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# **Insurance & Banking Subcommittee**

**Tuesday, January 17, 2012  
3:30 PM  
404 HOB**

**Dean Cannon  
Speaker**

**Bryan Nelson  
Chair**



# The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon  
Speaker

Bryan Nelson  
Chair

## AGENDA

January 17, 2012  
404 House Office Building  
3:30 p.m. - 6:00 p.m.

- I. Introductory Remarks
- II. HB 645 **Pub. Rec./Title Insurance Data/DFS** by *Rep. Moraitis*
- III. HB 941 **Commercial Lines Insurance Policies** by *Rep. Holder*
- IV. HB 1011 **Warranty Associations** by *Rep. Abruzzo*
- V. PCS for HB 643 **Title Insurance**
- VI. Workshop on the following:
  - a. HB 833 **Florida Hurricane Catastrophe Fund** by *Rep. Hager*
  - b. HB 1127 **Citizens Property Insurance Corporation** by *Rep. Albritton*
- VII. Adjournment



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 645 Pub. Rec./Title Insurance Data/DFS

SPONSOR(S): Moraitis, Jr.

TIED BILLS: HB 643 IDEN./SIM. BILLS: SB 1406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly <i>Reilly</i>	Cooper <i>Cooper</i>
2) Government Operations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill provides for title insurers, their affiliated businesses in Florida, and title insurance agencies to annually submit data to the Department of Financial Services (DFS) to assist in the analysis of title insurance premium rates, title search costs, and the condition of Florida's title insurance industry. The DFS is authorized to adopt rules to administer the collection of the data. The bill also creates a public records exemption for financial information that is submitted to the DFS.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.**

The bill is effective on the date that HB 643, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session and subsequently enacted into law, takes effect.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### **Public Records Law**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### **Effect of the Bill**

The bill provides for title insurers, their affiliated businesses in Florida, and title insurance agencies to annually submit data to the Department of Financial Services (DFS) to assist in the analysis of title insurance premium rates, title search costs, and the condition of Florida's title insurance industry. The DFS is authorized to adopt rules to administer the collection of the data.

The bill also creates a public records exemption for financial information provided to the Department of Financial Services (DFS) by title insurance agencies and title insurers. The bill sets forth Legislative findings of public necessity for proprietary business information to be made confidential and exempt from public records disclosure, and provides examples of such information, including trade secrets and other specified information. The exemption does not preclude the reporting of such statistics in the aggregate, or the release of the names of title insurance agencies and title insurers that submitted data.

#### B. SECTION DIRECTORY:

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

**Section 1.** Creates s. 626.84195, F.S., providing for the annual submission of title insurance data to the DFS, and creating a public records exemption for financial information.

**Section 2.** Sets forth legislative findings that a public records exemption for financial information is a public necessity.

**Section 3.** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

The bill requires title insurers and title agencies to annually submit information to the OIR relevant to a review of title insurance premium rates. To comply with the requirements, some insurers and agencies may incur programming and other technology-related costs.

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

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

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

None.

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

The bill creates both substantive law and a public records exemption in a single bill. It provides a public records exemption for financial information, but includes a public necessity statement relating to proprietary business information. The Florida Constitution provides that a bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions. The bill also makes reference to the department (DFS) when it appears that reference to the office (OIR) is intended. An amendment will be filed to address these issues.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
 An act relating to public records; creating s.  
 626.84195, F.S.; providing an exemption from public  
 records requirements for financial information, such  
 as revenue, loss, and expense data, which is supplied  
 periodically by a licensed title insurance agency to  
 the Department of Financial Services in order to  
 assist the department in analyzing title insurance  
 premium rates, title search costs, and the financial  
 viability of the title insurance industry in the  
 state; requiring that the information be supplied to  
 the department by a specified date; requiring the  
 department to adopt rules; authorizing the department  
 to disclose the total combined responses of all  
 agencies and reporting entities; providing for future  
 legislative review and repeal of the exemption under  
 the Open Government Sunset Review Act; providing a  
 statement of public necessity; providing a contingent  
 effective date.

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

Section 1. Section 626.84195, Florida Statutes, is created  
 to read:

626.84195 Collection of title insurance information;  
confidential information.-

(1)(a) Each title insurance agency licensed to do business  
in this state and each insurer doing direct, retail, or



29 affiliated business in this state shall maintain and submit  
 30 information, including revenue, loss, and expense data, as the  
 31 department determines necessary to assist in the analysis of  
 32 title insurance premium rates, title search costs, and the  
 33 financial viability of the title insurance industry in this  
 34 state.

35 (b) This information must be transmitted to the department  
 36 no later than March 31 of each year following the reporting  
 37 year.

38 (c) The department shall adopt rules pursuant to ss.  
 39 120.536(1) and 120.54 to administer this section.

40 (2) The financial information supplied by each title  
 41 insurance agency or insurer is confidential and exempt from the  
 42 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 43 Constitution in order to prevent disclosure of private  
 44 information of that agency or insurer to the public. However,  
 45 the total combined responses of all the agencies and reporting  
 46 insurers may be disclosed to the public as long as the specific  
 47 identities of the agencies or insurers are not revealed.

48 (3) This section is subject to the Open Government Sunset  
 49 Review Act in accordance with s. 119.15 and shall stand repealed  
 50 on October 2, 2017, unless reviewed and saved from repeal  
 51 through reenactment by the Legislature.

52 Section 2. The Legislature finds that it is a public  
 53 necessity that proprietary business information relating to the  
 54 title insurance industry, title insurers, and title insurance  
 55 agents, including, but not limited to, trade secrets, be made  
 56 confidential and exempt from the requirements of s. 119.07(1),

57 Florida Statutes, and s. 24(a), Article I of the State  
 58 Constitution. The disclosure of information, such as revenue,  
 59 loss expense data, analyses of gross receipts, the amount of  
 60 taxes paid, the amount of capital investment, customer  
 61 identification, the amount of employee wages paid, and the  
 62 detailed documentation to substantiate such performance  
 63 information, could injure a business in the marketplace by  
 64 providing its competitors with detailed insights into the  
 65 financial status and the strategic plans of the business,  
 66 thereby diminishing the advantage that the business maintains  
 67 over competitors that do not possess such information. Without  
 68 this exemption, title insurance agencies and title insurers,  
 69 whose records are generally not required to be open to the  
 70 public, may refrain from providing accurate and unbiased data  
 71 and would thus impair the Department of Financial Services in  
 72 setting fair and adequate title insurance rates. Proprietary  
 73 business information derives actual or potential independent  
 74 economic value from not being generally known to, and not being  
 75 readily ascertainable by proper means by, other persons who can  
 76 derive economic value from its disclosure or use. The Department  
 77 of Financial Services, or any subsidiary or contractor of the  
 78 department, in performing its lawful duties and  
 79 responsibilities, may need to obtain information from the  
 80 proprietary business information. Without an exemption from  
 81 public records requirements for proprietary business information  
 82 held by the department or its designee, such information becomes  
 83 a public record when received and must be divulged upon request.  
 84 Divulgence of any proprietary business information under public

85 records laws would destroy the value of that property to the  
 86 proprietor, causing a financial loss not only to the proprietor  
 87 but also to the residents of this state due to the loss of  
 88 reliable financial data necessary for fair and adequate rate  
 89 regulation. Release of proprietary business information would  
 90 give business competitors an unfair advantage and weaken the  
 91 position of the proprietor of the proprietary business  
 92 information in the marketplace. The harm to businesses in the  
 93 marketplace and to the effective administration of the  
 94 ratemaking function caused by the public disclosure of such  
 95 information far outweighs the public benefits derived from its  
 96 release. In addition, the confidentiality provided by this act  
 97 does not preclude the reporting of statistics in the aggregate  
 98 concerning the collection of data, as well as the names of the  
 99 title insurance agencies and title insurers participating in the  
 100 data collection. Such aggregate reported data is available to  
 101 the public and is important to an assessment of the setting of  
 102 title insurance premiums. Thus, the Legislature declares that it  
 103 is a public necessity that proprietary business information of  
 104 title insurers, title insurance agents, and the title insurance  
 105 industry held by the Department of Financial Services, or any  
 106 subsidiary, contractor, or agent of the department, be made  
 107 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 108 s. 24(a), Article I of the State Constitution.

109 Section 3. This act shall take effect on the same date  
 110 that HB 643 or similar legislation takes effect, if such  
 111 legislation is adopted in the same legislative session, or an  
 112 extension thereof, and becomes law.

HB 941

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941 Commercial Lines Insurance Policies

SPONSOR(S): Holder

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway <i>Jde</i>	Cooper <i>TC</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business. Some commercial insurance, such as workers' compensation, is required to be purchased by businesses; however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

The bill allows insurance companies writing commercial lines insurance policies to transfer these insurance policies to a different Florida licensed insurance company that is directly or indirectly owned, managed, or controlled by the first insurer. The policy transfer is a renewal of the policy, rather than a cancellation or nonrenewal of the policy. Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business and eliminates confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

The bill is very similar to s. 627.728(4)(d), F.S., which allows an insurance company to transfer automobile insurance policies to a new insurer under the same ownership or management of first insurer instead of canceling and nonrenewing the policies at the end of the policy term.

The bill has no fiscal impact.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.<sup>1</sup> Major types of commercial insurance are: boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, medical malpractice liability, product liability, professional liability, and workers' compensation.

Some commercial insurance, such as workers' compensation, is required to be purchased by businesses;<sup>2</sup> however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

The bill allows insurance companies writing commercial lines insurance policies to transfer these insurance policies to a different Florida licensed insurance company that is directly or indirectly owned, managed, or controlled by the first insurer. The policy transfer is a renewal of the policy, rather than a cancellation or nonrenewal of the policy. Thus, insurers will not have to provide 100 days' notice<sup>3</sup> of nonrenewal, or notice by June 1<sup>st</sup>, whichever is earlier, because the policy will be transferred, rather than nonrenewed. However, insurers transferring policies must still comply with current law relating to renewal notices which generally requires insurers to give policyholders 45 days advance written notice of the renewal premium for workers' compensation, employer's liability, property, and casualty insurance.<sup>4</sup> Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business and eliminates confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

The bill is very similar to s. 627.728(4)(d), F.S., which allows an insurance company to transfer automobile insurance policies to a new insurer under the same ownership or management of first insurer instead of canceling and nonrenewing the policies at the end of the policy term. Insurers wanting to transfer automobile policies to an associated insurer must give 45-days notice to the policyholder and must notify the policyholder of the policy premium and any reasons for an increase in premium. The 45-day transfer notice requirement for automobile policy transfers is consistent with the notice requirement in current law for cancellation or nonrenewal of automobile policies.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

**Section 2:** Provides an effective date of July 1, 2012.

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<sup>1</sup> <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed December 11, 2011).

<sup>2</sup> Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

<sup>3</sup> Under current law, policyholders whose residential structure has been insured by the same insurer for at least the five years before the date of nonrenewal receive 120 days' notice of nonrenewal, rather than 100 days.

<sup>4</sup> See s. 627.4133(1), F.S. Personal lines or commercial residential property insurance policies that are renewed also have a 45-day renewal notice under s. 627.4133(2), F.S. Mortgage guaranty, surety, and marine insurance are exempt from the 45 day notice of renewal premium provision in current law (s. 627.4133(1), F.S.). Automobile insurance renewal provisions are found in s. 627.728, F.S. and are not governed by the 45-day notice provision in s. 627.4133(1), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### 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:

None.

### B. RULE-MAKING AUTHORITY:

None provided in the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 941

2012

1                   A bill to be entitled  
 2           An act relating to commercial lines insurance  
 3           policies; amending s. 627.4133, F.S.; authorizing an  
 4           insurer to transfer a commercial lines policy under  
 5           certain circumstances; providing construction;  
 6           providing an effective date.

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

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 10           Section 1. Subsection (8) is added to section 627.4133,  
 11   Florida Statutes, to read:

12           627.4133 Notice of cancellation, nonrenewal, or renewal  
 13   premium.—

14           (8) An insurer issuing a commercial lines policy, may, at  
 15   the expiration of the policy term, transfer the policy to  
 16   another authorized insurer under the same direct or indirect  
 17   ownership, management, or control as the transferring insurer.  
 18   The transfer constitutes a renewal of the policy and may not be  
 19   treated as a cancellation or a nonrenewal of the policy.

20           Section 2. This act shall take effect July 1, 2012.



HB 1011

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1011 Warranty Associations  
**SPONSOR(S):** Abruzzo  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Cooper <i>TAC</i>	Cooper <i>TAC</i>
2) Rulemaking & Regulation Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

Although a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Under current law, warranties offered by the three types of warranty associations are cancelable by the purchaser who is entitled to a refund. For motor vehicle service agreements, refunds may be effectuated through the automobile dealer that originally sold the service agreement to the customer, although the service agreement company still remains responsible for the full refund. For home and service warranties, refunds are made by the respective associations.

The bill maintains the authority for automobile dealers to effectuate the refunds but codifies some of the documentation regarding refunds currently required by OIR. For home warranty and service warranty products, the bill specifies that the associations may provide refunds through the issuing sales representatives. Specific to service warranty associations, the bill permits refunds to be made by cash, check, store credit, gift card, or other similar means.

Currently, OIR is required to conduct periodic examinations regarding the financial and market conduct affairs of warranty associations. The bill eliminates this requirement, but authorizes OIR to examine them at its discretion. Unlike current law, which allows (but does not require) OIR to use independent examiners and levy the companies for the costs of their services, the bill removes that option, meaning that OIR's own staff will perform the examinations. The bill retains current law which allows OIR to recoup its costs.

The bill authorizes entities to provide donations and grants to the existing anti-fraud fund maintained by the Department of Financial Services. The bill authorizes funds to be used by the department to pursue unauthorized entities operating in violation of the statutory provisions relating to warranty associations.

By removing the required OIR examinations, warranty associations should experience cost savings. Also, some associations will no longer have to pay a \$2,000 filing fee when seeking an examination exemption.

The bill takes effect on July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1011.INBS.DOCX

DATE: 1/15/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

#### **Motor Vehicle Service Agreements**

Under current law, a motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. It also includes agreements that provide for: the coverage or protection which is issued or provided in conjunction with an additive product applied to the motor vehicle; payment of vehicle protection expenses; and, the payment for painless dent-removal services.<sup>1</sup>

To offer motor vehicle service agreements in Florida one must be licensed and pay an annual nonrefundable license fee to OIR. All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis. Companies are also required to file with the office the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. The office does not have authority to approve rates but they are required to review and approve forms used in the state.<sup>2</sup>

#### Cancellation of Service Agreements

The bill makes several changes in the regulatory framework of motor vehicle service agreements, including cancellation provisions. Currently, any service agreement is cancelable by the purchaser within 60 days after purchase. The individual is also entitled to a refund which must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the agreement holder. After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

- 1) there has been a material misrepresentation or fraud at the time of sale of the service agreement;
- 2) the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
- 3) the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
- 4) for nonpayment of premium by the agreement holder.<sup>3</sup>

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<sup>1</sup> s.634.011(8), F.S.

<sup>2</sup> ss. 634.011-634.289, F.S.

<sup>3</sup> s. 634.121(3)(b), F.S.

Additionally, current law states that if the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. Current law also provides that if, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company must return directly to the agreement holder not less than 90 percent of the unearned pro rata premium and may also deduct from the refund the amount of any claims paid on the agreement. Under current law, the service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent.<sup>4</sup>

The bill provides that if the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

The bill requires the salesperson or agent to maintain copies of certain documents to demonstrate that the refund has occurred and shall provide those copies to the service agreement company within 45 days after a request is made by the department.<sup>5</sup> If OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly provide refunds or fails to maintain or remit the specified documentation, the office must then notify the Department of Financial Service (DFS).

### Examination of Companies

Currently, OIR may periodically examine motor vehicle service agreement companies in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624. Consequently, the office may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, but must examine each company not less frequently than once every 5 years.<sup>6</sup> Criteria are provided in statute for OIR to consider in determining whether to conduct examinations. Also, rules are authorized, but not required, to establish provisions for exemptions from examination.

Current law also provides that the examinations may be conducted by independent certified public accountants, actuaries, investment specialists, information technology specialists, and reinsurance specialists with the costs paid for by the companies.<sup>7</sup> A similar provision exists for market conduct examinations.<sup>8</sup>

The bill makes several changes regarding examinations. It removes the option to use independent examiners and thereby the requirement to pay for their services. The bill also specifies that OIR is not required to conduct periodic examinations, but may examine a service agreement company at its discretion. Criteria for OIR to use in determining whether to use that discretion are eliminated. It also states that an examination may cover a period of only the most recent 5 years.

### Gifts and Grants to Combat Unauthorized Entities

In 2011, the Legislature created s. 626.9894, F.S., which authorizes DFS to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. Any such gift or grant is immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. Donations are

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<sup>4</sup> s. 634.121, F.S.

<sup>5</sup> The required documentation is based, in part, on guidance provided by OIR in *Informational Memorandum, OIR-11-04M*, issued April 11, 2011.

<sup>6</sup> s. 634.141, F.S. and s. 624.316, F.S.

<sup>7</sup> s. 624.316, F.S.

<sup>8</sup> s. 624.3161, F.S.

separately accounted for and may be used by the division to carry out its duties and responsibilities, or for the subgranting of such funds to state attorneys for the purpose of funding or defraying the costs of dedicated fraud prosecutors. The law also provides that moneys deposited into the Insurance Regulatory Trust Fund may be appropriated by the Legislature for the purpose of enabling the division to carry out its duties and responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.

The bill provides that a governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to DFS in accordance with s. 626.9894, F.S., to enable the department to pursue unauthorized entities operating in violation of provisions relating to motor vehicle service agreement companies. The department is also authorized to transfer funds or property to OIR to administer this section. The effects of these new provisions are unclear.

The purpose of the current law is to use funds to fight fraud. Although some unauthorized providers of service agreements may commit fraud, the language in the bill is broad and appears to conflict with the provisions of s. 626.9894, F.S. It allows DFS to “pursue” unauthorized entities for apparently any violation relating to motor vehicle service agreements thereby permitting DFS to take actions beyond fighting fraud. Furthermore, the department currently can take action against agents or salespersons but OIR is the entity that investigates and disciplines unauthorized providers. The bill’s attempt to authorize DFS to transfers funds to OIR “to administer this section” is ambiguous and very likely inadequate.

According to DFS, another issue is that this section does not provide for the disposal or liquidation of “property” that may have been donated since there is no mechanism within current law to transfer title. Moreover, according to the department, the new provision does not prevent more money to be taken out of the Trust Fund than what was put into the account for the stated purposes, and as a result, those entities that donated money or property for anti-fraud prevention could lose that money to warranty association regulation and possibly, in the view of DFS, create a cause for litigation.<sup>9</sup>

### **Home Warranty Associations**

Home warranty associations are organizations, other than authorized insurers, that issue home warranties. A home warranty is a contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.<sup>10</sup>

The regulatory framework of home warranty associations is similar to the oversight of motor vehicle service agreement companies. Regarding cancellations, any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium must be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement.<sup>11</sup>

Unlike the current law for motor vehicle service agreements which allow refunds by the issuing salesperson or agent, the current law for home warranty associations does not explicitly authorize that practice. The bill does, by stating that an association may effectuate a refund through the issuing sales

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<sup>9</sup> Department of Financial Services, Bill Analysis & Fiscal Impact Statement, HB 1011, 12/29/2011, on file with the Insurance & Banking Subcommittee.

<sup>10</sup> s. 634.301, F.S.

<sup>11</sup> s. 634.312, F.S.

representative. However, unlike the changes for motor vehicle service agreements, the bill does not provide detail or require documentation for home warranty associations regarding the effectuation of their refunds.

Regarding examinations of home warranty associations by OIR, the bill makes the same changes made for motor vehicle service agreements. The only difference is that currently there is no examination exemption process for home warranty associations as there is for motor vehicle service agreements. Hence, there is no rule authorization to repeal.

Also, the bill creates the same process for donating money or property to DFS in accordance with s. 626.9894, F.S. In this case it is to be used to pursue unauthorized entities providing home warranties. The provision results in the same issues of concern.

### **Service Warranty Associations**

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification<sup>12</sup> for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.<sup>13</sup>

As with the other two types of warranty associations, service warranty entities must meet certain regulatory requirements to offer their products in Florida. Regarding cancellations, current law provides that each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium must be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder.<sup>14</sup>

Like the provision in the bill for home warranty associations, service warranty associations may effectuate refunds through the issuing sales representative. No additional detail or documentation is provided. A provision is added to current law regarding the form of a refund (which now is apparently cash or check). The bill provides that a refund owed to a warranty holder may be in the form of cash, check, store credit, gift card, or other similar means. There is no requirement that the consumer has to agree with a refund when it is provided in a form other than in cash or by check.

The examination provisions in the bill are the same as with the other two warranty associations. For service warranty associations, current language specific to the rate charged for service warranty providers is deleted, as well as a filing fee of \$2,000 which accompanies Form 10-K as filed with the United States Securities and Exchange Commission. Currently, companies may file the Form 10-K with the office to have the examination requirement waived or, at the very least, the costs associated with their examinations, adjusted. However, to utilize this option the associations must pay a filing fee of \$2,000 with Form 10-K. Because OIR is not required to examine these companies on a regularly scheduled basis, but rather on an as needed one, businesses that sell service warranties should experience cost savings.

