so that such rate differentials correlate directly to  
 34 the uniform home grading scale. The rules may include such  
 35 changes to the uniform home grading scale as the commission  
 36 determines are necessary, and may specify the minimum required  
 37 discounts, credits, or other rate differentials. Such rate  
 38 differentials must be consistent with generally accepted  
 39 actuarial principles and wind-loss mitigation studies. The rules  
 40 shall allow a period of at least 2 years after the effective  
 41 date of the revised mitigation discounts, credits, or other rate  
 42 differentials for a property owner to obtain an inspection or  
 43 otherwise qualify for the revised credit, during which time the  
 44 insurer shall continue to apply the mitigation credit that was  
 45 applied immediately prior to the effective date of the revised  
 46 credit. Discounts, credits, and other rate differentials  
 47 established for rate filings under this paragraph shall

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

48 | supersede, after adoption, the discounts, credits, and other  
49 | rate differentials included in rate filings under paragraph (a).

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**T I T L E   A M E N D M E N T**

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Remove lines 59-67 and insert:

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conforming provisions to

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 1292-1304.

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**T I T L E A M E N D M E N T**

Remove line(s) 69-72 and insert:  
creating s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

14

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with directory and title amendments)**

Remove lines 1305-1357.

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**T I T L E A M E N D M E N T**

Remove line(s) 72-82 and insert:  
 the interests of the public or policyholders; amending s.  
 627.7011,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:  
 4

**Amendment (with title amendment)**

Remove lines 1419 - 1440 and insert:

7 (3) In the event of a loss for which a dwelling or  
 8 personal property is insured on the basis of replacement costs,  
 9 the insurer shall pay the replacement cost without reservation  
 10 or holdback of any depreciation in value, whether or not the  
 11 insured replaces or repairs the dwelling or property.

**T I T L E A M E N D M E N T**

Remove line(s) 83-93 and insert:

F.S; deleting obsolete provision; amending s. 627.70131, F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Bernard offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 1509-1543 and insert:

7 Section 15. The Legislature finds and declares:

8 (1) There is a compelling state interest in maintaining a  
 9 viable and orderly private-sector market for property insurance  
 10 in this state. The lack of a viable and orderly property market  
 11 reduces the availability of property insurance coverage to state  
 12 residents, increases the cost of property insurance, and  
 13 increases the state's reliance on a residual property insurance  
 14 market and its potential for imposing assessments on  
 15 policyholders throughout the state.

16 (2) Sections 16 through 22 of this act revise and adopt  
 17 new technical or scientific definitions in order to implement  
 18 and advance the Legislature's intended reduction of sinkhole  
 19 claims and disputes. Certain other revisions to ss. 627.706-

16

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

20 627.7074, Florida Statutes, are enacted to advance legislative  
21 intent to rely on scientific or technical determinations  
22 relating to sinkholes and sinkhole claims, reduce the number and  
23 cost of disputes relating to sinkhole claims, and ensure that  
24 repairs are made commensurate with the scientific and technical  
25 determinations and insurance claims payments.

26 (3) Sections 16 through 22 of this act affect only claims  
27 under policies issued on or after July 1, 2011.

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**T I T L E A M E N D M E N T**

Remove lines 96-98 and insert:  
payments; providing legislative intent with respect to  
statutory changes in the act relating to sinkhole  
insurance coverage; providing applicability; amending s.



Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 1623-1647.

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**T I T L E   A M E N D M E N T**

Remove line(s) 103-104 and insert:  
 revising definitions; placing a 3-year statute of repose on  
 claims for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 1689-1694

10 -----

**T I T L E A M E N D M E N T**

12 Remove line(s) 104-105 and insert:  
 13 damage"; repealing s. 627.7065, F.S., relating to

19

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking

2 Subcommittee

3 Representative Jenne offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 1695-1696

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12 **T I T L E A M E N D M E N T**

13 Remove line(s) 105-106 and insert:

14 sinkhole coverage; amending s.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 1808-1816

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**T I T L E A M E N D M E N T**

Remove line(s) 115-120 and insert:  
 exceptions; limiting a policyholder's

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 1916-1929

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**T I T L E A M E N D M E N T**

Remove line(s) 129-131 and insert:  
 and other specific information; amending s. 627.7074, F.S.;  
 revising

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

22

Amendment No.

Bill No. PCS for HB 803

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

4  
 5 **Amendment**  
 6 Remove lines 2018-2024

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

23

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Jenne offered the following:

**Amendment (with title amendment)**

Remove lines 2130-2131

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**T I T L E A M E N D M E N T**

Remove line(s) 142-143 and insert:  
 report;