Finally, the bill authorizes entities to provide property or money to DFS in accordance with s.626.9894, F.S., to enable the department to pursue unauthorized parties operating in violation with the provisions

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<sup>12</sup> Pursuant to s. 634.401 (5), F.S., "Indemnify" means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

<sup>13</sup> s. 634.401(13), F.S.

<sup>14</sup> s. 634.414, F.S.

relating to service warranty associations. The same issues are present here as with the other two changes in the bill relating to the other warranty associations.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 634.121, F. S., relating to forms, required procedures, and provisions.

**Section 2:** Amends s. 634.141, F.S., relating to examination of motor vehicle service agreement companies.

**Section 3:** Creates s. 634.2855, F.S., relating to unauthorized entities; gifts and grants.

**Section 4:** Amends s. 634.312, F. S., relating to forms, required provisions, and procedures for home warranty associations.

**Section 5:** Amends s. 634.314, F. S., relating to examination of home warranty associations.

**Section 6:** Creates s. 634.3385, F.S., relating to unauthorized entities; gifts and grants.

**Section 7:** Amends s. 634.414, F. S., relating to forms; required provisions, for service warranty associations.

**Section 8:** Amends s. 634.416, F. S., relating to examination of service warranty associations.

**Section 9:** Creates s. 634.4385, F.S., relating to unauthorized entities; gifts and grants.

**Section 10:** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

No specific amount known but see FISCAL COMMENTS.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

Because regularly scheduled examinations by OIR will no longer be required for warranty associations, companies will save costs associated with preparing for and actually undergoing those examinations. Also, companies will no longer, on a regular basis, have to pay for OIR's costs associated with the examinations. Entities that currently apply for examination exemptions will experience a cost reduction of a \$2,000 filing fee.

#### D. FISCAL COMMENTS:

According to OIR, the fiscal impact to the office is "None." Also in their bill analysis, OIR stated:

Pursuant to Section 634.416, F.S., with regards to financial examinations of a service warranty association and Rule 69O-200.014, FAC., with regards to a motor vehicle service agreement company, these entities can file a request to the Office for an exemption from the financial examination.

Currently, there are approximately 15 entities with exemption requests.

One of the requirements for the exemption is that the entity remits an exemption fee of \$2,000 to be deposited into the Insurance Regulatory Trust Fund.

### 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:

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

The title for the bill as filed is defective. References to "the Office of Financial Regulation" need to be replaced with "the Office of Insurance Regulation."

The term "service agreement company" on lines 222 and 280 need to be replaced with the terms "home warranty association" and "service warranty association," respectively.

In its bill analysis, DFS noted that Section 7, relating to service warranty associations, provides that refunds owed may be made by cash, check, store credit, gift card or other similar means. The department stated that it "feels that the refund should be made to the agreement holder in a like manner that the premium was paid cash or check." The department also suggested that lines 260-261 which permits refunds in a form other than in cash or check be deleted.<sup>15</sup>

Regarding the same provision on line 261, OIR in its bill analysis, raised a concern that following the types of refunds delineated, the wording "or other similar means" is vague.<sup>16</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>15</sup> Department of Financial Services, Bill Analysis & Fiscal Impact Statement, HB 1011, 12/29/2011, on file with the Insurance & Banking Subcommittee.

<sup>16</sup> Florida Office of Insurance Regulation, Bill Analysis, HB 1011, 01/13/2011, on file with the Insurance & Banking Subcommittee.



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A bill to be entitled

An act relating to warranty associations; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services; requiring the Office of Financial Regulation to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; providing an exception to the requirement that motor vehicle service agreement companies undergo periodic examinations; authorizing rather than requiring the Office of Financial Regulation to examine service agreement companies; limiting the examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department

29 of Financial Services to pursue unauthorized entities  
 30 operating as motor vehicle service agreement  
 31 companies; amending s. 634.312, F.S.; authorizing a  
 32 home warranty association to effectuate a refund  
 33 through the issuing sales representative; amending s.  
 34 634.314, F.S.; providing an exception to the  
 35 requirement that home warranty associations undergo  
 36 periodic examinations; authorizing rather than  
 37 requiring the Office of Financial Regulation to  
 38 examine home warranty associations; limiting the  
 39 examination period to the most recent 5 years;  
 40 removing the requirement that the Financial Services  
 41 Commission establish rules for conducting  
 42 examinations; removing the criteria for determining  
 43 whether an examination is warranted; creating s.  
 44 634.3385, F.S.; authorizing a governmental entity,  
 45 public agency, institution, person, firm, or legal  
 46 entity to provide property or money to the Department  
 47 of Financial Services to pursue unauthorized entities  
 48 operating as home warranty associations; amending s.  
 49 634.414, F.S.; authorizing service warranty  
 50 associations to effectuate refunds through the issuing  
 51 sales representative; authorizing a service warranty  
 52 association to issue refunds by cash, check, store  
 53 credit, gift card, or other similar means; amending s.  
 54 634.416, F.S.; providing an exception to the  
 55 requirement that service warranty associations undergo  
 56 periodic examinations; authorizing rather than

57 requiring the Office of Financial Regulation to  
 58 examine service warranty associations; limiting the  
 59 examination period to the most recent 5 years;  
 60 removing the requirement that the Financial Services  
 61 Commission establish rules for conducting  
 62 examinations; removing the criteria for determining  
 63 whether an examination is warranted; removing  
 64 provisions relating to the rates charged a to service  
 65 warranty association for examinations; removing the  
 66 provision authorizing the Office of Financial  
 67 Regulation to waive the examination requirement upon  
 68 receipt and review of the Form 10-K; creating s.  
 69 634.4385, F.S.; authorizing a governmental entity,  
 70 public agency, institution, person, firm, or legal  
 71 entity to provide property or money to the Department  
 72 of Financial Services to pursue unauthorized entities  
 73 operating as service warranty associations; providing  
 74 an effective date.

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

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78 Section 1. Paragraph (b) of subsection (3) of section  
 79 634.121, Florida Statutes, is amended, and paragraphs (c), (d),  
 80 and (e) are added to that subsection, to read:

81 634.121 Forms, required procedures, provisions.—

82 (3)

83 (b) After the service agreement has been in effect for 60  
 84 days, it may not be canceled by the insurer or service agreement

85 | company unless:

86 |       1. There has been a material misrepresentation or fraud at  
87 | the time of sale of the service agreement;

88 |       2. The agreement holder has failed to maintain the motor  
89 | vehicle as prescribed by the manufacturer;

90 |       3. The odometer has been tampered with or disabled and the  
91 | agreement holder has failed to repair the odometer; or

92 |       4. For nonpayment of premium by the agreement holder, in  
93 | which case the service agreement company shall provide the  
94 | agreement holder notice of cancellation by certified mail.

95 |  
96 | If the service agreement is canceled by the insurer or service  
97 | agreement company, the return of premium must not be less than  
98 | 100 percent of the paid unearned pro rata premium, less any  
99 | claims paid on the agreement. If, after 60 days, the service  
100 | agreement is canceled by the service agreement holder, the  
101 | insurer or service agreement company shall return directly to  
102 | the agreement holder not less than 90 percent of the unearned  
103 | pro rata premium, less any claims paid on the agreement. The  
104 | service agreement company remains responsible for full refunds  
105 | to the consumer on canceled service agreements. However, the  
106 | salesperson and agent are responsible for the refund of the  
107 | unearned pro rata commission. A service agreement company may  
108 | effectuate refunds through the issuing salesperson or agent in  
109 | accordance with paragraphs (c) and (d).

110 |       (c) If the service agreement company effectuates refunds  
111 | through the issuing salesperson or agent, the service agreement  
112 | company must send the unearned pro rata premium refund due, less

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113 any unearned pro rata commission, to the salesperson or agent  
 114 effectuating the refund. Upon receipt, the salesperson or agent  
 115 must refund the unearned pro rata premium, including any  
 116 unearned pro rata commission, and the sales tax refund owed to  
 117 the service agreement holder.

118 (d) The salesperson, agent, or service agreement company  
 119 shall maintain a copy of one of the following documents, as  
 120 applicable, demonstrating that the refund owed pursuant to  
 121 paragraph (c) has been refunded:

122 1. A copy of the front and back of the cancelled check for  
 123 the applicable refund amount owed to the service agreement  
 124 holder;

125 2. A copy of the front of the check for the applicable  
 126 refund amount owed to the service agreement holder and a copy of  
 127 the statement from the bank account on which the check was drawn  
 128 showing that the check was cashed;

129 3. A copy of the front of the check issued by the service  
 130 agreement company to the salesperson or agent in the amount of  
 131 the service agreement company's portion of the refund owed to  
 132 the service agreement holder and a copy of the statement from  
 133 the bank account on which the check was drawn showing that the  
 134 check was cashed;

135 4. A copy of a completed buyer's order demonstrating that  
 136 the applicable refund amount owed to the service agreement  
 137 holder was credited toward the purchase or lease of another  
 138 vehicle;

139 5. Any document received from or sent to a lender, finance  
 140 company, or creditor demonstrating that a loan or amount

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141 financed by the agreement holder was decreased by the amount of  
 142 the applicable refund amount owed to the service agreement  
 143 holder; or

144 6. Any other evidence approved by the office in a written  
 145 communication to a person licensed pursuant to this part  
 146 demonstrating that the applicable refund amount due to the  
 147 service agreement holder was properly made.

148  
 149 A salesperson or agent effectuating a refund shall maintain a  
 150 copy of the documentation required by this paragraph, and shall  
 151 provide a copy to the service agreement company within 45 days  
 152 after a request is made by the department.

153 (e) If the office finds that a salesperson or agent  
 154 exhibits a pattern or practice of failing to properly effectuate  
 155 refunds owed or to maintain and remit to the service agreement  
 156 company the documentation required by paragraph (d), the office  
 157 shall notify the department of its finding.

158 Section 2. Section 634.141, Florida Statutes, is amended  
 159 to read:

160 634.141 Examination of companies.-

161 ~~(1)~~ Motor vehicle service agreement companies licensed  
 162 under this part may be subject to periodic examination by the  
 163 office in the same manner and subject to the same terms and  
 164 conditions as applies to insurers under part II of chapter 624,  
 165 with the exception of ss. 624.316(2)(e) and 624.3161(3), which  
 166 do not apply to examinations conducted pursuant to this section.  
 167 The office is not required to conduct periodic examinations  
 168 pursuant to this section, but may examine a service agreement

169 company at its discretion. An examination conducted pursuant to  
 170 this section may cover a period of only the most recent 5 years.  
 171 ~~The commission may by rule establish provisions whereby a~~  
 172 ~~company may be exempted from examination.~~

173 ~~(2) The office shall determine whether to conduct an~~  
 174 ~~examination of a company by considering:~~

175 ~~(a) The amount of time that the company has been~~  
 176 ~~continuously licensed and operating under the same management~~  
 177 ~~and control.~~

178 ~~(b) The company's history of compliance with applicable~~  
 179 ~~law.~~

180 ~~(c) The number of consumer complaints against the company.~~

181 ~~(d) The financial condition of the company, demonstrated~~  
 182 ~~by the financial reports submitted pursuant to s. 634.137.~~

183 Section 3. Section 634.2855, Florida Statutes, is created  
 184 to read:

185 634.2855 Unauthorized entities; gifts and grants.-A  
 186 governmental unit, public agency, institution, person, firm, or  
 187 legal entity may provide property or money to the department in  
 188 accordance with s. 626.9894 to enable the department to pursue  
 189 unauthorized entities operating in violation of this part. The  
 190 department may transfer funds or property to the office to  
 191 administer this section.

192 Section 4. Subsection (5) of section 634.312, Florida  
 193 Statutes, is amended to read:

194 634.312 Forms; required provisions and procedures.-

195 (5) Each home warranty contract shall contain a  
 196 cancellation provision. Any home warranty agreement may be

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197 canceled by the purchaser within 10 days after purchase. The  
 198 refund must be 100 percent of the gross premium paid, less any  
 199 claims paid on the agreement. A reasonable administrative fee  
 200 may be charged, not to exceed 5 percent of the gross premium  
 201 paid by the warranty agreement holder. After the home warranty  
 202 agreement has been in effect for 10 days, if the contract is  
 203 canceled by the warranty holder, a return of premium shall be  
 204 based upon 90 percent of unearned pro rata premium less any  
 205 claims that have been paid. If the contract is canceled by the  
 206 association for any reason other than for fraud or  
 207 misrepresentation, a return of premium shall be based upon 100  
 208 percent of unearned pro rata premium, less any claims paid on  
 209 the agreement. A home warranty association may effectuate a  
 210 refund through the issuing sales representative.

211 Section 5. Section 634.314, Florida Statutes, is amended  
 212 to read:

213 634.314 Examination of associations.—

214 ~~(1)~~ Home warranty associations licensed under this part  
 215 may be subject to periodic examinations by the office, in the  
 216 same manner and subject to the same terms and conditions as  
 217 apply to insurers under part II of chapter 624 of the insurance  
 218 code, with the exception of ss. 624.316(2)(e) and 624.3161(3),  
 219 which do not apply to examinations conducted pursuant to this  
 220 section. The office is not required to conduct periodic  
 221 examinations pursuant to this section, but may examine a service  
 222 agreement company at its discretion. An examination conducted  
 223 pursuant to this section may cover a period of only the most  
 224 recent 5 years.



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225 ~~(2) The office shall determine whether to conduct an~~  
 226 ~~examination of a home warranty association by considering:~~  
 227 ~~(a) The amount of time that the association has been~~  
 228 ~~continuously licensed and operating under the same management~~  
 229 ~~and control.~~  
 230 ~~(b) The association's history of compliance with~~  
 231 ~~applicable law.~~  
 232 ~~(c) The number of consumer complaints against the~~  
 233 ~~association.~~  
 234 ~~(d) The financial condition of the association,~~  
 235 ~~demonstrated by the financial reports submitted pursuant to s.~~  
 236 ~~634.313.~~

237 Section 6. Section 634.3385, Florida Statutes, is created  
 238 to read:

239 634.3385 Unauthorized entities, gifts and grants.—A  
 240 governmental unit, public agency, institution, person, firm, or  
 241 legal entity may provide property or money to the department in  
 242 accordance with s. 626.9894 to enable the department to pursue  
 243 unauthorized entities operating in violation of this part. The  
 244 department may transfer funds or property to the office to  
 245 administer this section.

246 Section 7. Section 634.414, Florida Statutes, is amended  
 247 to read:

248 634.414 Forms; required provisions.—

249 (1) Each service warranty contract shall contain a  
 250 cancellation provision. If the contract is canceled by the  
 251 warranty holder, return of premium shall be based upon no less  
 252 than 90 percent of unearned pro rata premium less any claims

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253 that have been paid or less the cost of repairs made on behalf  
 254 of the warranty holder. If the contract is canceled by the  
 255 association, return of premium shall be based upon 100 percent  
 256 of unearned pro rata premium, less any claims paid or the cost  
 257 of repairs made on behalf of the warranty holder. Service  
 258 warranty associations may effectuate refunds through the issuing  
 259 sales representative.

260 (2) Refunds owed pursuant to this section may be made by  
 261 cash, check, store credit, gift card, or other similar means.

262 (3)~~(2)~~ By July 1, 2011, each service warranty contract  
 263 sold in this state must be accompanied by a written disclosure  
 264 to the consumer that the rate charged for the contract is not  
 265 subject to regulation by the office. A service warranty  
 266 association may comply with this requirement by including such  
 267 disclosure in its service warranty contract form or in a  
 268 separate written notice provided to the consumer at the time of  
 269 sale.

270 Section 8. Section 634.416, Florida Statutes, is amended  
 271 to read:

272 634.416 Examination of associations.-

273 ~~(1)(a)~~ Service warranty associations licensed under this  
 274 part may be subject to periodic examination by the office, in  
 275 the same manner and subject to the same terms and conditions  
 276 that apply to insurers under part II of chapter 624, with the  
 277 exception of ss. 624.316(2)(e) and 624.3161(3), which do not  
 278 apply to examinations conducted pursuant to this section. The  
 279 office is not required to conduct periodic examinations pursuant  
 280 to this section, but may examine a service agreement company at

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281 its discretion. An examination conducted pursuant to this  
282 section may cover a period of only the most recent 5 years.

283 ~~(b) The office shall determine whether to conduct an~~  
284 ~~examination of a service warranty association by considering:~~

285 ~~1. The amount of time that the association has been~~  
286 ~~continuously licensed and operating under the same management~~  
287 ~~and control.~~

288 ~~2. The association's history of compliance with applicable~~  
289 ~~law.~~

290 ~~3. The number of consumer complaints against the~~  
291 ~~association.~~

292 ~~4. The financial condition of the association,~~  
293 ~~demonstrated by the financial reports submitted pursuant to s.~~  
294 ~~634.313.~~

295 ~~(2) The rate charged a service warranty association by~~  
296 ~~the office for examination may be adjusted to reflect the amount~~  
297 ~~collected for the Form 10-K filing fee as provided in this~~  
298 ~~section.~~

299 ~~(3) On or before May 1 of each year, an association may~~  
300 ~~submit to the office the Form 10-K, as filed with the United~~  
301 ~~States Securities and Exchange Commission pursuant to the~~  
302 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~  
303 ~~review of the most current Form 10-K, the office may waive the~~  
304 ~~examination requirement; if the office determines not to waive~~  
305 ~~the examination, such examination will be limited to that~~  
306 ~~examination necessary to ensure compliance with this part. The~~  
307 ~~Form 10-K shall be accompanied by a filing fee of \$2,000 to be~~  
308 ~~deposited into the Insurance Regulatory Trust Fund.~~

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309 ~~(4) The office is not required to examine an association~~  
 310 ~~that has less than \$20,000 in gross written premiums as~~  
 311 ~~reflected in its most recent annual statement. The office may~~  
 312 ~~examine such an association if it has reason to believe that the~~  
 313 ~~association may be in violation of this part or is otherwise in~~  
 314 ~~an unsound financial condition.~~ If the office examines an  
 315 association that has less than \$20,000 in gross written  
 316 premiums, the examination fee may not exceed 5 percent of the  
 317 gross written premiums of the association.

318 Section 9. Section 634.4385, Florida Statutes, is created  
 319 to read:

320 634.4385 Unauthorized entities; gifts and grants.—A  
 321 governmental unit, public agency, institution, person, firm, or  
 322 legal entity may provide property or money to the department in  
 323 accordance with the provisions of s. 626.9894 to enable the  
 324 department to pursue unauthorized entities operating in  
 325 violation of this part. The department may transfer funds or  
 326 property to the office to administer this section.

327 Section 10. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 643 Title Insurance  
**SPONSOR(S):** Insurance & Banking Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS:

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

### SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. The bill requires title insurers and title insurance agencies to submit to the Office of Insurance Regulation (OIR), by March 31 of each year, data that have been identified as necessary to assist in the analysis of premium rates, title search costs, and the condition of Florida's title insurance industry. The Financial Services Commission is authorized to promulgate rules governing the collection and analysis of such data. The Department of Financial Services is required to take adverse action against title insurance agents or agencies that fail to timely file the required data, including suspension or revocation of authority.

Under current law, title insurance agents must complete 10 hours of continuing education (CE) every 2 years on any insurance products sold in Florida. However, these agents are authorized to sell only title insurance products and no other lines of insurance. The bill amends CE requirements for title insurance agents, specifying that the credit hours must be earned in title insurance and escrow management courses specific to Florida and approved by the Department of Financial Services. At least 1.5 of the CE hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

The bill requires attorneys who serve as title insurance or real estate settlement agents to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Such attorneys are also required to permit title insurers for whom they hold funds to audit the separate account.

The bill also requires the OIR to:

- Approve or disapprove forms filed by title insurers within 180 days after receipt and, when approving a form, to determine if the current rate applies or if the coverages require the adoption of rules.
- Expeditiously approve filed forms that contain identical coverages, rates, and approved deviations to a form the OIR has approved for another title insurer to prevent a competitive advantage in the marketplace.

The OIR is authorized to revoke approval of any form after providing 180 days notice to the title insurer.

To the extent that the bill provides timeframes for the approval/disapproval of title insurance forms and annual review of title insurance data by the OIR, it will permit title insurers to respond more quickly to changes in the marketplace and ensure that the premiums charged are appropriate.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.<sup>1</sup> Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.<sup>2</sup>

#### Regulation in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents in Florida. Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage<sup>3,4</sup> and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).<sup>5</sup> Title insurers may deviate from the proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.<sup>6</sup>

Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.<sup>7</sup> Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30%. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.<sup>8</sup>

#### Title Insurance Agencies and Agents

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<sup>1</sup> Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

<sup>2</sup> See, e.g., the website of the American Land Title Association, <http://www.alta.org> (last visited January 7, 2012). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

<sup>3</sup> Section 627.777, F.S.

<sup>4</sup> According to the OIR, there is currently no timeframe within which it is required to approve or disapprove filed title insurance forms.

<sup>5</sup> Section 627.782, F.S.

<sup>6</sup> Section 627.783, F.S.

<sup>7</sup> Section 627.786, F.S.

<sup>8</sup> Section 627.782, F.S.

Title insurance agencies must apply for and be licensed by the DFS, and are separately appointed<sup>9</sup> by each title insurer they represent.

To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling.

Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee. Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years<sup>10</sup> on any insurance products sold in Florida, and must be separately appointed by each insurer they represent.

### **Effect of the Bill**

The bill makes changes to title insurance regulation as follows.

#### **Title Insurance Forms**

The OIR is required to approve or disapprove filed title insurance forms within 180 days of receipt. (Currently, there are no timeframes within which filed forms must be approved or disapproved.) When approving a form, the OIR must determine if the current rate applies or if the coverages require rulemaking. To prevent a competitive advantage to an insurer that has received approval of a filed form, the OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations as the approved form.

#### **Submission of Data to the OIR**

Title insurers, their direct or retail businesses in the state, and title agencies must submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is authorized to adopt rules to assist in data analysis and collection. The DFS is required to take action against the authority of any title insurance agent or agency that fails to timely submit the required data, including suspension or revocation of a license or appointment, unless a rule challenge has been filed under s. 120.56, F.S., as to the form or substance of the data that must be submitted.

#### **Separate Escrow Account for Specified Funds Held by Attorneys**

Attorneys who serve as title insurance or real estate settlement agents are required to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Attorneys are required to allow insurers for whom they hold funds to audit the separate account.

#### **Continuing Education Requirements for Title Insurance Agents**

While the number of continuing education (CE) hours title insurance agents must complete every 2 years remains unchanged (10 hours), the bill requires that the credits be earned in title insurance and escrow management courses specific to Florida, and which have been approved by the DFS. At least 1.5 of these hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

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<sup>9</sup> An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.

<sup>10</sup> Section 626.2815(3)(d), F.S.



**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 626.2815, F.S., to revise continuing education requirements for title insurance agents.

**Section 2.** Amends s. 626.8437, F.S., to require the Department of Financial Services to deny, suspend or revoke the authority of title insurance agents and agencies that do not timely submit annual data to the OIR.

**Section 3.** Amends s. 626.8473, F.S., to require attorneys who serve as title or real estate settlement agents to deposit funds received in connection with these transactions in a separate account, unless such deposit as to a particular client would violate rules of the Florida Bar.

**Section 4.** Amends s. 627.777, F.S., relating to approval or disapproval of title insurance forms filed with the OIR.

**Section 5.** Amends s. 627.782, F.S., to require title insurers, their affiliated businesses in Florida, and title agents to submit certain financial data annually to the OIR; mandates penalties for failure to timely submit required data.

**Section 6.** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

Requiring title insurers to annually submit data for analysis to the OIR, establishing timeframes within which filed forms must be approved or disapproved, and requiring a determination of whether current rates apply to newly approved forms, will allow the title insurance industry to be more responsive to changes in the title insurance market and ensure proper review of premium charges.

Title insurers and title agencies may have to invest in technology and expand the programming capacities of their current computer systems to collect and provide the OIR with data based upon rulemaking authority granted to the Financial Services Commission. As it is likely that the regulatory cost of such rule will exceed \$1 million in the aggregate over 5 years, the OIR will be required to submit the rule to the Legislature for ratification before it takes effect pursuant to chapter 2010-279, F.S.

**D. FISCAL COMMENTS:**

See comments in Section II.C.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The Financial Services Commission is authorized to promulgate rules to govern the submission and collection of certain financial data from title insurers.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to title insurance; amending s.  
 3           626.2815, F.S.; specifying continuing education  
 4           requirements for title insurance agents; amending s.  
 5           626.8437, F.S.; specifying additional grounds to deny,  
 6           suspend, revoke, or refuse to renew or continue the  
 7           license or appointment of a title insurance agent or  
 8           agency; amending s. 626.8473, F.S.; requiring an  
 9           attorney serving as a title or real estate settlement  
 10          agent to deposit and maintain certain funds in a  
 11          separate trust account and permit the account to be  
 12          audited by the applicable title insurer, unless  
 13          prohibited by the rules of The Florida Bar; amending  
 14          s. 627.777, F.S.; providing procedures and  
 15          requirements relating to the approval or disapproval  
 16          of title insurance forms by the office; amending s.  
 17          627.782, F.S.; requiring title insurance agencies and  
 18          insurers to submit specified information to the office  
 19          to assist in the analysis of title insurance premium  
 20          rates, title search costs, and the condition of the  
 21          title insurance industry; providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1. Paragraph (d) of subsection (3) of section  
 26   626.2815, Florida Statutes, is amended, and paragraph (1) is  
 27   added to that subsection, to read:

28           626.2815 Continuing education required; application;

29 exceptions; requirements; penalties.-

30 (3)

31 (d) Any person who holds a license as a customer  
 32 representative, limited customer representative, ~~title agent,~~  
 33 motor vehicle physical damage and mechanical breakdown insurance  
 34 agent, crop or hail and multiple-peril crop insurance agent, or  
 35 as an industrial fire insurance or burglary insurance agent and  
 36 who is not a licensed life or health insurance agent, must ~~shall~~  
 37 ~~be required to~~ complete 10 hours of continuing education courses  
 38 every 2 years.

39 (1) Any person who holds a license as a title insurance  
 40 agent must complete a minimum of 10 hours of continuing  
 41 education courses every 2 years in title insurance and escrow  
 42 management specific to this state and approved by the  
 43 department, which shall include at least 1.5 hours of continuing  
 44 education on the subject matter of ethics, rules, or compliance  
 45 with state and federal regulations relating to title insurance  
 46 and closing services.

47  
 48 Section 2. Subsection (11) is added to section 626.8437,  
 49 Florida Statutes, to read:

50 626.8437 Grounds for denial, suspension, revocation, or  
 51 refusal to renew license or appointment.-The department shall  
 52 deny, suspend, revoke, or refuse to renew or continue the  
 53 license or appointment of any title insurance agent or agency,  
 54 and it shall suspend or revoke the eligibility to hold a license  
 55 or appointment of such person, if it finds that as to the  
 56 applicant, licensee, appointee, or any principal thereof, any

57 one or more of the following grounds exist:

58 (11) Failure to timely submit data as required by s.  
 59 627.782, unless a rule challenge has been filed pursuant to s.  
 60 120.56 as to the form or substance of data to be provided.

61 Section 3. Subsection (8) is added to section 626.8473,  
 62 Florida Statutes, to read: 626.8473 Escrow; trust fund.—

63 (8) An attorney shall deposit and maintain all funds  
 64 received in connection with transactions in which the attorney  
 65 is serving as a title or real estate settlement agent into a  
 66 separate trust account that is maintained exclusively for funds  
 67 received in connection with such transactions and permit the  
 68 account to be audited by its title insurers, unless maintaining  
 69 funds in the separate account for a particular client would  
 70 violate applicable rules of The Florida Bar.

71 Section 4. Section 627.777, Florida Statutes, is amended to  
 72 read:

73 627.777 Approval of forms.—

74 (1) A title insurer may not issue or agree to issue any  
 75 form of title insurance commitment, title insurance policy,  
 76 other contract of title insurance, or related form until it is  
 77 filed with and approved by the office. The office may not  
 78 disapprove a title guarantee or policy form on the ground that  
 79 it has on it a blank form for an attorney's opinion on the  
 80 title.

81 (2) The office shall approve or disapprove a form filed for  
 82 approval within 180 days after receipt.

83 (3) When the office approves any form, it shall determine  
 84 if the current rate in effect applies or if the coverages

85 require the adoption of a rule pursuant to s. 627.782.

86 (4) The office may revoke approval of any form after  
87 providing 180 days' notice to the title insurer.

88 (5) An insurer may not achieve a competitive advantage over  
89 any other insurer, agency, or agent as to rates or forms. If a  
90 form or rate is approved for an insurer, the office shall  
91 expeditiously approve the forms of other insurers who apply for  
92 approval if those forms contain identical coverages, rates, and  
93 deviations which have been approved under s. 627.783.

94 Section 5. Subsection (8) of section 627.782, Florida  
95 Statutes, is amended to read:

96 627.782 Adoption of rates.—

97 (8) Each title insurance agency and insurer licensed to do  
98 business in this state and each insurer's direct or retail  
99 business in this state shall maintain and submit information,  
100 including revenue, loss, and expense data, as the office  
101 determines necessary to assist in the analysis of title  
102 insurance premium rates, title search costs, and the condition  
103 of the title insurance industry in this state. This information  
104 must be transmitted to the office annually by March 31 of the  
105 year after the reporting year. The commission shall adopt rules  
106 to assist in the collection and analysis of the data from the  
107 title insurance industry. ~~The commission may, by rule, require~~  
108 ~~licensees under this part to annually submit statistical~~  
109 ~~information, including loss and expense data, as the department~~  
110 ~~determines to be necessary to analyze premium rates, retention~~  
111 ~~rates, and the condition of the title insurance industry.~~

112 Section 6. This act shall take effect July 1, 2012.



1 A bill to be entitled

2 An act relating to the Florida Hurricane Catastrophe  
 3 Fund; amending s. 215.555, F.S.; revising the  
 4 definitions of "retention" and "corporation";  
 5 providing for calculation of an insurer's  
 6 reimbursement premium and retention under the  
 7 reimbursement contract; revising coverage levels  
 8 available under the reimbursement contract; revising  
 9 aggregate coverage limits; providing for the phase-in  
 10 of changes to coverage levels and limits; revising the  
 11 cash build-up factor included in reimbursement  
 12 premiums; providing for phase-in; reducing maximum  
 13 allowable emergency assessments; changing the name of  
 14 the Florida Hurricane Catastrophe Fund Finance  
 15 Corporation; repealing provisions related to temporary  
 16 emergency options for additional coverage; terminating  
 17 the temporary increase in coverage limits option at  
 18 the end of the 2011-2012 contract year; limiting to  
 19 the 2012-2013 contract year provisions relating to the  
 20 TICL options addendum, TICL reimbursement premiums,  
 21 and the claims-paying capacity of the fund, to  
 22 conform; amending s. 627.0629, F.S.; conforming a  
 23 cross-reference; providing an effective date.

24  
 25 Be It Enacted by the Legislature of the State of Florida:

26  
 27 Section 1. Paragraphs (e) and (n) of subsection (2),  
 28 paragraphs (b) and (c) of subsection (4), paragraph (b) of



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29 subsection (5), paragraphs (b) and (d) of subsection (6), and  
30 subsections (16), (17), and (18) of section 215.555, Florida  
31 Statutes, are amended to read:

32 215.555 Florida Hurricane Catastrophe Fund.—

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

34 (e) "Retention" means the amount of losses below which an  
35 insurer is not entitled to reimbursement from the fund. An  
36 insurer's retention shall be calculated as follows:

37 1.a. The board shall calculate and report to each insurer  
38 the retention multiples for that year.

39 (I) For the contract year beginning June 1, 2005, the  
40 retention multiple shall be equal to \$4.5 billion divided by the  
41 total estimated reimbursement premium for the contract year; for  
42 subsequent years, up to and including the 2012-2013 contract  
43 year, the retention multiple shall be equal to \$4.5 billion,  
44 adjusted based upon the reported exposure for the contract year  
45 occurring 2 years before the particular contract year to reflect  
46 the percentage growth in exposure to the fund for covered  
47 policies since 2004, divided by the total estimated  
48 reimbursement premium for the contract year.

49 (II) For the contract year beginning June 1, 2013, the  
50 retention multiple shall be equal to \$8 billion divided by the  
51 total estimated reimbursement premium for the contract year. For  
52 subsequent years, the retention multiple shall be equal to \$8  
53 billion, adjusted based upon the reported exposure for the  
54 contract year occurring 2 years before the particular contract  
55 year to reflect the percentage growth in exposure to the fund  
56 for covered policies since 2011, divided by the total

57 reimbursement premium for the contract year.

58 b. For the 2012-2013 contract year, total reimbursement  
 59 premium for purposes of the calculation under this subparagraph  
 60 shall be estimated using the assumption that all insurers have  
 61 selected the 90-percent coverage level.

62 c. In order to implement the phase-in of reduced coverage  
 63 levels as provided in paragraph (4) (b), total reimbursement  
 64 premium for purposes of the calculation under this subparagraph  
 65 shall be estimated using the following assumptions:

66 (I) For the 2013-2014 contract year, the assumption is  
 67 that all insurers have selected the 85-percent coverage level.

68 (II) For the 2014-2015 contract year, the assumption is  
 69 that all insurers have selected the 80-percent coverage level.

70 (III) For the 2015-2016 contract year and subsequent  
 71 contract years, the assumption is that all insurers have  
 72 selected the 75-percent coverage level.

73 2. The retention multiple as determined under subparagraph  
 74 1. shall be adjusted to reflect the coverage level elected by  
 75 the insurer.

76 a. For an insurer electing the maximum coverage level  
 77 available under paragraph (4) (b) for a particular contract year  
 78 ~~For insurers electing the 90-percent coverage level, the~~  
 79 adjusted retention multiple is 100 percent of the amount  
 80 determined under subparagraph 1.

81 b. In order to implement the phase-in of reduced coverage  
 82 levels as provided in paragraph (4) (b), for an insurer electing  
 83 a coverage level other than the maximum coverage level, the  
 84 adjusted retention multiple is as follows:

85        (I) With respect to the 2012-2013 contract year, for an  
 86 insurer ~~For insurers~~ electing the 75-percent coverage level, the  
 87 retention multiple is 90/75ths ~~120 percent~~ of the amount  
 88 determined under subparagraph 1., and for an insurer ~~For~~  
 89 ~~insurers~~ electing the 45-percent coverage level, the adjusted  
 90 retention multiple is 90/45ths ~~200 percent~~ of the amount  
 91 determined under subparagraph 1.

92        (II) With respect to the 2013-2014 contract year, for an  
 93 insurer electing the 75-percent coverage level, the retention  
 94 multiple is 85/75ths of the amount determined under subparagraph  
 95 1., and for an insurer electing the 45-percent coverage level,  
 96 the retention multiple is 85/45ths of the amount determined  
 97 under subparagraph 1.

98        (III) With respect to the 2014-2015 contract year, for an  
 99 insurer electing the 75-percent coverage level, the retention  
 100 multiple is 80/75ths of the amount determined under subparagraph  
 101 1., and for an insurer electing the 45-percent coverage level,  
 102 the retention multiple is 80/45ths of the amount determined  
 103 under subparagraph 1.

104        (IV) With respect to the 2015-2016 contract year and  
 105 subsequent contract years, for an insurer electing the 75-  
 106 percent coverage level, the retention multiple is the amount  
 107 determined under subparagraph 1., and for an insurer electing  
 108 the 45-percent coverage level, the retention multiple is  
 109 75/45ths of the amount determined under subparagraph 1.

110        3. An insurer shall determine its provisional retention by  
 111 multiplying its provisional reimbursement premium by the  
 112 applicable adjusted retention multiple and shall determine its

113 actual retention by multiplying its actual reimbursement premium  
 114 by the applicable adjusted retention multiple.

115 4. For insurers who experience multiple covered events  
 116 causing loss during the contract year, beginning June 1, 2005,  
 117 each insurer's full retention shall be applied to each of the  
 118 covered events causing the two largest losses for that insurer.  
 119 For each other covered event resulting in losses, the insurer's  
 120 retention shall be reduced to one-third of the full retention.  
 121 The reimbursement contract shall provide for the reimbursement  
 122 of losses for each covered event based on the full retention  
 123 with adjustments made to reflect the reduced retentions on or  
 124 after January 1 of the contract year provided the insurer  
 125 reports its losses as specified in the reimbursement contract.

126 (n) "Corporation" means the State Board of Administration  
 127 ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation created  
 128 in paragraph (6) (d).

129 (4) REIMBURSEMENT CONTRACTS.—

130 (b)1.a. The contract shall contain a promise by the board  
 131 to reimburse the insurer for a specified percentage ~~45 percent,~~  
 132 ~~75 percent, or 90 percent~~ of its losses from each covered event  
 133 in excess of the insurer's retention, plus 5 percent of the  
 134 reimbursed losses to cover loss adjustment expenses.

135 b. The available coverage levels are as follows:

136 (I) For the 2012-2013 contract year, 90 percent, 75  
 137 percent, and 45 percent.

138 (II) For the 2013-2014 contract year, 85 percent, 75  
 139 percent, and 45 percent.

140 (III) For the 2014-2015 contract year, 80 percent, 75

141 percent, and 45 percent.

142 (IV) For the 2015-2016 contract year and subsequent  
 143 contract years, 75 percent and 45 percent.

144 2.a. The insurer must elect one of the percentage coverage  
 145 levels specified in this paragraph and may, upon renewal of a  
 146 reimbursement contract, elect a lower percentage coverage level  
 147 if no revenue bonds issued under subsection (6) after a covered  
 148 event are outstanding, or elect a higher percentage coverage  
 149 level, regardless of whether or not revenue bonds are  
 150 outstanding. All members of an insurer group must elect the same  
 151 percentage coverage level. Any joint underwriting association,  
 152 risk apportionment plan, or other entity created under s.  
 153 627.351 must elect the maximum ~~90-percent~~ coverage level  
 154 available under subparagraph 1.

155 b. In order to implement the phase-in of reduced coverage  
 156 levels as provided in subparagraph 1., and notwithstanding any  
 157 provisions of sub-subparagraph a. to the contrary, if revenue  
 158 bonds issued under subsection (6) after a covered event are  
 159 outstanding and the insurer has elected the maximum coverage  
 160 level available under subparagraph 1., the insurer must, upon  
 161 renewal of the reimbursement contract, elect the maximum  
 162 coverage level available under subparagraph 1. for the renewal  
 163 contract year.

164 3. The contract shall provide that reimbursement amounts  
 165 shall not be reduced by reinsurance paid or payable to the  
 166 insurer from other sources.

167 4. Notwithstanding any other provision contained in this  
 168 section, the board shall make available to insurers that

169 purchased coverage provided by this subparagraph in 2008,  
 170 insurers qualifying as limited apportionment companies under s.  
 171 627.351(6)(c), and insurers that have been approved to  
 172 participate in the Insurance Capital Build-Up Incentive Program  
 173 pursuant to s. 215.5595 a contract or contract addendum that  
 174 provides an additional amount of reimbursement coverage of up to  
 175 \$10 million. The premium to be charged for this additional  
 176 reimbursement coverage shall be 50 percent of the additional  
 177 reimbursement coverage provided, which shall include one prepaid  
 178 reinstatement. The minimum retention level that an eligible  
 179 participating insurer must retain associated with this  
 180 additional coverage layer is 30 percent of the insurer's surplus  
 181 ~~as of December 31, 2008, for the 2009-2010 contract year; as of~~  
 182 ~~December 31, 2009, for the 2010-2011 contract year; and as of~~  
 183 December 31, 2010, for the 2011-2012 contract year. This  
 184 coverage shall be in addition to all other coverage that may be  
 185 provided under this section. The coverage provided by the fund  
 186 under this subparagraph shall be in addition to the claims-  
 187 paying capacity as defined in subparagraph (c)1., but only with  
 188 respect to those insurers that select the additional coverage  
 189 option and meet the requirements of this subparagraph. The  
 190 claims-paying capacity with respect to all other participating  
 191 insurers and limited apportionment companies that do not select  
 192 the additional coverage option shall be limited to their  
 193 reimbursement premium's proportionate share of the actual  
 194 claims-paying capacity otherwise defined in subparagraph (c)1.  
 195 and as provided for under the terms of the reimbursement  
 196 contract. The optional coverage retention as specified shall be

197 accessed before the mandatory coverage under the reimbursement  
 198 contract, but once the limit of coverage selected under this  
 199 option is exhausted, the insurer's retention under the mandatory  
 200 coverage will apply. This coverage will apply and be paid  
 201 concurrently with mandatory coverage. This subparagraph expires  
 202 on May 31, 2012.

203 (c)1. The contract shall also provide that the obligation  
 204 of the board with respect to all contracts covering a particular  
 205 contract year shall not exceed the actual claims-paying capacity  
 206 of the fund up to the limit specified in this subparagraph.

207 a. For the 2012-2013 contract year, the limit is \$17  
 208 billion.

209 b. For the 2013-2014 contract year, the limit is \$15.5  
 210 billion.

211 c. For the 2014-2015 contract year, the limit is \$14  
 212 billion.

213 d. For the 2015-2016 contract year and subsequent contract  
 214 years, the limit is \$12 billion.

215 e. For contract years after the 2015-2016 contract year,  
 216 if a limit of \$17 billion for that contract year, unless the  
 217 board determines that there is sufficient estimated claims-  
 218 paying capacity to provide \$12 \$17 billion of capacity for the  
 219 current contract year and an additional \$12 \$17 billion of  
 220 capacity for subsequent contract years. If the board makes such  
 221 a determination, the estimated claims-paying capacity for the  
 222 particular contract year shall be determined by adding to the  
 223 \$12 \$17 billion limit one-half of the fund's estimated claims-  
 224 paying capacity in excess of \$24 \$34 billion. However, the

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225 dollar growth in the limit may not increase in any year by an  
 226 amount greater than the dollar growth of the balance of the fund  
 227 as of December 31, ~~less any premiums or interest attributable to~~  
 228 ~~optional coverage~~, as defined by rule, which occurred over the  
 229 prior calendar year.

230 2. In May and October of the contract year, the board  
 231 shall publish in the Florida Administrative Weekly a statement  
 232 of the fund's estimated borrowing capacity, the fund's estimated  
 233 claims-paying capacity, and the projected balance of the fund as  
 234 of December 31. After the end of each calendar year, the board  
 235 shall notify insurers of the estimated borrowing capacity,  
 236 estimated claims-paying capacity, and the balance of the fund as  
 237 of December 31 to provide insurers with data necessary to assist  
 238 them in determining their retention and projected payout from  
 239 the fund for loss reimbursement purposes. In conjunction with  
 240 the development of the premium formula, as provided for in  
 241 subsection (5), the board shall publish factors or multiples  
 242 that assist insurers in determining their retention and  
 243 projected payout for the next contract year. For all regulatory  
 244 and reinsurance purposes, an insurer may calculate its projected  
 245 payout from the fund as its share of the total fund premium for  
 246 the current contract year multiplied by the sum of the projected  
 247 balance of the fund as of December 31 and the estimated  
 248 borrowing capacity for that contract year as reported under this  
 249 subparagraph.

250 (5) REIMBURSEMENT PREMIUMS.—

251 (b)1. The State Board of Administration shall select an  
 252 independent consultant to develop a formula for determining the



253 actuarially indicated premium to be paid to the fund. The  
254 formula shall specify, for each zip code or other limited  
255 geographical area, the amount of premium to be paid by an  
256 insurer for each \$1,000 of insured value under covered policies  
257 in that zip code or other area. In establishing premiums, the  
258 board shall consider the coverage elected under paragraph (4)(b)  
259 and any factors that tend to enhance the actuarial  
260 sophistication of ratemaking for the fund, including  
261 deductibles, type of construction, type of coverage provided,  
262 relative concentration of risks, and other such factors deemed  
263 by the board to be appropriate.

264 2. The formula must provide for a cash build-up factor as  
265 specified in this subparagraph. ~~For the 2009-2010 contract year,~~  
266 ~~the factor is 5 percent.~~ ~~For the 2010-2011 contract year, the~~  
267 ~~factor is 10 percent.~~

268 a. For the 2011-2012 contract year, the factor is 15  
269 percent.

270 b. For the 2012-2013 contract year, the factor is 20  
271 percent.

272 c. For the 2013-2014 contract year ~~and thereafter,~~ the  
273 factor is 25 percent.

274 d For the 2014-2015 contract year, the factor is 30  
275 percent.

276 e. For the 2015-2016 contract year, the factor is 35  
277 percent.

278 f. For the 2016-2017 contract year, the factor is 40  
279 percent.

280 g. For the 2017-2018 contract year, the factor is 45

281 percent.

282 h. For the 2018-2019 contract year and subsequent contract  
 283 years, the factor is 50 percent.

284 3. The formula may provide for a procedure to determine  
 285 the premiums to be paid by new insurers that begin writing  
 286 covered policies after the beginning of a contract year, taking  
 287 into consideration when the insurer starts writing covered  
 288 policies, the potential exposure of the insurer, the potential  
 289 exposure of the fund, the administrative costs to the insurer  
 290 and to the fund, and any other factors deemed appropriate by the  
 291 board. The formula must be approved by unanimous vote of the  
 292 board. The board may, at any time, revise the formula pursuant  
 293 to the procedure provided in this paragraph.

294 (6) REVENUE BONDS.—

295 (b) Emergency assessments—

296 1. If the board determines that the amount of revenue  
 297 produced under subsection (5) is insufficient to fund the  
 298 obligations, costs, and expenses of the fund and the  
 299 corporation, including repayment of revenue bonds and that  
 300 portion of the debt service coverage not met by reimbursement  
 301 premiums, the board shall direct the Office of Insurance  
 302 Regulation to levy, by order, an emergency assessment on direct  
 303 premiums for all property and casualty lines of business in this  
 304 state, including property and casualty business of surplus lines  
 305 insurers regulated under part VIII of chapter 626, but not  
 306 including any workers' compensation premiums or medical  
 307 malpractice premiums. As used in this subsection, the term  
 308 "property and casualty business" includes all lines of business

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309 identified on Form 2, Exhibit of Premiums and Losses, in the  
 310 annual statement required of authorized insurers by s. 624.424  
 311 and any rule adopted under this section, except for those lines  
 312 identified as accident and health insurance and except for  
 313 policies written under the National Flood Insurance Program. The  
 314 assessment shall be specified as a percentage of direct written  
 315 premium and is subject to annual adjustments by the board in  
 316 order to meet debt obligations. The same percentage shall apply  
 317 to all policies in lines of business subject to the assessment  
 318 issued or renewed during the 12-month period beginning on the  
 319 effective date of the assessment.

320 2.a. A premium is not subject to an annual assessment  
 321 under this paragraph in excess of 6 percent of premium with  
 322 respect to obligations arising out of losses attributable to any  
 323 one contract year prior to the 2015-2016 contract year, and a  
 324 premium is not subject to an aggregate annual assessment under  
 325 this paragraph in excess of 10 percent of premium if all of the  
 326 losses that generated the obligations were attributable to  
 327 contract years prior to the 2015-2016 contract year. An annual  
 328 assessment under this paragraph shall continue as long as the  
 329 revenue bonds issued with respect to which the assessment was  
 330 imposed are outstanding, including any bonds the proceeds of  
 331 which were used to refund the revenue bonds, unless adequate  
 332 provision has been made for the payment of the bonds under the  
 333 documents authorizing issuance of the bonds.

334 b. Except as provided in sub-subparagraph a., a premium is  
 335 not subject to an annual assessment under this paragraph in  
 336 excess of 5 percent of premium with respect to obligations

337 arising out of losses attributable to any one contract year, and  
 338 a premium is not subject to an aggregate annual assessment under  
 339 this paragraph in excess of 8 percent of premium. An annual  
 340 assessment under this paragraph shall continue as long as the  
 341 revenue bonds issued with respect to which the assessment was  
 342 imposed are outstanding, including any bonds the proceeds of  
 343 which were used to refund the revenue bonds, unless adequate  
 344 provision has been made for the payment of the bonds under the  
 345 documents authorizing issuance of the bonds.

346 3. Emergency assessments shall be collected from  
 347 policyholders. Emergency assessments shall be remitted by  
 348 insurers as a percentage of direct written premium for the  
 349 preceding calendar quarter as specified in the order from the  
 350 Office of Insurance Regulation. The office shall verify the  
 351 accurate and timely collection and remittance of emergency  
 352 assessments and shall report the information to the board in a  
 353 form and at a time specified by the board. Each insurer  
 354 collecting assessments shall provide the information with  
 355 respect to premiums and collections as may be required by the  
 356 office to enable the office to monitor and verify compliance  
 357 with this paragraph.

358 4. With respect to assessments of surplus lines premiums,  
 359 each surplus lines agent shall collect the assessment at the  
 360 same time as the agent collects the surplus lines tax required  
 361 by s. 626.932, and the surplus lines agent shall remit the  
 362 assessment to the Florida Surplus Lines Service Office created  
 363 by s. 626.921 at the same time as the agent remits the surplus  
 364 lines tax to the Florida Surplus Lines Service Office. The

365 emergency assessment on each insured procuring coverage and  
 366 filing under s. 626.938 shall be remitted by the insured to the  
 367 Florida Surplus Lines Service Office at the time the insured  
 368 pays the surplus lines tax to the Florida Surplus Lines Service  
 369 Office. The Florida Surplus Lines Service Office shall remit the  
 370 collected assessments to the fund or corporation as provided in  
 371 the order levied by the Office of Insurance Regulation. The  
 372 Florida Surplus Lines Service Office shall verify the proper  
 373 application of such emergency assessments and shall assist the  
 374 board in ensuring the accurate and timely collection and  
 375 remittance of assessments as required by the board. The Florida  
 376 Surplus Lines Service Office shall annually calculate the  
 377 aggregate written premium on property and casualty business,  
 378 other than workers' compensation and medical malpractice,  
 379 procured through surplus lines agents and insureds procuring  
 380 coverage and filing under s. 626.938 and shall report the  
 381 information to the board in a form and at a time specified by  
 382 the board.

383       5.a. Any assessment authority not used for a particular  
 384 contract year may be used for a subsequent contract year. If,  
 385 for a subsequent contract year, the board determines that the  
 386 amount of revenue produced under subsection (5) is insufficient  
 387 to fund the obligations, costs, and expenses of the fund and the  
 388 corporation, including repayment of revenue bonds and that  
 389 portion of the debt service coverage not met by reimbursement  
 390 premiums, the board shall direct the Office of Insurance  
 391 Regulation to levy an emergency assessment up to an amount not  
 392 exceeding the amount of unused assessment authority from a

393 previous contract year or years, plus an additional 4 percent,  
 394 ~~if provided that~~ the assessments in the aggregate do not exceed  
 395 the limits specified in subparagraph 2. and all of the losses  
 396 that generated the obligations were attributable to contract  
 397 years prior to the 2015-2016 contract year.

398 b. Except as provided in sub-subparagraph a., any  
 399 assessment authority not used for a particular contract year may  
 400 be used for a subsequent contract year. If, for a subsequent  
 401 contract year, the board determines that the amount of revenue  
 402 produced under subsection (5) is insufficient to fund the  
 403 obligations, costs, and expenses of the fund and the  
 404 corporation, including repayment of revenue bonds and that  
 405 portion of the debt service coverage not met by reimbursement  
 406 premiums, the board shall direct the Office of Insurance  
 407 Regulation to levy an emergency assessment up to an amount not  
 408 exceeding the amount of unused assessment authority from a  
 409 previous contract year or years, plus an additional 3 percent,  
 410 if the assessments in the aggregate do not exceed the limits  
 411 specified in subparagraph 2.

412 6. The assessments otherwise payable to the corporation  
 413 under this paragraph shall be paid to the fund unless and until  
 414 the Office of Insurance Regulation and the Florida Surplus Lines  
 415 Service Office have received from the corporation and the fund a  
 416 notice, which shall be conclusive and upon which they may rely  
 417 without further inquiry, that the corporation has issued bonds  
 418 and the fund has no agreements in effect with local governments  
 419 under paragraph (c). On or after the date of the notice and  
 420 until the date the corporation has no bonds outstanding, the

421 fund shall have no right, title, or interest in or to the  
 422 assessments, except as provided in the fund's agreement with the  
 423 corporation.

424 7. Emergency assessments are not premium and are not  
 425 subject to the premium tax, to the surplus lines tax, to any  
 426 fees, or to any commissions. An insurer is liable for all  
 427 assessments that it collects and must treat the failure of an  
 428 insured to pay an assessment as a failure to pay the premium. An  
 429 insurer is not liable for uncollectible assessments.

430 8. When an insurer is required to return an unearned  
 431 premium, it shall also return any collected assessment  
 432 attributable to the unearned premium. A credit adjustment to the  
 433 collected assessment may be made by the insurer with regard to  
 434 future remittances that are payable to the fund or corporation,  
 435 but the insurer is not entitled to a refund.

436 9. When a surplus lines insured or an insured who has  
 437 procured coverage and filed under s. 626.938 is entitled to the  
 438 return of an unearned premium, the Florida Surplus Lines Service  
 439 Office shall provide a credit or refund to the agent or such  
 440 insured for the collected assessment attributable to the  
 441 unearned premium prior to remitting the emergency assessment  
 442 collected to the fund or corporation.

443 10. The exemption of medical malpractice insurance  
 444 premiums from emergency assessments under this paragraph is  
 445 repealed May 31, 2013, and medical malpractice insurance  
 446 premiums shall be subject to emergency assessments attributable  
 447 to loss events occurring in the contract years commencing on  
 448 June 1, 2013.

449 (d) State Board of Administration ~~Florida Hurricane~~  
 450 ~~Catastrophe Fund~~ Finance Corporation.-

451 1. In addition to the findings and declarations in  
 452 subsection (1), the Legislature also finds and declares that:

453 a. The public benefits corporation created under this  
 454 paragraph will provide a mechanism necessary for the cost-  
 455 effective and efficient issuance of bonds. This mechanism will  
 456 eliminate unnecessary costs in the bond issuance process,  
 457 thereby increasing the amounts available to pay reimbursement  
 458 for losses to property sustained as a result of hurricane  
 459 damage.

460 b. The purpose of such bonds is to fund reimbursements  
 461 through the Florida Hurricane Catastrophe Fund to pay for the  
 462 costs of construction, reconstruction, repair, restoration, and  
 463 other costs associated with damage to properties of  
 464 policyholders of covered policies due to the occurrence of a  
 465 hurricane.

466 c. The efficacy of the financing mechanism will be  
 467 enhanced by the corporation's ownership of the assessments, by  
 468 the insulation of the assessments from possible bankruptcy  
 469 proceedings, and by covenants of the state with the  
 470 corporation's bondholders.

471 2.a. There is created a public benefits corporation, which  
 472 is an instrumentality of the state, to be known as the State  
 473 Board of Administration ~~Florida Hurricane Catastrophe Fund~~  
 474 Finance Corporation.

475 b. The corporation shall operate under a five-member board  
 476 of directors consisting of the Governor or a designee, the Chief



477 Financial Officer or a designee, the Attorney General or a  
 478 designee, the director of the Division of Bond Finance of the  
 479 State Board of Administration, and the Chief Operating Officer  
 480 ~~senior employee of the State Board of Administration~~ responsible  
 481 ~~for operations~~ of the Florida Hurricane Catastrophe Fund.

482 c. The corporation has all of the powers of corporations  
 483 under chapter 607 and under chapter 617, subject only to the  
 484 provisions of this subsection.

485 d. The corporation may issue bonds and engage in such  
 486 other financial transactions as are necessary to provide  
 487 sufficient funds to achieve the purposes of this section.

488 e. The corporation may invest in any of the investments  
 489 authorized under s. 215.47.

490 f. There shall be no liability on the part of, and no  
 491 cause of action shall arise against, any board members or  
 492 employees of the corporation for any actions taken by them in  
 493 the performance of their duties under this paragraph.

494 3.a. In actions under chapter 75 to validate any bonds  
 495 issued by the corporation, the notice required by s. 75.06 shall  
 496 be published only in Leon County and in two newspapers of  
 497 general circulation in the state, and the complaint and order of  
 498 the court shall be served only on the State Attorney of the  
 499 Second Judicial Circuit.

500 b. The state hereby covenants with holders of bonds of the  
 501 corporation that the state will not repeal or abrogate the power  
 502 of the board to direct the Office of Insurance Regulation to  
 503 levy the assessments and to collect the proceeds of the revenues  
 504 pledged to the payment of such bonds as long as any such bonds

505 remain outstanding unless adequate provision has been made for  
 506 the payment of such bonds pursuant to the documents authorizing  
 507 the issuance of such bonds.

508 4. The bonds of the corporation are not a debt of the  
 509 state or of any political subdivision, and neither the state nor  
 510 any political subdivision is liable on such bonds. The  
 511 corporation does not have the power to pledge the credit, the  
 512 revenues, or the taxing power of the state or of any political  
 513 subdivision. The credit, revenues, or taxing power of the state  
 514 or of any political subdivision shall not be deemed to be  
 515 pledged to the payment of any bonds of the corporation.

516 5.a. The property, revenues, and other assets of the  
 517 corporation; the transactions and operations of the corporation  
 518 and the income from such transactions and operations; and all  
 519 bonds issued under this paragraph and interest on such bonds are  
 520 exempt from taxation by the state and any political subdivision,  
 521 including the intangibles tax under chapter 199 and the income  
 522 tax under chapter 220. This exemption does not apply to any tax  
 523 imposed by chapter 220 on interest, income, or profits on debt  
 524 obligations owned by corporations other than the State Board of  
 525 Administration ~~Florida Hurricane Catastrophe Fund~~ Finance  
 526 Corporation.

527 b. All bonds of the corporation shall be and constitute  
 528 legal investments without limitation for all public bodies of  
 529 this state; for all banks, trust companies, savings banks,  
 530 savings associations, savings and loan associations, and  
 531 investment companies; for all administrators, executors,  
 532 trustees, and other fiduciaries; for all insurance companies and

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533 associations and other persons carrying on an insurance  
 534 business; and for all other persons who are now or may hereafter  
 535 be authorized to invest in bonds or other obligations of the  
 536 state and shall be and constitute eligible securities to be  
 537 deposited as collateral for the security of any state, county,  
 538 municipal, or other public funds. This sub-subparagraph shall be  
 539 considered as additional and supplemental authority and shall  
 540 not be limited without specific reference to this sub-  
 541 subparagraph.

542 6. The corporation and its corporate existence shall  
 543 continue until terminated by law; however, no such law shall  
 544 take effect as long as the corporation has bonds outstanding  
 545 unless adequate provision has been made for the payment of such  
 546 bonds pursuant to the documents authorizing the issuance of such  
 547 bonds. Upon termination of the existence of the corporation, all  
 548 of its rights and properties in excess of its obligations shall  
 549 pass to and be vested in the state.

550 7. The State Board of Administration Finance Corporation  
 551 is for all purposes the successor to the Florida Hurricane  
 552 Catastrophe Fund Finance Corporation.

553 ~~(16) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.~~

554 ~~(a) Findings and intent.~~

555 ~~1. The Legislature finds that:~~

556 ~~a. Because of temporary disruptions in the market for~~  
 557 ~~eatastrophic reinsurance, many property insurers were unable to~~  
 558 ~~procure reinsurance for the 2006 hurricane season with an~~  
 559 ~~attachment point below the insurers' respective Florida~~  
 560 ~~Hurricane Catastrophe Fund attachment points, were unable to~~

561 | ~~procure sufficient amounts of such reinsurance, or were able to~~  
 562 | ~~procure such reinsurance only by incurring substantially higher~~  
 563 | ~~costs than in prior years.~~

564 | ~~b. The reinsurance market problems were responsible, at~~  
 565 | ~~least in part, for substantial premium increases to many~~  
 566 | ~~consumers and increases in the number of policies issued by the~~  
 567 | ~~Citizens Property Insurance Corporation.~~

568 | ~~c. It is likely that the reinsurance market disruptions~~  
 569 | ~~will not significantly abate prior to the 2007 hurricane season.~~

570 | ~~2. It is the intent of the Legislature to create a~~  
 571 | ~~temporary emergency program, applicable to the 2007, 2008, and~~  
 572 | ~~2009 hurricane seasons, to address these market disruptions and~~  
 573 | ~~enable insurers, at their option, to procure additional coverage~~  
 574 | ~~from the Florida Hurricane Catastrophe Fund.~~

575 | ~~(b) Applicability of other provisions of this section. All~~  
 576 | ~~provisions of this section and the rules adopted under this~~  
 577 | ~~section apply to the program created by this subsection unless~~  
 578 | ~~specifically superseded by this subsection.~~

579 | ~~(c) Optional coverage. For the contract year commencing~~  
 580 | ~~June 1, 2007, and ending May 31, 2008, the contract year~~  
 581 | ~~commencing June 1, 2008, and ending May 31, 2009, and the~~  
 582 | ~~contract year commencing June 1, 2009, and ending May 31, 2010,~~  
 583 | ~~the board shall offer for each of such years the optional~~  
 584 | ~~coverage as provided in this subsection.~~

585 | ~~(d) Additional definitions. As used in this subsection,~~  
 586 | ~~the term:~~

587 | ~~1. "TEACO options" means the temporary emergency~~  
 588 | ~~additional coverage options created under this subsection.~~

589           ~~2. "TEACO insurer" means an insurer that has opted to~~  
 590 ~~obtain coverage under the TEACO options in addition to the~~  
 591 ~~coverage provided to the insurer under its reimbursement~~  
 592 ~~contract.~~

593           ~~3. "TEACO reimbursement premium" means the premium charged~~  
 594 ~~by the fund for coverage provided under the TEACO options.~~

595           ~~4. "TEACO retention" means the amount of losses below~~  
 596 ~~which a TEACO insurer is not entitled to reimbursement from the~~  
 597 ~~fund under the TEACO option selected. A TEACO insurer's~~  
 598 ~~retention options shall be calculated as follows:~~

599           ~~a. The board shall calculate and report to each TEACO~~  
 600 ~~insurer the TEACO retention multiples. There shall be three~~  
 601 ~~TEACO retention multiples for defining coverage. Each multiple~~  
 602 ~~shall be calculated by dividing \$3 billion, \$4 billion, or \$5~~  
 603 ~~billion by the total estimated mandatory FHCf reimbursement~~  
 604 ~~premium assuming all insurers selected the 90 percent coverage~~  
 605 ~~level.~~

606           ~~b. The TEACO retention multiples as determined under sub-~~  
 607 ~~subparagraph a. shall be adjusted to reflect the coverage level~~  
 608 ~~elected by the insurer. For insurers electing the 90 percent~~  
 609 ~~coverage level, the adjusted retention multiple is 100 percent~~  
 610 ~~of the amount determined under sub-subparagraph a. For insurers~~  
 611 ~~electing the 75 percent coverage level, the retention multiple~~  
 612 ~~is 120 percent of the amount determined under sub-subparagraph~~  
 613 ~~a. For insurers electing the 45 percent coverage level, the~~  
 614 ~~adjusted retention multiple is 200 percent of the amount~~  
 615 ~~determined under sub-subparagraph a.~~

616           ~~c. An insurer shall determine its provisional TEACO~~

617 ~~retention by multiplying its estimated mandatory FHCF~~  
 618 ~~reimbursement premium by the applicable adjusted TEACO retention~~  
 619 ~~multiple and shall determine its actual TEACO retention by~~  
 620 ~~multiplying its actual mandatory FHCF reimbursement premium by~~  
 621 ~~the applicable adjusted TEACO retention multiple.~~

622 ~~d. For TEACO insurers who experience multiple covered~~  
 623 ~~events causing loss during the contract year, the insurer's full~~  
 624 ~~TEACO retention shall be applied to each of the covered events~~  
 625 ~~causing the two largest losses for that insurer. For other~~  
 626 ~~covered events resulting in losses, the TEACO option does not~~  
 627 ~~apply and the insurer's retention shall be one-third of the full~~  
 628 ~~retention as calculated under paragraph (2)(c).~~

629 ~~5. "TEACO addendum" means an addendum to the reimbursement~~  
 630 ~~contract reflecting the obligations of the fund and TEACO~~  
 631 ~~insurers under the program created by this subsection.~~

632 ~~6. "FHCF" means the Florida Hurricane Catastrophe Fund.~~

633 ~~(c) TEACO addendum.~~

634 ~~1. The TEACO addendum shall provide for reimbursement of~~  
 635 ~~TEACO insurers for covered events occurring during the contract~~  
 636 ~~year, in exchange for the TEACO reimbursement premium paid into~~  
 637 ~~the fund under paragraph (f). Any insurer writing covered~~  
 638 ~~policies has the option of choosing to accept the TEACO addendum~~  
 639 ~~for any of the 3 contract years that the coverage is offered.~~

640 ~~2. The TEACO addendum shall contain a promise by the board~~  
 641 ~~to reimburse the TEACO insurer for 45 percent, 75 percent, or 90~~  
 642 ~~percent of its losses from each covered event in excess of the~~  
 643 ~~insurer's TEACO retention, plus 5 percent of the reimbursed~~  
 644 ~~losses to cover loss adjustment expenses. The percentage shall~~

645 ~~be the same as the coverage level selected by the insurer under~~  
 646 ~~paragraph (4) (b).~~

647 ~~3. The TEACO addendum shall provide that reimbursement~~  
 648 ~~amounts shall not be reduced by reinsurance paid or payable to~~  
 649 ~~the insurer from other sources.~~

650 ~~4. The TEACO addendum shall also provide that the~~  
 651 ~~obligation of the board with respect to all TEACO addenda shall~~  
 652 ~~not exceed an amount equal to two times the difference between~~  
 653 ~~the industry retention level calculated under paragraph (2) (e)~~  
 654 ~~and the \$3 billion, \$4 billion, or \$5 billion industry TEACO~~  
 655 ~~retention level options actually selected, but in no event may~~  
 656 ~~the board's obligation exceed the actual claims paying capacity~~  
 657 ~~of the fund plus the additional capacity created in paragraph~~  
 658 ~~(g). If the actual claims paying capacity and the additional~~  
 659 ~~capacity created under paragraph (g) fall short of the board's~~  
 660 ~~obligations under the reimbursement contract, each insurer's~~  
 661 ~~share of the fund's capacity shall be prorated based on the~~  
 662 ~~premium an insurer pays for its mandatory reimbursement coverage~~  
 663 ~~and the premium paid for its optional TEACO coverage as each~~  
 664 ~~such premium bears to the total premiums paid to the fund times~~  
 665 ~~the available capacity.~~

666 ~~5. The priorities, schedule, and method of reimbursements~~  
 667 ~~under the TEACO addendum shall be the same as provided under~~  
 668 ~~subsection (4).~~

669 ~~6. A TEACO insurer's maximum reimbursement for a single~~  
 670 ~~event shall be equal to the product of multiplying its mandatory~~  
 671 ~~FHCF premium by the difference between its FHCF retention~~  
 672 ~~multiple and its TEACO retention multiple under the TEACO option~~

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673 ~~selected and by the coverage selected under paragraph (4) (b),~~  
674 ~~plus an additional 5 percent for loss adjustment expenses. A~~  
675 ~~TEACO insurer's maximum reimbursement under the TEACO option~~  
676 ~~selected for a TEACO insurer's two largest events shall be twice~~  
677 ~~its maximum reimbursement for a single event.~~

678 ~~(f) TEACO reimbursement premiums.~~

679 ~~1. Each TEACO insurer shall pay to the fund, in the manner~~  
680 ~~and at the time provided in the reimbursement contract for~~  
681 ~~payment of reimbursement premiums, a TEACO reimbursement premium~~  
682 ~~calculated as specified in this paragraph.~~

683 ~~2. The insurer's TEACO reimbursement premium associated~~  
684 ~~with the \$3 billion retention option shall be equal to 85~~  
685 ~~percent of a TEACO insurer's maximum reimbursement for a single~~  
686 ~~event as calculated under subparagraph (c)6. The TEACO~~  
687 ~~reimbursement premium associated with the \$4 billion retention~~  
688 ~~option shall be equal to 80 percent of a TEACO insurer's maximum~~  
689 ~~reimbursement for a single event as calculated under~~  
690 ~~subparagraph (c)6. The TEACO premium associated with the \$5~~  
691 ~~billion retention option shall be equal to 75 percent of a TEACO~~  
692 ~~insurer's maximum reimbursement for a single event as calculated~~  
693 ~~under subparagraph (c)6.~~

694 ~~(g) Effect on claims paying capacity of the fund. For the~~  
695 ~~contract term commencing June 1, 2007, the contract year~~  
696 ~~commencing June 1, 2008, and the contract term beginning June 1,~~  
697 ~~2009, the program created by this subsection shall increase the~~  
698 ~~claims paying capacity of the fund as provided in subparagraph~~  
699 ~~(4) (c)1. by an amount equal to two times the difference between~~  
700 ~~the industry retention level calculated under paragraph (2) (e)~~



701 | ~~and the \$3 billion industry TEACO retention level specified in~~  
 702 | ~~sub-subparagraph (d)4.a. The additional capacity shall apply~~  
 703 | ~~only to the additional coverage provided by the TEACO option and~~  
 704 | ~~shall not otherwise affect any insurer's reimbursement from the~~  
 705 | ~~fund.~~

706 | (16)~~(17)~~ TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

707 | (a) Findings and intent.—

708 | 1. The Legislature finds that:

709 | a. Because of temporary disruptions in the market for  
 710 | catastrophic reinsurance, many property insurers were unable to  
 711 | procure sufficient amounts of reinsurance for the 2006 hurricane  
 712 | season or were able to procure such reinsurance only by  
 713 | incurring substantially higher costs than in prior years.

714 | b. The reinsurance market problems were responsible, at  
 715 | least in part, for substantial premium increases to many  
 716 | consumers and increases in the number of policies issued by  
 717 | Citizens Property Insurance Corporation.

718 | c. It is likely that the reinsurance market disruptions  
 719 | will not significantly abate prior to the 2007 hurricane season.

720 | 2. It is the intent of the Legislature to create options  
 721 | for insurers to purchase a temporary increased coverage limit  
 722 | above the statutorily determined limit in subparagraph (4)(c)1.,  
 723 | applicable for the ~~2007, 2008, 2009, 2010, 2011, 2012, and 2013~~  
 724 | hurricane season ~~seasons~~, to address market disruptions and  
 725 | enable insurers, at their option, to procure additional coverage  
 726 | from the Florida Hurricane Catastrophe Fund.

727 | (b) Applicability of other provisions of this section.—All  
 728 | provisions of this section and the rules adopted under this

729 section apply to the coverage created by this subsection unless  
 730 specifically superseded by provisions in this subsection.

731 (c) Optional coverage.—For the ~~2009-2010, 2010-2011,~~ 2011-  
 732 ~~2012, 2012-2013,~~ and ~~2013-2014~~ contract year ~~years~~, the board  
 733 shall offer, ~~for each of such years,~~ the optional coverage as  
 734 provided in this subsection.

735 (d) Additional definitions.—As used in this subsection,  
 736 the term:

- 737 1. "FHCF" means Florida Hurricane Catastrophe Fund.
- 738 2. "FHCF reimbursement premium" means the premium paid by  
 739 an insurer for its coverage as a mandatory participant in the  
 740 FHCF, but does not include additional premiums for optional  
 741 coverages.
- 742 3. "Payout multiple" means the number or multiple created  
 743 by dividing the statutorily defined claims-paying capacity as  
 744 determined in subparagraph (4)(c)1. by the aggregate  
 745 reimbursement premiums paid by all insurers estimated or  
 746 projected as of calendar year-end.
- 747 4. "TICL" means the temporary increase in coverage limit.
- 748 5. "TICL options" means the temporary increase in coverage  
 749 options created under this subsection.
- 750 6. "TICL insurer" means an insurer that has opted to  
 751 obtain coverage under the TICL options addendum in addition to  
 752 the coverage provided to the insurer under its FHCF  
 753 reimbursement contract.
- 754 7. "TICL reimbursement premium" means the premium charged  
 755 by the fund for coverage provided under the TICL option.
- 756 8. "TICL coverage multiple" means the coverage multiple

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757 when multiplied by an insurer's reimbursement premium that  
758 defines the temporary increase in coverage limit.

759 9. "TICL coverage" means the coverage for an insurer's  
760 losses above the insurer's statutorily determined claims-paying  
761 capacity based on the claims-paying limit in subparagraph  
762 (4)(c)1., which an insurer selects as its temporary increase in  
763 coverage from the fund under the TICL options selected. A TICL  
764 insurer's increased coverage limit options shall be calculated  
765 as follows:

766 a. ~~The board shall calculate and report to each TICL~~  
767 ~~insurer the TICL coverage multiples based on 12 options for~~  
768 ~~increasing the insurer's FHCF coverage limit. Each TICL coverage~~  
769 ~~multiple shall be calculated by dividing \$1 billion, \$2 billion,~~  
770 ~~\$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7 billion, \$8~~  
771 ~~billion, \$9 billion, \$10 billion, \$11 billion, or \$12 billion by~~  
772 ~~the total estimated aggregate FHCF reimbursement premiums for~~  
773 ~~the 2007-2008 contract year, and the 2008-2009 contract year.~~

774 b. ~~For the 2009-2010 contract year, the board shall~~  
775 ~~calculate and report to each TICL insurer the TICL coverage~~  
776 ~~multiples based on 10 options for increasing the insurer's FHCF~~  
777 ~~coverage limit. Each TICL coverage multiple shall be calculated~~  
778 ~~by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5~~  
779 ~~billion, \$6 billion, \$7 billion, \$8 billion, \$9 billion, and \$10~~  
780 ~~billion by the total estimated aggregate FHCF reimbursement~~  
781 ~~premiums for the 2009-2010 contract year.~~

782 c. ~~For the 2010-2011 contract year, the board shall~~  
783 ~~calculate and report to each TICL insurer the TICL coverage~~  
784 ~~multiples based on eight options for increasing the insurer's~~

785 ~~FHCF coverage limit. Each TICL coverage multiple shall be~~  
 786 ~~calculated by dividing \$1 billion, \$2 billion, \$3 billion, \$4~~  
 787 ~~billion, \$5 billion, \$6 billion, \$7 billion, and \$8 billion by~~  
 788 ~~the total estimated aggregate FHCF reimbursement premiums for~~  
 789 ~~the contract year.~~

790 ~~d. For the 2011-2012 contract year, the board shall~~  
 791 ~~calculate and report to each TICL insurer the TICL coverage~~  
 792 ~~multiples based on six options for increasing the insurer's FHCF~~  
 793 ~~coverage limit. Each TICL coverage multiple shall be calculated~~  
 794 ~~by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5~~  
 795 ~~billion, and \$6 billion by the total estimated aggregate FHCF~~  
 796 ~~reimbursement premiums for the 2011-2012 contract year.~~

797 a.e. For the 2012-2013 contract year, the board shall  
 798 calculate and report to each TICL insurer the TICL coverage  
 799 multiples based on four options for increasing the insurer's  
 800 FHCF coverage limit. Each TICL coverage multiple shall be  
 801 calculated by dividing \$1 billion, \$2 billion, \$3 billion, and  
 802 \$4 billion by the total estimated aggregate FHCF reimbursement  
 803 premiums for the 2012-2013 contract year.

804 ~~f. For the 2013-2014 contract year, the board shall~~  
 805 ~~calculate and report to each TICL insurer the TICL coverage~~  
 806 ~~multiples based on two options for increasing the insurer's FHCF~~  
 807 ~~coverage limit. Each TICL coverage multiple shall be calculated~~  
 808 ~~by dividing \$1 billion and \$2 billion by the total estimated~~  
 809 ~~aggregate FHCF reimbursement premiums for the 2013-2014 contract~~  
 810 ~~year.~~

811 b.g. The TICL insurer's increased coverage shall be the  
 812 FHCF reimbursement premium multiplied by the TICL coverage

813 multiple. In order to determine an insurer's total limit of  
 814 coverage, an insurer shall add its TICL coverage multiple to its  
 815 payout multiple. The total shall represent a number that, when  
 816 multiplied by an insurer's FHCF reimbursement premium for a  
 817 given reimbursement contract year, defines an insurer's total  
 818 limit of FHCF reimbursement coverage for that reimbursement  
 819 contract year.

820 10. "TICL options addendum" means an addendum to the  
 821 reimbursement contract reflecting the obligations of the fund  
 822 and insurers selecting an option to increase an insurer's FHCF  
 823 coverage limit.

824 (e) TICL options addendum.—

825 1. The TICL options addendum shall provide for  
 826 reimbursement of TICL insurers for covered events occurring  
 827 during the ~~2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-~~  
 828 ~~2014~~ contract year ~~years~~ in exchange for the TICL reimbursement  
 829 premium paid into the fund under paragraph (f) based on the TICL  
 830 coverage available and selected for each respective contract  
 831 year. Any insurer writing covered policies has the option of  
 832 selecting an increased limit of coverage under the TICL options  
 833 addendum and shall select such coverage at the time that it  
 834 executes the FHCF reimbursement contract.

835 2. The TICL addendum shall contain a promise by the board  
 836 to reimburse the TICL insurer for 45 percent, 75 percent, or 90  
 837 percent of its losses from each covered event in excess of the  
 838 insurer's retention, plus 5 percent of the reimbursed losses to  
 839 cover loss adjustment expenses. The percentage shall be the same  
 840 as the coverage level selected by the insurer under paragraph

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841 (4) (b) .

842 3. The TICL addendum shall provide that reimbursement  
843 amounts shall not be reduced by reinsurance paid or payable to  
844 the insurer from other sources.

845 4. The priorities, schedule, and method of reimbursements  
846 under the TICL addendum shall be the same as provided under  
847 subsection (4) .

848 (f) TICL reimbursement premiums.—Each TICL insurer shall  
849 pay to the fund, in the manner and at the time provided in the  
850 reimbursement contract for payment of reimbursement premiums, a  
851 TICL reimbursement premium determined as specified in subsection  
852 (5), except that a cash build-up factor does not apply to the  
853 TICL reimbursement premiums. However, the TICL reimbursement  
854 premium shall be increased in the ~~2009-2010 contract year by a~~  
855 ~~factor of two, in the 2010-2011 contract year by a factor of~~  
856 ~~three, in the 2011-2012 contract year by a factor of four, in~~  
857 ~~the 2012-2013 contract year by a factor of five, and in the~~  
858 ~~2013-2014 contract year by a factor of six.~~

859 (g) Effect on claims-paying capacity of the fund.—For the  
860 ~~2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014~~  
861 ~~contract year~~ years, the program created by this subsection  
862 shall increase the claims-paying capacity of the fund as  
863 provided in subparagraph (4) (c) 1. by an amount not to exceed \$4  
864 ~~\$12~~ billion and shall depend on the TICL coverage options  
865 available and selected for the specified contract year and the  
866 number of insurers that select the TICL optional coverage. The  
867 additional capacity shall apply only to the additional coverage  
868 provided under the TICL options and shall not otherwise affect

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869 any insurer's reimbursement from the fund if the insurer chooses  
870 not to select the temporary option to increase its limit of  
871 coverage under the FHCF.

872 (17)~~(18)~~ FACILITATION OF INSURERS' PRIVATE CONTRACT  
873 NEGOTIATIONS BEFORE THE START OF THE HURRICANE SEASON.—

874 (a) In addition to the legislative findings and intent  
875 provided elsewhere in this section, the Legislature finds that:

876 1.a. Because a regular session of the Legislature begins  
877 approximately 3 months before the start of a contract year and  
878 ends approximately 1 month before the start of a contract year,  
879 participants in the fund always face the possibility that  
880 legislative actions will change the coverage provided or offered  
881 by the fund with only a few days or weeks of advance notice.

882 b. The timing issues described in sub-subparagraph a. can  
883 create uncertainties and disadvantages for the residential  
884 property insurers that are required to participate in the fund  
885 when such insurers negotiate for the procurement of private  
886 reinsurance or other sources of capital.

887 c. Providing participating insurers with a greater degree  
888 of certainty regarding the coverage provided or offered by the  
889 fund and more time to negotiate for the procurement of private  
890 reinsurance or other sources of capital will enable the  
891 residential property insurance market to operate with greater  
892 stability.

893 d. Increased stability in the residential property  
894 insurance market serves a primary purpose of the fund and  
895 benefits Florida consumers by enabling insurers to operate more  
896 economically. In years when reinsurance and capital markets are

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897 | experiencing a capital shortage, the last-minute rush by  
898 | insurers only weeks before the start of the hurricane season to  
899 | procure adequate coverage in order to meet their capital  
900 | requirements can result in higher costs that are passed on to  
901 | Florida consumers. However, if more time is available,  
902 | residential property insurers should experience greater  
903 | competition for their business with a corresponding beneficial  
904 | effect for Florida consumers.

905 |         2. It is the intent of the Legislature to provide insurers  
906 | with the terms and conditions of the reimbursement contract well  
907 | in advance of the insurers' need to finalize their procurement  
908 | of private reinsurance or other sources of capital, and thereby  
909 | improve insurers' negotiating position with reinsurers and other  
910 | sources of capital.

911 |         3. It is also the intent of the Legislature that the board  
912 | publish the fund's maximum statutory limit of coverage and the  
913 | fund's total retention early enough that residential property  
914 | insurers can have the opportunity to better estimate their  
915 | coverage from the fund.

916 |         (b) The board shall adopt the reimbursement contract for a  
917 | particular contract year by February 1 of the immediately  
918 | preceding contract year. However, the reimbursement contract  
919 | shall be adopted as soon as possible in advance of the 2010-2011  
920 | contract year.

921 |         (c) Insurers writing covered policies shall execute the  
922 | reimbursement contract by March 1 of the immediately preceding  
923 | contract year, and the contract shall have an effective date as  
924 | defined in paragraph (2)(o).



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925 (d) The board shall publish in the Florida Administrative  
 926 Weekly the maximum statutory adjusted capacity for the mandatory  
 927 coverage for a particular contract year, the maximum statutory  
 928 coverage for any optional coverage for the particular contract  
 929 year, and the aggregate fund retention used to calculate  
 930 individual insurer's retention multiples for the particular  
 931 contract year no later than January 1 of the immediately  
 932 preceding contract year.

933 Section 2. Subsection (5) of section 627.0629, Florida  
 934 Statutes, is amended to read:

935 627.0629 Residential property insurance; rate filings.—

936 (5) In order to provide an appropriate transition period,  
 937 an insurer may implement an approved rate filing for residential  
 938 property insurance over a period of years. Such insurer must  
 939 provide an informational notice to the office setting out its  
 940 schedule for implementation of the phased-in rate filing. The  
 941 insurer may include in its rate the actual cost of private  
 942 market reinsurance that corresponds to available coverage of the  
 943 Temporary Increase in Coverage Limits, TICL, from the Florida  
 944 Hurricane Catastrophe Fund. The insurer may also include the  
 945 cost of reinsurance to replace the TICL reduction implemented  
 946 pursuant to s. 215.555(16)(d)9 ~~s. 215.555(17)(d)9~~. However, this  
 947 cost for reinsurance may not include any expense or profit load  
 948 or result in a total annual base rate increase in excess of 10  
 949 percent.

950 Section 3. This act shall take effect upon becoming a law.



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A bill to be entitled  
 An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; conforming cross-references; reducing to 2 percent from 6 percent the amount of the projected deficit in the coastal account for the prior calendar year which is recovered through regular assessments; requiring that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for the Citizens policyholder surcharge; requiring the Office of Insurance Regulation of the Financial Services Commission to notify assessable insurers and the Florida Surplus Lines Service Office of the dates assessable insurers shall collect and pay emergency assessments; removing reference to recoupment of residual market deficit assessments; requiring the board of governors to make a determination that an account has a projected deficit before it levies a Citizens policy holder surcharge; requiring that a limited apportionment company begin collecting regular assessments within 90 days and pay in full within 15 months after the assessment is levied; authorizing the Office of Insurance Regulation to assist the Citizens Property Insurance Corporation in the collection of assessments; replacing the term "market equalization surcharge" with the term "policyholder surcharge"; providing an effective date.

29  
30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Paragraphs (b), (c), (q), and (w) of subsection  
33 (6) of section 627.351, Florida Statutes, are amended to read:

34 627.351 Insurance risk apportionment plans.—

35 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

36 (b)1. All insurers authorized to write one or more subject  
37 lines of business in this state are subject to assessment by the  
38 corporation and, for the purposes of this subsection, are  
39 referred to collectively as "assessable insurers." Insurers  
40 writing one or more subject lines of business in this state  
41 pursuant to part VIII of chapter 626 are not assessable  
42 insurers, but insureds who procure one or more subject lines of  
43 business in this state pursuant to part VIII of chapter 626 are  
44 subject to assessment by the corporation and are referred to  
45 collectively as "assessable insureds." An insurer's assessment  
46 liability begins on the first day of the calendar year following  
47 the year in which the insurer was issued a certificate of  
48 authority to transact insurance for subject lines of business in  
49 this state and terminates 1 year after the end of the first  
50 calendar year during which the insurer no longer holds a  
51 certificate of authority to transact insurance for subject lines  
52 of business in this state.

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

56 (I) A personal lines account for personal residential

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57 policies issued by the corporation, or issued by the Residential  
 58 Property and Casualty Joint Underwriting Association and renewed  
 59 by the corporation, which provides comprehensive, multiperil  
 60 coverage on risks that are not located in areas eligible for  
 61 coverage by the Florida Windstorm Underwriting Association as  
 62 those areas were defined on January 1, 2002, and for policies  
 63 that do not provide coverage for the peril of wind on risks that  
 64 are located in such areas;

65 (II) A commercial lines account for commercial residential  
 66 and commercial nonresidential policies issued by the  
 67 corporation, or issued by the Residential Property and Casualty  
 68 Joint Underwriting Association and renewed by the corporation,  
 69 which provides coverage for basic property perils on risks that  
 70 are not located in areas eligible for coverage by the Florida  
 71 Windstorm Underwriting Association as those areas were defined  
 72 on January 1, 2002, and for policies that do not provide  
 73 coverage for the peril of wind on risks that are located in such  
 74 areas; and

75 (III) A coastal account for personal residential policies  
 76 and commercial residential and commercial nonresidential  
 77 property policies issued by the corporation, or transferred to  
 78 the corporation, which provides coverage for the peril of wind  
 79 on risks that are located in areas eligible for coverage by the  
 80 Florida Windstorm Underwriting Association as those areas were  
 81 defined on January 1, 2002. The corporation may offer policies  
 82 that provide multiperil coverage and the corporation shall  
 83 continue to offer policies that provide coverage only for the  
 84 peril of wind for risks located in areas eligible for coverage

85 in the coastal account. In issuing multiperil coverage, the  
 86 corporation may use its approved policy forms and rates for the  
 87 personal lines account. An applicant or insured who is eligible  
 88 to purchase a multiperil policy from the corporation may  
 89 purchase a multiperil policy from an authorized insurer without  
 90 prejudice to the applicant's or insured's eligibility to  
 91 prospectively purchase a policy that provides coverage only for  
 92 the peril of wind from the corporation. An applicant or insured  
 93 who is eligible for a corporation policy that provides coverage  
 94 only for the peril of wind may elect to purchase or retain such  
 95 policy and also purchase or retain coverage excluding wind from  
 96 an authorized insurer without prejudice to the applicant's or  
 97 insured's eligibility to prospectively purchase a policy that  
 98 provides multiperil coverage from the corporation. It is the  
 99 goal of the Legislature that there be an overall average savings  
 100 of 10 percent or more for a policyholder who currently has a  
 101 wind-only policy with the corporation, and an ex-wind policy  
 102 with a voluntary insurer or the corporation, and who obtains a  
 103 multiperil policy from the corporation. It is the intent of the  
 104 Legislature that the offer of multiperil coverage in the coastal  
 105 account be made and implemented in a manner that does not  
 106 adversely affect the tax-exempt status of the corporation or  
 107 creditworthiness of or security for currently outstanding  
 108 financing obligations or credit facilities of the coastal  
 109 account, the personal lines account, or the commercial lines  
 110 account. The coastal account must also include quota share  
 111 primary insurance under subparagraph (c)2. The area eligible for  
 112 coverage under the coastal account also includes the area within

113 Port Canaveral, which is bordered on the south by the City of  
 114 Cape Canaveral, bordered on the west by the Banana River, and  
 115 bordered on the north by Federal Government property.

116       b. The three separate accounts must be maintained as long  
 117 as financing obligations entered into by the Florida Windstorm  
 118 Underwriting Association or Residential Property and Casualty  
 119 Joint Underwriting Association are outstanding, in accordance  
 120 with the terms of the corresponding financing documents. If the  
 121 financing obligations are no longer outstanding, the corporation  
 122 may use a single account for all revenues, assets, liabilities,  
 123 losses, and expenses of the corporation. Consistent with this  
 124 subparagraph and prudent investment policies that minimize the  
 125 cost of carrying debt, the board shall exercise its best efforts  
 126 to retire existing debt or obtain the approval of necessary  
 127 parties to amend the terms of existing debt, so as to structure  
 128 the most efficient plan to consolidate the three separate  
 129 accounts into a single account.

130       c. Creditors of the Residential Property and Casualty  
 131 Joint Underwriting Association and the accounts specified in  
 132 sub-sub-subparagraphs a.(I) and (II) may have a claim against,  
 133 and recourse to, those accounts and no claim against, or  
 134 recourse to, the account referred to in sub-sub-subparagraph  
 135 a.(III). Creditors of the Florida Windstorm Underwriting  
 136 Association have a claim against, and recourse to, the account  
 137 referred to in sub-sub-subparagraph a.(III) and no claim  
 138 against, or recourse to, the accounts referred to in sub-sub-  
 139 subparagraphs a.(I) and (II).

140       d. Revenues, assets, liabilities, losses, and expenses not

141 | attributable to particular accounts shall be prorated among the  
 142 | accounts.

143 | e. The Legislature finds that the revenues of the  
 144 | corporation are revenues that are necessary to meet the  
 145 | requirements set forth in documents authorizing the issuance of  
 146 | bonds under this subsection.

147 | f. ~~No part of~~ The income of the corporation may not inure  
 148 | to the benefit of any private person.

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

150 | a. After accounting for the Citizens policyholder  
 151 | surcharge imposed under sub-subparagraph i. ~~h.~~, if the remaining  
 152 | projected deficit incurred in the coastal account in a  
 153 | particular calendar year:

154 | (I) Is not greater than 2 ½ percent of the aggregate  
 155 | statewide direct written premium for the subject lines of  
 156 | business for the prior calendar year, the entire deficit shall  
 157 | be recovered through regular assessments of assessable insurers  
 158 | under paragraph (q) and assessable insureds.

159 | (II) Exceeds 2 ½ percent of the aggregate statewide direct  
 160 | written premium for the subject lines of business for the prior  
 161 | calendar year, the corporation shall levy regular assessments on  
 162 | assessable insurers under paragraph (q) and on assessable  
 163 | insureds in an amount equal to the greater of 2 ½ percent of the  
 164 | projected deficit or 2 ½ percent of the aggregate statewide  
 165 | direct written premium for the subject lines of business for the  
 166 | prior calendar year. Any remaining projected deficit shall be  
 167 | recovered through emergency assessments under sub-subparagraph  
 168 | d. ~~e.~~



169           b. Each assessable insurer's share of the amount being  
 170 assessed under sub-subparagraph a. must be in the proportion  
 171 that the assessable insurer's direct written premium for the  
 172 subject lines of business for the year preceding the assessment  
 173 bears to the aggregate statewide direct written premium for the  
 174 subject lines of business for that year. The assessment  
 175 percentage applicable to each assessable insured is the ratio of  
 176 the amount being assessed under sub-subparagraph a. to the  
 177 aggregate statewide direct written premium for the subject lines  
 178 of business for the prior year. Assessments levied by the  
 179 corporation on assessable insurers under sub-subparagraph a.  
 180 must be paid as required by the corporation's plan of operation  
 181 and paragraph (q). Assessments levied by the corporation on  
 182 assessable insureds under sub-subparagraph a. shall be collected  
 183 by the surplus lines agent at the time the surplus lines agent  
 184 collects the surplus lines tax required by s. 626.932, and paid  
 185 to the Florida Surplus Lines Service Office at the time the  
 186 surplus lines agent pays the surplus lines tax to that office.  
 187 Upon receipt of regular assessments from surplus lines agents,  
 188 the Florida Surplus Lines Service Office shall transfer the  
 189 assessments directly to the corporation as determined by the  
 190 corporation.

191           c. After accounting for the Citizens policyholder  
 192 surcharge imposed under sub-subparagraph i., the remaining  
 193 projected deficits in the personal lines account and in the  
 194 commercial lines account in a particular calendar year shall be  
 195 recovered through emergency assessments under sub-subparagraph

196 d.

197 d.e. Upon a determination by the board of governors that a  
 198 projected deficit in an account exceeds the amount that is  
 199 expected to ~~will~~ be recovered through regular assessments under  
 200 sub-subparagraph a., plus the amount that is expected to be  
 201 recovered through surcharges under sub-subparagraph i. ~~h.~~, the  
 202 board, after verification by the office, shall levy emergency  
 203 assessments for as many years as necessary to cover the  
 204 deficits, to be collected by assessable insurers and the  
 205 corporation and collected from assessable insureds upon issuance  
 206 or renewal of policies for subject lines of business, excluding  
 207 National Flood Insurance policies. The amount collected in a  
 208 particular year must be a uniform percentage of that year's  
 209 direct written premium for subject lines of business and all  
 210 accounts of the corporation, excluding National Flood Insurance  
 211 Program policy premiums, as annually determined by the board and  
 212 verified by the office. The office shall verify the arithmetic  
 213 calculations involved in the board's determination within 30  
 214 days after receipt of the information on which the determination  
 215 was based. The office shall notify assessable insurers and the  
 216 Florida Surplus Lines Service Office of the date on which  
 217 assessable insurers shall begin to collect and assessable  
 218 insureds shall begin to pay such assessment. The date may be not  
 219 less than 90 days after the date the corporation levies  
 220 emergency assessments pursuant to this sub-subparagraph.  
 221 Notwithstanding any other provision of law, the corporation and  
 222 each assessable insurer that writes subject lines of business  
 223 shall collect emergency assessments from its policyholders  
 224 without such obligation being affected by any credit,

225 | limitation, exemption, or deferment. Emergency assessments  
 226 | levied by the corporation on assessable insureds shall be  
 227 | collected by the surplus lines agent at the time the surplus  
 228 | lines agent collects the surplus lines tax required by s.  
 229 | 626.932 and paid to the Florida Surplus Lines Service Office at  
 230 | the time the surplus lines agent pays the surplus lines tax to  
 231 | that office. The emergency assessments collected shall be  
 232 | transferred directly to the corporation on a periodic basis as  
 233 | determined by the corporation and held by the corporation solely  
 234 | in the applicable account. The aggregate amount of emergency  
 235 | assessments levied for an account under this sub-subparagraph in  
 236 | any calendar year may be less than but not exceed the greater of  
 237 | 10 percent of the amount needed to cover the deficit, plus  
 238 | interest, fees, commissions, required reserves, and other costs  
 239 | associated with financing the original deficit, or 10 percent of  
 240 | the aggregate statewide direct written premium for subject lines  
 241 | of business and all accounts of the corporation for the prior  
 242 | year, plus interest, fees, commissions, required reserves, and  
 243 | other costs associated with financing the deficit.

244 | e.d. The corporation may pledge the proceeds of  
 245 | assessments, projected recoveries from the Florida Hurricane  
 246 | Catastrophe Fund, other insurance and reinsurance recoverables,  
 247 | policyholder surcharges and other surcharges, and other funds  
 248 | available to the corporation as the source of revenue for and to  
 249 | secure bonds issued under paragraph (q), bonds or other  
 250 | indebtedness issued under subparagraph (c)3., or lines of credit  
 251 | or other financing mechanisms issued or created under this  
 252 | subsection, or to retire any other debt incurred as a result of

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253 deficits or events giving rise to deficits, or in any other way  
 254 that the board determines will efficiently recover such  
 255 deficits. The purpose of the lines of credit or other financing  
 256 mechanisms is to provide additional resources to assist the  
 257 corporation in covering claims and expenses attributable to a  
 258 catastrophe. As used in this subsection, the term "assessments"  
 259 includes regular assessments under sub-subparagraph a. or  
 260 subparagraph (q)1. and emergency assessments under sub-  
 261 subparagraph d. Emergency assessments collected under sub-  
 262 subparagraph d. are not part of an insurer's rates, are not  
 263 premium, and are not subject to premium tax, fees, or  
 264 commissions; however, failure to pay the emergency assessment  
 265 shall be treated as failure to pay premium. The emergency  
 266 assessments under sub-subparagraph d. ~~e.~~ shall continue as long  
 267 as any bonds issued or other indebtedness incurred with respect  
 268 to a deficit for which the assessment was imposed remain  
 269 outstanding, unless adequate provision has been made for the  
 270 payment of such bonds or other indebtedness pursuant to the  
 271 documents governing such bonds or indebtedness.

272 f.e. As used in this subsection for purposes of any  
 273 deficit incurred on or after January 25, 2007, the term "subject  
 274 lines of business" means insurance written by assessable  
 275 insurers or procured by assessable insureds for all property and  
 276 casualty lines of business in this state, but not including  
 277 workers' compensation or medical malpractice. As used in this  
 278 sub-subparagraph, the term "property and casualty lines of  
 279 business" includes all lines of business identified on Form 2,  
 280 Exhibit of Premiums and Losses, in the annual statement required

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281 of authorized insurers under s. 624.424 and any rule adopted  
 282 under this section, except for those lines identified as  
 283 accident and health insurance and except for policies written  
 284 under the National Flood Insurance Program or the Federal Crop  
 285 Insurance Program. For purposes of this sub-subparagraph, the  
 286 term "workers' compensation" includes both workers' compensation  
 287 insurance and excess workers' compensation insurance.

288 ~~g.f.~~ The Florida Surplus Lines Service Office shall  
 289 determine annually the aggregate statewide written premium in  
 290 subject lines of business procured by assessable insureds and  
 291 report that information to the corporation in a form and at a  
 292 time the corporation specifies to ensure that the corporation  
 293 can meet the requirements of this subsection and the  
 294 corporation's financing obligations.

295 ~~h.g.~~ The Florida Surplus Lines Service Office shall verify  
 296 the proper application by surplus lines agents of assessment  
 297 percentages for regular assessments and emergency assessments  
 298 levied under this subparagraph on assessable insureds and assist  
 299 the corporation in ensuring the accurate, timely collection and  
 300 payment of assessments by surplus lines agents as required by  
 301 the corporation.

302 ~~i.h. If a deficit is incurred in any account~~ In 2008 or  
 303 thereafter, upon a determination by the board of governors that  
 304 an account has a projected deficit, the board shall levy a  
 305 Citizens policyholder surcharge against all policyholders of the  
 306 corporation.

307 (I) The surcharge shall be levied as a uniform percentage  
 308 of the premium for the policy of up to 15 percent of such

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309 premium, which funds shall be used to offset the deficit.

310 (II) The surcharge is payable upon cancellation or  
 311 termination of the policy, upon renewal of the policy, or upon  
 312 issuance of a new policy by the corporation within the first 12  
 313 months after the date of the levy or the period of time  
 314 necessary to fully collect the surcharge amount.

315 (III) The corporation may not levy any regular assessments  
 316 under paragraph (q) pursuant to sub-subparagraph a. or sub-  
 317 subparagraph b. with respect to a particular year's deficit  
 318 until the corporation has first levied the full amount of the  
 319 surcharge authorized by this sub-subparagraph.

320 (IV) The surcharge is not considered premium and is not  
 321 subject to commissions, fees, or premium taxes. However, failure  
 322 to pay the surcharge shall be treated as failure to pay premium.

323 ~~j.i.~~ If the amount of any assessments or surcharges  
 324 collected from corporation policyholders, assessable insurers or  
 325 their policyholders, or assessable insureds exceeds the amount  
 326 of the deficits, such excess amounts shall be remitted to and  
 327 retained by the corporation in a reserve to be used by the  
 328 corporation, as determined by the board of governors and  
 329 approved by the office, to pay claims or reduce any past,  
 330 present, or future plan-year deficits or to reduce outstanding  
 331 debt.

332 (c) The corporation's plan of operation:

333 1. Must provide for adoption of residential property and  
 334 casualty insurance policy forms and commercial residential and  
 335 nonresidential property insurance forms, which must be approved  
 336 by the office before use. The corporation shall adopt the

337 following policy forms:

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

342 b. Basic personal lines policy forms that are policies  
 343 similar to an HO-8 policy or a dwelling fire policy that provide  
 344 coverage meeting the requirements of the secondary mortgage  
 345 market, but which is more limited than the coverage under a  
 346 standard policy.

347 c. Commercial lines residential and nonresidential policy  
 348 forms that are generally similar to the basic perils of full  
 349 coverage obtainable for commercial residential structures and  
 350 commercial nonresidential structures in the admitted voluntary  
 351 market.

352 d. Personal lines and commercial lines residential  
 353 property insurance forms that cover the peril of wind only. The  
 354 forms are applicable only to residential properties located in  
 355 areas eligible for coverage under the coastal account referred  
 356 to in sub-subparagraph (b)2.a.

357 e. Commercial lines nonresidential property insurance  
 358 forms that cover the peril of wind only. The forms are  
 359 applicable only to nonresidential properties located in areas  
 360 eligible for coverage under the coastal account referred to in  
 361 sub-subparagraph (b)2.a.

362 f. The corporation may adopt variations of the policy  
 363 forms listed in sub-subparagraphs a.-e. which contain more  
 364 restrictive coverage.

365 2. Must provide that the corporation adopt a program in  
 366 which the corporation and authorized insurers enter into quota  
 367 share primary insurance agreements for hurricane coverage, as  
 368 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
 369 property insurance forms for eligible risks which cover the  
 370 peril of wind only.

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

372 (I) "Quota share primary insurance" means an arrangement  
 373 in which the primary hurricane coverage of an eligible risk is  
 374 provided in specified percentages by the corporation and an  
 375 authorized insurer. The corporation and authorized insurer are  
 376 each solely responsible for a specified percentage of hurricane  
 377 coverage of an eligible risk as set forth in a quota share  
 378 primary insurance agreement between the corporation and an  
 379 authorized insurer and the insurance contract. The  
 380 responsibility of the corporation or authorized insurer to pay  
 381 its specified percentage of hurricane losses of an eligible  
 382 risk, as set forth in the agreement, may not be altered by the  
 383 inability of the other party to pay its specified percentage of  
 384 losses. Eligible risks that are provided hurricane coverage  
 385 through a quota share primary insurance arrangement must be  
 386 provided policy forms that set forth the obligations of the  
 387 corporation and authorized insurer under the arrangement,  
 388 clearly specify the percentages of quota share primary insurance  
 389 provided by the corporation and authorized insurer, and  
 390 conspicuously and clearly state that the authorized insurer and  
 391 the corporation may not be held responsible beyond their  
 392 specified percentage of coverage of hurricane losses.



393 (II) "Eligible risks" means personal lines residential and  
 394 commercial lines residential risks that meet the underwriting  
 395 criteria of the corporation and are located in areas that were  
 396 eligible for coverage by the Florida Windstorm Underwriting  
 397 Association on January 1, 2002.

398 b. The corporation may enter into quota share primary  
 399 insurance agreements with authorized insurers at corporation  
 400 coverage levels of 90 percent and 50 percent.

401 c. If the corporation determines that additional coverage  
 402 levels are necessary to maximize participation in quota share  
 403 primary insurance agreements by authorized insurers, the  
 404 corporation may establish additional coverage levels. However,  
 405 the corporation's quota share primary insurance coverage level  
 406 may not exceed 90 percent.

407 d. Any quota share primary insurance agreement entered  
 408 into between an authorized insurer and the corporation must  
 409 provide for a uniform specified percentage of coverage of  
 410 hurricane losses, by county or territory as set forth by the  
 411 corporation board, for all eligible risks of the authorized  
 412 insurer covered under the agreement.

413 e. Any quota share primary insurance agreement entered  
 414 into between an authorized insurer and the corporation is  
 415 subject to review and approval by the office. However, such  
 416 agreement shall be authorized only as to insurance contracts  
 417 entered into between an authorized insurer and an insured who is  
 418 already insured by the corporation for wind coverage.

419 f. For all eligible risks covered under quota share  
 420 primary insurance agreements, the exposure and coverage levels

421 for both the corporation and authorized insurers shall be  
 422 reported by the corporation to the Florida Hurricane Catastrophe  
 423 Fund. For all policies of eligible risks covered under such  
 424 agreements, the corporation and the authorized insurer must  
 425 maintain complete and accurate records for the purpose of  
 426 exposure and loss reimbursement audits as required by fund  
 427 rules. The corporation and the authorized insurer shall each  
 428 maintain duplicate copies of policy declaration pages and  
 429 supporting claims documents.

430 g. The corporation board shall establish in its plan of  
 431 operation standards for quota share agreements which ensure that  
 432 there is no discriminatory application among insurers as to the  
 433 terms of the agreements, pricing of the agreements, incentive  
 434 provisions if any, and consideration paid for servicing policies  
 435 or adjusting claims.

436 h. The quota share primary insurance agreement between the  
 437 corporation and an authorized insurer must set forth the  
 438 specific terms under which coverage is provided, including, but  
 439 not limited to, the sale and servicing of policies issued under  
 440 the agreement by the insurance agent of the authorized insurer  
 441 producing the business, the reporting of information concerning  
 442 eligible risks, the payment of premium to the corporation, and  
 443 arrangements for the adjustment and payment of hurricane claims  
 444 incurred on eligible risks by the claims adjuster and personnel  
 445 of the authorized insurer. Entering into a quota sharing  
 446 insurance agreement between the corporation and an authorized  
 447 insurer is voluntary and at the discretion of the authorized  
 448 insurer.

449           3.a. May provide that the corporation may employ or  
 450 otherwise contract with individuals or other entities to provide  
 451 administrative or professional services that may be appropriate  
 452 to effectuate the plan. The corporation may borrow funds by  
 453 issuing bonds or by incurring other indebtedness, and shall have  
 454 other powers reasonably necessary to effectuate the requirements  
 455 of this subsection, including, without limitation, the power to  
 456 issue bonds and incur other indebtedness in order to refinance  
 457 outstanding bonds or other indebtedness. The corporation may  
 458 seek judicial validation of its bonds or other indebtedness  
 459 under chapter 75. The corporation may issue bonds or incur other  
 460 indebtedness, or have bonds issued on its behalf by a unit of  
 461 local government pursuant to subparagraph (q)2. in the absence  
 462 of a hurricane or other weather-related event, upon a  
 463 determination by the corporation, subject to approval by the  
 464 office, that such action would enable it to efficiently meet the  
 465 financial obligations of the corporation and that such  
 466 financings are reasonably necessary to effectuate the  
 467 requirements of this subsection. The corporation may take all  
 468 actions needed to facilitate tax-free status for such bonds or  
 469 indebtedness, including formation of trusts or other affiliated  
 470 entities. The corporation may pledge assessments, projected  
 471 recoveries from the Florida Hurricane Catastrophe Fund, other  
 472 reinsurance recoverables, policyholder surcharges ~~market~~  
 473 ~~equalization~~ and other surcharges, and other funds available to  
 474 the corporation as security for bonds or other indebtedness. In  
 475 recognition of s. 10, Art. I of the State Constitution,  
 476 prohibiting the impairment of obligations of contracts, it is

477 the intent of the Legislature that no action be taken whose  
 478 purpose is to impair any bond indenture or financing agreement  
 479 or any revenue source committed by contract to such bond or  
 480 other indebtedness.

481 b. To ensure that the corporation is operating in an  
 482 efficient and economic manner while providing quality service to  
 483 policyholders, applicants, and agents, the board shall  
 484 commission an independent third-party consultant having  
 485 expertise in insurance company management or insurance company  
 486 management consulting to prepare a report and make  
 487 recommendations on the relative costs and benefits of  
 488 outsourcing various policy issuance and service functions to  
 489 private servicing carriers or entities performing similar  
 490 functions in the private market for a fee, rather than  
 491 performing such functions in-house. In making such  
 492 recommendations, the consultant shall consider how other  
 493 residual markets, both in this state and around the country,  
 494 outsource appropriate functions or use servicing carriers to  
 495 better match expenses with revenues that fluctuate based on a  
 496 widely varying policy count. The report must be completed by  
 497 July 1, 2012. Upon receiving the report, the board shall develop  
 498 a plan to implement the report and submit the plan for review,  
 499 modification, and approval to the Financial Services Commission.  
 500 Upon the commission's approval of the plan, the board shall  
 501 begin implementing the plan by January 1, 2013.

502 4. Must require that the corporation operate subject to  
 503 the supervision and approval of a board of governors consisting  
 504 of eight individuals who are residents of this state, from

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505 different geographical areas of this state.

506       a. The Governor, the Chief Financial Officer, the  
 507 President of the Senate, and the Speaker of the House of  
 508 Representatives shall each appoint two members of the board. At  
 509 least one of the two members appointed by each appointing  
 510 officer must have demonstrated expertise in insurance and is  
 511 deemed to be within the scope of the exemption provided in s.  
 512 112.313(7)(b). The Chief Financial Officer shall designate one  
 513 of the appointees as chair. All board members serve at the  
 514 pleasure of the appointing officer. All members of the board are  
 515 subject to removal at will by the officers who appointed them.  
 516 All board members, including the chair, must be appointed to  
 517 serve for 3-year terms beginning annually on a date designated  
 518 by the plan. However, for the first term beginning on or after  
 519 July 1, 2009, each appointing officer shall appoint one member  
 520 of the board for a 2-year term and one member for a 3-year term.  
 521 A board vacancy shall be filled for the unexpired term by the  
 522 appointing officer. The Chief Financial Officer shall appoint a  
 523 technical advisory group to provide information and advice to  
 524 the board in connection with the board's duties under this  
 525 subsection. The executive director and senior managers of the  
 526 corporation shall be engaged by the board and serve at the  
 527 pleasure of the board. Any executive director appointed on or  
 528 after July 1, 2006, is subject to confirmation by the Senate.  
 529 The executive director is responsible for employing other staff  
 530 as the corporation may require, subject to review and  
 531 concurrence by the board.

532       b. The board shall create a Market Accountability Advisory

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533 | Committee to assist the corporation in developing awareness of  
 534 | its rates and its customer and agent service levels in  
 535 | relationship to the voluntary market insurers writing similar  
 536 | coverage.

537 |         (I) The members of the advisory committee consist of the  
 538 | following 11 persons, one of whom must be elected chair by the  
 539 | members of the committee: four representatives, one appointed by  
 540 | the Florida Association of Insurance Agents, one by the Florida  
 541 | Association of Insurance and Financial Advisors, one by the  
 542 | Professional Insurance Agents of Florida, and one by the Latin  
 543 | American Association of Insurance Agencies; three  
 544 | representatives appointed by the insurers with the three highest  
 545 | voluntary market share of residential property insurance  
 546 | business in the state; one representative from the Office of  
 547 | Insurance Regulation; one consumer appointed by the board who is  
 548 | insured by the corporation at the time of appointment to the  
 549 | committee; one representative appointed by the Florida  
 550 | Association of Realtors; and one representative appointed by the  
 551 | Florida Bankers Association. All members shall be appointed to  
 552 | 3-year terms and may serve for consecutive terms.

553 |         (II) The committee shall report to the corporation at each  
 554 | board meeting on insurance market issues which may include rates  
 555 | and rate competition with the voluntary market; service,  
 556 | including policy issuance, claims processing, and general  
 557 | responsiveness to policyholders, applicants, and agents; and  
 558 | matters relating to depopulation.

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

561 a. Subject to s. 627.3517, with respect to personal lines  
 562 residential risks, if the risk is offered coverage from an  
 563 authorized insurer at the insurer's approved rate under a  
 564 standard policy including wind coverage or, if consistent with  
 565 the insurer's underwriting rules as filed with the office, a  
 566 basic policy including wind coverage, for a new application to  
 567 the corporation for coverage, the risk is not eligible for any  
 568 policy issued by the corporation unless the premium for coverage  
 569 from the authorized insurer is more than 15 percent greater than  
 570 the premium for comparable coverage from the corporation. If the  
 571 risk is not able to obtain such offer, the risk is eligible for  
 572 a standard policy including wind coverage or a basic policy  
 573 including wind coverage issued by the corporation; however, if  
 574 the risk could not be insured under a standard policy including  
 575 wind coverage regardless of market conditions, the risk is  
 576 eligible for a basic policy including wind coverage unless  
 577 rejected under subparagraph 8. However, a policyholder of the  
 578 corporation or a policyholder removed from the corporation  
 579 through an assumption agreement until the end of the assumption  
 580 period remains eligible for coverage from the corporation  
 581 regardless of any offer of coverage from an authorized insurer  
 582 or surplus lines insurer. The corporation shall determine the  
 583 type of policy to be provided on the basis of objective  
 584 standards specified in the underwriting manual and based on  
 585 generally accepted underwriting practices.

586 (I) If the risk accepts an offer of coverage through the  
 587 market assistance plan or through a mechanism established by the  
 588 corporation before a policy is issued to the risk by the

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589 corporation or during the first 30 days of coverage by the  
 590 corporation, and the producing agent who submitted the  
 591 application to the plan or to the corporation is not currently  
 592 appointed by the insurer, the insurer shall:

593 (A) Pay to the producing agent of record of the policy for  
 594 the first year, an amount that is the greater of the insurer's  
 595 usual and customary commission for the type of policy written or  
 596 a fee equal to the usual and customary commission of the  
 597 corporation; or

598 (B) Offer to allow the producing agent of record of the  
 599 policy to continue servicing the policy for at least 1 year and  
 600 offer to pay the agent the greater of the insurer's or the  
 601 corporation's usual and customary commission for the type of  
 602 policy written.

603  
 604 If the producing agent is unwilling or unable to accept  
 605 appointment, the new insurer shall pay the agent in accordance  
 606 with sub-sub-sub-subparagraph (A).

607 (II) If the corporation enters into a contractual  
 608 agreement for a take-out plan, the producing agent of record of  
 609 the corporation policy is entitled to retain any unearned  
 610 commission on the policy, and the insurer shall:

611 (A) Pay to the producing agent of record, for the first  
 612 year, an amount that is the greater of the insurer's usual and  
 613 customary commission for the type of policy written or a fee  
 614 equal to the usual and customary commission of the corporation;  
 615 or

616 (B) Offer to allow the producing agent of record to



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617 | continue servicing the policy for at least 1 year and offer to  
 618 | pay the agent the greater of the insurer's or the corporation's  
 619 | usual and customary commission for the type of policy written.

620 |  
 621 | If the producing agent is unwilling or unable to accept  
 622 | appointment, the new insurer shall pay the agent in accordance  
 623 | with sub-sub-sub-subparagraph (A).

624 |       b. With respect to commercial lines residential risks, for  
 625 | a new application to the corporation for coverage, if the risk  
 626 | is offered coverage under a policy including wind coverage from  
 627 | an authorized insurer at its approved rate, the risk is not  
 628 | eligible for a policy issued by the corporation unless the  
 629 | premium for coverage from the authorized insurer is more than 15  
 630 | percent greater than the premium for comparable coverage from  
 631 | the corporation. If the risk is not able to obtain any such  
 632 | offer, the risk is eligible for a policy including wind coverage  
 633 | issued by the corporation. However, a policyholder of the  
 634 | corporation or a policyholder removed from the corporation  
 635 | through an assumption agreement until the end of the assumption  
 636 | period remains eligible for coverage from the corporation  
 637 | regardless of an offer of coverage from an authorized insurer or  
 638 | surplus lines insurer.

639 |       (I) If the risk accepts an offer of coverage through the  
 640 | market assistance plan or through a mechanism established by the  
 641 | corporation before a policy is issued to the risk by the  
 642 | corporation or during the first 30 days of coverage by the  
 643 | corporation, and the producing agent who submitted the  
 644 | application to the plan or the corporation is not currently

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645 appointed by the insurer, the insurer shall:

646 (A) Pay to the producing agent of record of the policy,  
 647 for the first year, an amount that is the greater of the  
 648 insurer's usual and customary commission for the type of policy  
 649 written or a fee equal to the usual and customary commission of  
 650 the corporation; or

651 (B) Offer to allow the producing agent of record of the  
 652 policy to continue servicing the policy for at least 1 year and  
 653 offer to pay the agent the greater of the insurer's or the  
 654 corporation's usual and customary commission for the type of  
 655 policy written.

656  
 657 If the producing agent is unwilling or unable to accept  
 658 appointment, the new insurer shall pay the agent in accordance  
 659 with sub-sub-sub-subparagraph (A).

660 (II) If the corporation enters into a contractual  
 661 agreement for a take-out plan, the producing agent of record of  
 662 the corporation policy is entitled to retain any unearned  
 663 commission on the policy, and the insurer shall:

664 (A) Pay to the producing agent of record, for the first  
 665 year, an amount that is the greater of the insurer's usual and  
 666 customary commission for the type of policy written or a fee  
 667 equal to the usual and customary commission of the corporation;  
 668 or

669 (B) Offer to allow the producing agent of record to  
 670 continue servicing the policy for at least 1 year and offer to  
 671 pay the agent the greater of the insurer's or the corporation's  
 672 usual and customary commission for the type of policy written.

673  
 674 If the producing agent is unwilling or unable to accept  
 675 appointment, the new insurer shall pay the agent in accordance  
 676 with sub-sub-sub-subparagraph (A).  
 677       c. For purposes of determining comparable coverage under  
 678 sub-subparagraphs a. and b., the comparison must be based on  
 679 those forms and coverages that are reasonably comparable. The  
 680 corporation may rely on a determination of comparable coverage  
 681 and premium made by the producing agent who submits the  
 682 application to the corporation, made in the agent's capacity as  
 683 the corporation's agent. A comparison may be made solely of the  
 684 premium with respect to the main building or structure only on  
 685 the following basis: the same coverage A or other building  
 686 limits; the same percentage hurricane deductible that applies on  
 687 an annual basis or that applies to each hurricane for commercial  
 688 residential property; the same percentage of ordinance and law  
 689 coverage, if the same limit is offered by both the corporation  
 690 and the authorized insurer; the same mitigation credits, to the  
 691 extent the same types of credits are offered both by the  
 692 corporation and the authorized insurer; the same method for loss  
 693 payment, such as replacement cost or actual cash value, if the  
 694 same method is offered both by the corporation and the  
 695 authorized insurer in accordance with underwriting rules; and  
 696 any other form or coverage that is reasonably comparable as  
 697 determined by the board. If an application is submitted to the  
 698 corporation for wind-only coverage in the coastal account, the  
 699 premium for the corporation's wind-only policy plus the premium  
 700 for the ex-wind policy that is offered by an authorized insurer

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701 to the applicant must be compared to the premium for multiperil  
 702 coverage offered by an authorized insurer, subject to the  
 703 standards for comparison specified in this subparagraph. If the  
 704 corporation or the applicant requests from the authorized  
 705 insurer a breakdown of the premium of the offer by types of  
 706 coverage so that a comparison may be made by the corporation or  
 707 its agent and the authorized insurer refuses or is unable to  
 708 provide such information, the corporation may treat the offer as  
 709 not being an offer of coverage from an authorized insurer at the  
 710 insurer's approved rate.

711 6. Must include rules for classifications of risks and  
 712 rates.

713 7. Must provide that if premium and investment income for  
 714 an account attributable to a particular calendar year are in  
 715 excess of projected losses and expenses for the account  
 716 attributable to that year, such excess shall be held in surplus  
 717 in the account. Such surplus must be available to defray  
 718 deficits in that account as to future years and used for that  
 719 purpose before assessing assessable insurers and assessable  
 720 insureds as to any calendar year.

721 8. Must provide objective criteria and procedures to be  
 722 uniformly applied to all applicants in determining whether an  
 723 individual risk is so hazardous as to be uninsurable. In making  
 724 this determination and in establishing the criteria and  
 725 procedures, the following must be considered:

726 a. Whether the likelihood of a loss for the individual  
 727 risk is substantially higher than for other risks of the same  
 728 class; and

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

731  
732 The acceptance or rejection of a risk by the corporation shall  
733 be construed as the private placement of insurance, and the  
734 provisions of chapter 120 do not apply.

735           9. Must provide that the corporation make its best efforts  
736 to procure catastrophe reinsurance at reasonable rates, to cover  
737 its projected 100-year probable maximum loss as determined by  
738 the board of governors.

739           10. The policies issued by the corporation must provide  
740 that if the corporation or the market assistance plan obtains an  
741 offer from an authorized insurer to cover the risk at its  
742 approved rates, the risk is no longer eligible for renewal  
743 through the corporation, except as otherwise provided in this  
744 subsection.

745           11. Corporation policies and applications must include a  
746 notice that the corporation policy could, under this section, be  
747 replaced with a policy issued by an authorized insurer which  
748 does not provide coverage identical to the coverage provided by  
749 the corporation. The notice must also specify that acceptance of  
750 corporation coverage creates a conclusive presumption that the  
751 applicant or policyholder is aware of this potential.

752           12. May establish, subject to approval by the office,  
753 different eligibility requirements and operational procedures  
754 for any line or type of coverage for any specified county or  
755 area if the board determines that such changes are justified due  
756 to the voluntary market being sufficiently stable and

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757 competitive in such area or for such line or type of coverage  
 758 and that consumers who, in good faith, are unable to obtain  
 759 insurance through the voluntary market through ordinary methods  
 760 continue to have access to coverage from the corporation. If  
 761 coverage is sought in connection with a real property transfer,  
 762 the requirements and procedures may not provide an effective  
 763 date of coverage later than the date of the closing of the  
 764 transfer as established by the transferor, the transferee, and,  
 765 if applicable, the lender.

766 13. Must provide that, with respect to the coastal  
 767 account, any assessable insurer with a surplus as to  
 768 policyholders of \$25 million or less writing 25 percent or more  
 769 of its total countrywide property insurance premiums in this  
 770 state may petition the office, within the first 90 days of each  
 771 calendar year, to qualify as a limited apportionment company. A  
 772 regular assessment levied by the corporation on a limited  
 773 apportionment company for a deficit incurred by the corporation  
 774 for the coastal account may be paid to the corporation on a  
 775 monthly basis as the assessments are collected by the limited  
 776 apportionment company from its insureds ~~pursuant to s. 627.3512,~~  
 777 but a limited apportionment company must begin collecting the  
 778 regular assessments not later than 90 days after the regular  
 779 assessments are levied by the corporation, and the regular  
 780 assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months  
 781 after being levied by the corporation. A limited apportionment  
 782 company shall collect from its policyholders any emergency  
 783 assessment imposed under sub-subparagraph (b)3.d. The plan must  
 784 provide that, if the office determines that any regular

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785 assessment will result in an impairment of the surplus of a  
786 limited apportionment company, the office may direct that all or  
787 part of such assessment be deferred as provided in subparagraph  
788 (q)4. However, an emergency assessment to be collected from  
789 policyholders under sub-subparagraph (b)3.d. may not be limited  
790 or deferred.

791 14. Must provide that the corporation appoint as its  
792 licensed agents only those agents who also hold an appointment  
793 as defined in s. 626.015(3) with an insurer who at the time of  
794 the agent's initial appointment by the corporation is authorized  
795 to write and is actually writing personal lines residential  
796 property coverage, commercial residential property coverage, or  
797 commercial nonresidential property coverage within the state.

798 15. Must provide a premium payment plan option to its  
799 policyholders which, at a minimum, allows for quarterly and  
800 semiannual payment of premiums. A monthly payment plan may, but  
801 is not required to, be offered.

802 16. Must limit coverage on mobile homes or manufactured  
803 homes built before 1994 to actual cash value of the dwelling  
804 rather than replacement costs of the dwelling.

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

807 18. May require commercial property to meet specified  
808 hurricane mitigation construction features as a condition of  
809 eligibility for coverage.

810 19. Must provide that new or renewal policies issued by  
811 the corporation on or after January 1, 2012, which cover  
812 sinkhole loss do not include coverage for any loss to

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813 appurtenant structures, driveways, sidewalks, decks, or patios  
 814 that are directly or indirectly caused by sinkhole activity. The  
 815 corporation shall exclude such coverage using a notice of  
 816 coverage change, which may be included with the policy renewal,  
 817 and not by issuance of a notice of nonrenewal of the excluded  
 818 coverage upon renewal of the current policy.

819 20. As of January 1, 2012, must require that the agent  
 820 obtain from an applicant for coverage from the corporation an  
 821 acknowledgement signed by the applicant, which includes, at a  
 822 minimum, the following statement:

823  
 824 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE  
 825 AND ASSESSMENT LIABILITY:  
 826

827 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE  
 828 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
 829 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
 830 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
 831 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
 832 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
 833 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
 834 LEGISLATURE.

835 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
 836 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
 837 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
 838 FLORIDA LEGISLATURE.

839 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
 840 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE



841 STATE OF FLORIDA.

842

843 a. The corporation shall maintain, in electronic format or  
 844 otherwise, a copy of the applicant's signed acknowledgement and  
 845 provide a copy of the statement to the policyholder as part of  
 846 the first renewal after the effective date of this subparagraph.

847 b. The signed acknowledgement form creates a conclusive  
 848 presumption that the policyholder understood and accepted his or  
 849 her potential surcharge and assessment liability as a  
 850 policyholder of the corporation.

851 (q)1. The corporation shall certify to the office its  
 852 needs for annual assessments as to a particular calendar year,  
 853 and for any interim assessments that it deems to be necessary to  
 854 sustain operations as to a particular year pending the receipt  
 855 of annual assessments. Upon verification, the office shall  
 856 approve such certification, and the corporation shall levy such  
 857 annual or interim assessments. Such assessments shall be  
 858 prorated as provided in paragraph (b). The corporation shall  
 859 take all reasonable and prudent steps necessary to collect the  
 860 amount of assessments ~~assessment~~ due from each assessable  
 861 insurer, including, if prudent, filing suit to collect the  
 862 assessments, and the office may provide such assistance to the  
 863 corporation it deems appropriate ~~such assessment~~. If the  
 864 corporation is unable to collect an assessment from any  
 865 assessable insurer, the uncollected assessments shall be levied  
 866 as an additional assessment against the assessable insurers and  
 867 any assessable insurer required to pay an additional assessment  
 868 as a result of such failure to pay shall have a cause of action

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869 against such nonpaying assessable insurer. Assessments shall be  
870 included as an appropriate factor in the making of rates. The  
871 failure of a surplus lines agent to collect and remit any  
872 regular or emergency assessment levied by the corporation is  
873 considered to be a violation of s. 626.936 and subjects the  
874 surplus lines agent to the penalties provided in that section.

875 2. The governing body of any unit of local government, any  
876 residents of which are insured by the corporation, may issue  
877 bonds as defined in s. 125.013 or s. 166.101 from time to time  
878 to fund an assistance program, in conjunction with the  
879 corporation, for the purpose of defraying deficits of the  
880 corporation. In order to avoid needless and indiscriminate  
881 proliferation, duplication, and fragmentation of such assistance  
882 programs, any unit of local government, any residents of which  
883 are insured by the corporation, may provide for the payment of  
884 losses, regardless of whether or not the losses occurred within  
885 or outside of the territorial jurisdiction of the local  
886 government. Revenue bonds under this subparagraph may not be  
887 issued until validated pursuant to chapter 75, unless a state of  
888 emergency is declared by executive order or proclamation of the  
889 Governor pursuant to s. 252.36 making such findings as are  
890 necessary to determine that it is in the best interests of, and  
891 necessary for, the protection of the public health, safety, and  
892 general welfare of residents of this state and declaring it an  
893 essential public purpose to permit certain municipalities or  
894 counties to issue such bonds as will permit relief to claimants  
895 and policyholders of the corporation. Any such unit of local  
896 government may enter into such contracts with the corporation

897 | and with any other entity created pursuant to this subsection as  
 898 | are necessary to carry out this paragraph. Any bonds issued  
 899 | under this subparagraph shall be payable from and secured by  
 900 | moneys received by the corporation from emergency assessments  
 901 | under sub-subparagraph (b)3.d., and assigned and pledged to or  
 902 | on behalf of the unit of local government for the benefit of the  
 903 | holders of such bonds. The funds, credit, property, and taxing  
 904 | power of the state or of the unit of local government shall not  
 905 | be pledged for the payment of such bonds.

906 |       3.a. The corporation shall adopt one or more programs  
 907 | subject to approval by the office for the reduction of both new  
 908 | and renewal writings in the corporation. Beginning January 1,  
 909 | 2008, any program the corporation adopts for the payment of  
 910 | bonuses to an insurer for each risk the insurer removes from the  
 911 | corporation shall comply with s. 627.3511(2) and may not exceed  
 912 | the amount referenced in s. 627.3511(2) for each risk removed.  
 913 | The corporation may consider any prudent and not unfairly  
 914 | discriminatory approach to reducing corporation writings, and  
 915 | may adopt a credit against assessment liability or other  
 916 | liability that provides an incentive for insurers to take risks  
 917 | out of the corporation and to keep risks out of the corporation  
 918 | by maintaining or increasing voluntary writings in counties or  
 919 | areas in which corporation risks are highly concentrated and a  
 920 | program to provide a formula under which an insurer voluntarily  
 921 | taking risks out of the corporation by maintaining or increasing  
 922 | voluntary writings will be relieved wholly or partially from  
 923 | assessments under sub-subparagraphs (b)3.a. and b. However, any  
 924 | "take-out bonus" or payment to an insurer must be conditioned on

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925 the property being insured for at least 5 years by the insurer,  
 926 unless canceled or nonrenewed by the policyholder. If the policy  
 927 is canceled or nonrenewed by the policyholder before the end of  
 928 the 5-year period, the amount of the take-out bonus must be  
 929 prorated for the time period the policy was insured. When the  
 930 corporation enters into a contractual agreement for a take-out  
 931 plan, the producing agent of record of the corporation policy is  
 932 entitled to retain any unearned commission on such policy, and  
 933 the insurer shall either:

934 (I) Pay to the producing agent of record of the policy,  
 935 for the first year, an amount which is the greater of the  
 936 insurer's usual and customary commission for the type of policy  
 937 written or a policy fee equal to the usual and customary  
 938 commission of the corporation; or

939 (II) Offer to allow the producing agent of record of the  
 940 policy to continue servicing the policy for a period of not less  
 941 than 1 year and offer to pay the agent the insurer's usual and  
 942 customary commission for the type of policy written. If the  
 943 producing agent is unwilling or unable to accept appointment by  
 944 the new insurer, the new insurer shall pay the agent in  
 945 accordance with sub-sub-subparagraph (I).

946 b. Any credit or exemption from regular assessments  
 947 adopted under this subparagraph shall last no longer than the 3  
 948 years following the cancellation or expiration of the policy by  
 949 the corporation. With the approval of the office, the board may  
 950 extend such credits for an additional year if the insurer  
 951 guarantees an additional year of renewability for all policies  
 952 removed from the corporation, or for 2 additional years if the

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953 insurer guarantees 2 additional years of renewability for all  
954 policies so removed.

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

958 4. The plan shall provide for the deferment, in whole or  
959 in part, of the assessment of an assessable insurer, other than  
960 an emergency assessment collected from policyholders pursuant to  
961 sub-subparagraph (b)3.d., if the office finds that payment of  
962 the assessment would endanger or impair the solvency of the  
963 insurer. In the event an assessment against an assessable  
964 insurer is deferred in whole or in part, the amount by which  
965 such assessment is deferred may be assessed against the other  
966 assessable insurers in a manner consistent with the basis for  
967 assessments set forth in paragraph (b).

968 5. Effective July 1, 2007, in order to evaluate the costs  
969 and benefits of approved take-out plans, if the corporation pays  
970 a bonus or other payment to an insurer for an approved take-out  
971 plan, it shall maintain a record of the address or such other  
972 identifying information on the property or risk removed in order  
973 to track if and when the property or risk is later insured by  
974 the corporation.

975 6. Any policy taken out, assumed, or removed from the  
976 corporation is, as of the effective date of the take-out,  
977 assumption, or removal, direct insurance issued by the insurer  
978 and not by the corporation, even if the corporation continues to  
979 service the policies. This subparagraph applies to policies of  
980 the corporation and not policies taken out, assumed, or removed

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981 from any other entity.

982 (w) Notwithstanding any other provision of law:

983 1. The pledge or sale of, the lien upon, and the security  
 984 interest in any rights, revenues, or other assets of the  
 985 corporation created or purported to be created pursuant to any  
 986 financing documents to secure any bonds or other indebtedness of  
 987 the corporation shall be and remain valid and enforceable,  
 988 notwithstanding the commencement of and during the continuation  
 989 of, and after, any rehabilitation, insolvency, liquidation,  
 990 bankruptcy, receivership, conservatorship, reorganization, or  
 991 similar proceeding against the corporation under the laws of  
 992 this state.

993 2. The ~~No such~~ proceeding does not shall relieve the  
 994 corporation of its obligation, or otherwise affect its ability  
 995 to perform its obligation, to continue to collect, or levy and  
 996 collect, assessments, policyholder surcharges ~~market~~  
 997 ~~equalization~~ or other surcharges under sub-subparagraph (b)3.i.  
 998 ~~subparagraph (c)10.~~, or any other rights, revenues, or other  
 999 assets of the corporation pledged pursuant to any financing  
 1000 documents.

1001 3. Each such pledge or sale of, lien upon, and security  
 1002 interest in, including the priority of such pledge, lien, or  
 1003 security interest, any such assessments, policyholder surcharges  
 1004 ~~market equalization~~ or other surcharges, or other rights,  
 1005 revenues, or other assets which are collected, or levied and  
 1006 collected, after the commencement of and during the pendency of,  
 1007 or after, any such proceeding shall continue unaffected by such  
 1008 proceeding. As used in this subsection, the term "financing

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1009 documents" means any agreement or agreements, instrument or  
 1010 instruments, or other document or documents now existing or  
 1011 hereafter created evidencing any bonds or other indebtedness of  
 1012 the corporation or pursuant to which any such bonds or other  
 1013 indebtedness has been or may be issued and pursuant to which any  
 1014 rights, revenues, or other assets of the corporation are pledged  
 1015 or sold to secure the repayment of such bonds or indebtedness,  
 1016 together with the payment of interest on such bonds or such  
 1017 indebtedness, or the payment of any other obligation or  
 1018 financial product, as defined in the plan of operation of the  
 1019 corporation related to such bonds or indebtedness.

1020 4. Any such pledge or sale of assessments, revenues,  
 1021 contract rights, or other rights or assets of the corporation  
 1022 shall constitute a lien and security interest, or sale, as the  
 1023 case may be, that is immediately effective and attaches to such  
 1024 assessments, revenues, or contract rights or other rights or  
 1025 assets, whether or not imposed or collected at the time the  
 1026 pledge or sale is made. Any such pledge or sale is effective,  
 1027 valid, binding, and enforceable against the corporation or other  
 1028 entity making such pledge or sale, and valid and binding against  
 1029 and superior to any competing claims or obligations owed to any  
 1030 other person or entity, including policyholders in this state,  
 1031 asserting rights in any such assessments, revenues, or contract  
 1032 rights or other rights or assets to the extent set forth in and  
 1033 in accordance with the terms of the pledge or sale contained in  
 1034 the applicable financing documents, whether or not any such  
 1035 person or entity has notice of such pledge or sale and without  
 1036 the need for any physical delivery, recordation, filing, or

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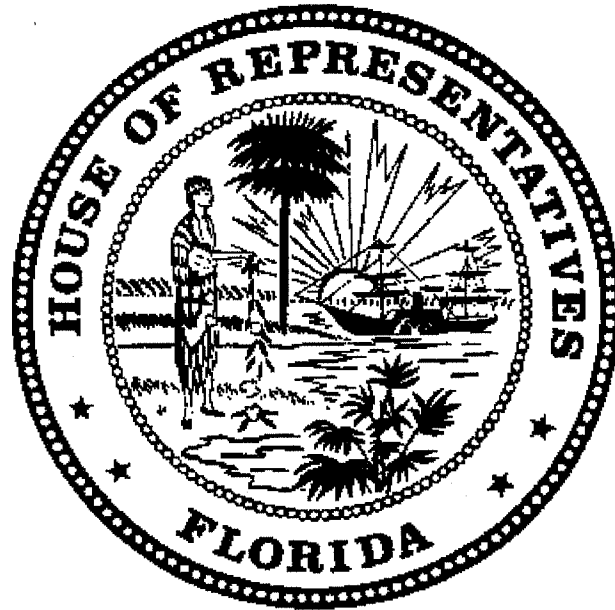
1037 other action.

1038           5. As long as the corporation has any bonds outstanding,  
 1039 the corporation may not file a voluntary petition under chapter  
 1040 9 of the federal Bankruptcy Code or such corresponding chapter  
 1041 or sections as may be in effect, from time to time, and a public  
 1042 officer or any organization, entity, or other person may not  
 1043 authorize the corporation to be or become a debtor under chapter  
 1044 9 of the federal Bankruptcy Code or such corresponding chapter  
 1045 or sections as may be in effect, from time to time, during any  
 1046 such period.

1047           6. If ordered by a court of competent jurisdiction, the  
 1048 corporation may assume policies or otherwise provide coverage  
 1049 for policyholders of an insurer placed in liquidation under  
 1050 chapter 631, under such forms, rates, terms, and conditions as  
 1051 the corporation deems appropriate, subject to approval by the  
 1052 office.

1053           Section 2. This act shall take effect July 1, 2012.





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# **Insurance & Banking Subcommittee**

**Tuesday, January 17, 2012  
3:30 PM  
404 HOB**

## **AMENDMENT PACKET**



## **INSURANCE & BANKING SUBCOMMITTEE**

**HB 645 by Rep. Moraitis  
Public Records**

### **AMENDMENT SUMMARY January 17, 2012**

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**Amendment 1** by Rep. Moraitis (Strike-all). The strike-all amendment to HB 645:

- Removes substantive provisions and narrows the scope of the bill to relate solely to the creation of a public records exemption.
- Defines proprietary business information in the title insurance industry; provides a statement of public necessity for such information to be made confidential and exempt from public records disclosure.
- Makes technical changes.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 645 (2012)

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 Moraitis offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 626.84195, Florida Statutes, is created  
8 to read:

9 626.84195 Confidentiality of information supplied by title  
10 insurance agencies and insurers.-

11 (1) For purposes of this section, "proprietary business  
12 information" means information that is owned or controlled by a  
13 title insurance agency or insurer requesting confidentiality  
14 under this section; that is intended to be and is treated by the  
15 title insurance agency or insurer as private in that the  
16 disclosure of the information would cause harm to the business  
17 operations of the title insurance agency or insurer; that has  
18 not been publicly disclosed unless disclosed pursuant to a  
19 statutory provision, an order of a court or administrative body,

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20 or a private agreement providing that the information may be  
21 released to the public; and that is information concerning:

22 1. Business plans.

23 2. Internal auditing controls and reports of internal  
24 auditors.

25 3. Reports of external auditors for privately held  
26 companies.

27 4. Trade secrets, as defined in s. 688.002.

28 5. Financial information, including, but not limited to,  
29 revenue data, loss expense data, gross receipts, taxes paid,  
30 capital investment, customer identification, and employee wages.

31 (2) Proprietary business information provided to the office  
32 by a title insurance agency or insurer is confidential and  
33 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
34 of the State Constitution, until such information is otherwise  
35 publicly available or is no longer treated by the title  
36 insurance agency or insurer as proprietary business information.  
37 However, information provided by multiple title insurance  
38 agencies and insurers may be aggregated on an industry-wide  
39 basis and disclosed to the public as long as the specific  
40 identities of the agencies or insurers are not revealed.

41 (3) This section is subject to the Open Government Sunset  
42 Review Act in accordance with s. 119.15 and shall stand repealed  
43 on October 2, 2017, unless reviewed and saved from repeal  
44 through reenactment by the Legislature.

45 Section 2. The Legislature finds that it is a public  
46 necessity that proprietary business information relating to the  
47 title insurance industry, title insurers, and title insurance

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 645 (2012)

Amendment No.

48 agents, including, but not limited to, trade secrets, be made  
49 confidential and exempt from the requirements of s. 119.07(1),  
50 Florida Statutes, and s. 24(a), Article I of the State  
51 Constitution. The disclosure of information, such as revenue,  
52 loss expense data, analyses of gross receipts, the amount of  
53 taxes paid, the amount of capital investment, customer  
54 identification, the amount of employee wages paid, and the  
55 detailed documentation to substantiate such performance  
56 information, could injure a business in the marketplace by  
57 providing its competitors with detailed insights into the  
58 financial status and the strategic plans of the business,  
59 thereby diminishing the advantage that the business maintains  
60 over competitors that do not possess such information. Without  
61 this exemption, title insurance agencies and title insurers,  
62 whose records are generally not required to be open to the  
63 public, may refrain from providing accurate and unbiased data  
64 and would thus impair the office in setting fair and adequate  
65 title insurance rates. Proprietary business information derives  
66 actual or potential independent economic value from not being  
67 generally known to, and not being readily ascertainable by  
68 proper means by, other persons who can derive economic value  
69 from its disclosure or use. The office, or any subsidiary or  
70 contractor of the office, in performing its lawful duties and  
71 responsibilities, may need to obtain information from the  
72 proprietary business information. Without an exemption from  
73 public records requirements for proprietary business information  
74 held by the office or its designee, such information becomes a  
75 public record when received and must be divulged upon request.

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76 Divulgence of any proprietary business information under public  
77 records laws would destroy the value of that property to the  
78 proprietor, causing a financial loss not only to the proprietor  
79 but also to the residents of this state due to the loss of  
80 reliable financial data necessary for fair and adequate rate  
81 regulation. Release of proprietary business information would  
82 give business competitors an unfair advantage and weaken the  
83 position of the proprietor of the proprietary business  
84 information in the marketplace. The harm to businesses in the  
85 marketplace and to the effective administration of the  
86 ratemaking function caused by the public disclosure of such  
87 information far outweighs the public benefits derived from its  
88 release. In addition, the confidentiality provided by this act  
89 does not preclude the reporting of statistics in the aggregate  
90 concerning the collection of data, as well as the names of the  
91 title insurance agencies and title insurers participating in the  
92 data collection. Such aggregate reported data is available to  
93 the public and is important to an assessment of the setting of  
94 title insurance premiums. Thus, the Legislature declares that it  
95 is a public necessity that proprietary business information of  
96 title insurers, title insurance agents, and the title insurance  
97 industry held by the office, or any subsidiary, contractor, or  
98 agent of the office, be made confidential and exempt from s.  
99 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
100 State Constitution.

101 Section 3. This act shall take effect on the same date  
102 that HB 643 or similar legislation takes effect, if such

Amendment No.

103 legislation is adopted in the same legislative session, or an  
104 extension thereof, and becomes law.

105

106

107

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108

**T I T L E   A M E N D M E N T**

109

Remove the entire title and insert:

110

A bill to be entitled

111

An act relating to public records; creating s. 626.84195, F.S.;

112

providing an exemption from public records requirements for

113

proprietary business information provided by title insurance

114

agencies and insurers to the Office of Insurance Regulation;

115

providing a definition; authorizing disclosure of aggregated

116

information; providing for future legislative review and repeal

117

of the exemption under the Open Government Sunset Review Act;

118

providing a statement of public necessity; providing a

119

contingent effective date.





## INSURANCE & BANKING SUBCOMMITTEE

### HB 1011 by Rep. Abruzzo Warranty Associations

#### AMENDMENT SUMMARY January 17, 2012

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**Amendment 1** by Rep. Cruz (Strike-Everything Amendment) The amendment retains many of the same provisions of the bill and makes the following major changes:

- Deletes the provision in current law that provides service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from the definition of motor vehicle service agreement and are exempt from regulation under the Florida Insurance Code.
- Clarifies the provisions in the bill which authorize donating money to DFS for the purpose of pursuing unauthorized entities that violate the laws regarding warranty associations.
- Restores current law which the bill removes regarding OIR's use of independent examiners. However, the costs associated with the use of those examiners are capped.
- Makes technical changes to correct drafting errors.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1011 (2012)

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 Cruz offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (8) of section 634.011, Florida  
8 Statutes, is amended to read:

9 634.011 Definitions.—As used in this part, the term:

10 (8) "Motor vehicle service agreement" or "service  
11 agreement" means any contract or agreement indemnifying the  
12 service agreement holder for the motor vehicle listed on the  
13 service agreement and arising out of the ownership, operation,  
14 and use of the motor vehicle against loss caused by failure of  
15 any mechanical or other component part, or any mechanical or  
16 other component part that does not function as it was originally  
17 intended; however, nothing in this part shall prohibit or affect  
18 the giving, free of charge, of the usual performance guarantees  
19 by manufacturers or dealers in connection with the sale of motor

Amendment No.

20 vehicles. Transactions exempt under s. 624.125 are expressly  
21 excluded from this definition and are exempt from the provisions  
22 of this part. ~~Service agreements that are sold to persons other~~  
23 ~~than consumers and that cover motor vehicles used for commercial~~  
24 ~~purposes are excluded from this definition and are exempt from~~  
25 ~~regulation under the Florida Insurance Code.~~ The term "motor  
26 vehicle service agreement" includes any contract or agreement  
27 that provides:

28 (a) For the coverage or protection defined in this  
29 subsection and which is issued or provided in conjunction with  
30 an additive product applied to the motor vehicle that is the  
31 subject of such contract or agreement;

32 (b) For payment of vehicle protection expenses.

33 1.a. "Vehicle protection expenses" means a preestablished  
34 flat amount payable for the loss of or damage to a vehicle or  
35 expenses incurred by the service agreement holder for loss or  
36 damage to a covered vehicle, including, but not limited to,  
37 applicable deductibles under a motor vehicle insurance policy;  
38 temporary vehicle rental expenses; expenses for a replacement  
39 vehicle that is at least the same year, make, and model of the  
40 stolen motor vehicle; sales taxes or registration fees for a  
41 replacement vehicle that is at least the same year, make, and  
42 model of the stolen vehicle; or other incidental expenses  
43 specified in the agreement.

44 b. "Vehicle protection product" means a product or system  
45 installed or applied to a motor vehicle or designed to prevent  
46 the theft of the motor vehicle or assist in the recovery of the  
47 stolen motor vehicle.

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48           2. Vehicle protection expenses shall be payable in the  
49 event of loss or damage to the vehicle as a result of the  
50 failure of the vehicle protection product to prevent the theft  
51 of the motor vehicle or to assist in the recovery of the stolen  
52 motor vehicle. Vehicle protection expenses covered under the  
53 agreement shall be clearly stated in the service agreement form,  
54 unless the agreement provides for the payment of a  
55 preestablished flat amount, in which case the service agreement  
56 form shall clearly identify such amount.

57           3. Motor vehicle service agreements providing for the  
58 payment of vehicle protection expenses shall either:

59           a. Reimburse a service agreement holder for the following  
60 expenses, at a minimum: deductibles applicable to comprehensive  
61 coverage under the service agreement holder's motor vehicle  
62 insurance policy; temporary vehicle rental expenses; sales taxes  
63 and registration fees on a replacement vehicle that is at least  
64 the same year, make, and model of the stolen motor vehicle; and  
65 the difference between the benefits paid to the service  
66 agreement holder for the stolen vehicle under the service  
67 agreement holder's comprehensive coverage and the actual cost of  
68 a replacement vehicle that is at least the same year, make, and  
69 model of the stolen motor vehicle; or

70           b. Pay a preestablished flat amount to the service  
71 agreement holder.

72  
73 Payments shall not duplicate any benefits or expenses paid to  
74 the service agreement holder by the insurer providing  
75 comprehensive coverage under a motor vehicle insurance policy

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76 covering the stolen motor vehicle; however, the payment of  
77 vehicle protection expenses at a preestablished flat amount of  
78 \$5,000 or less does not duplicate any benefits or expenses  
79 payable under any comprehensive motor vehicle insurance policy;  
80 or

81 (c)1. For the payment for paintless dent-removal services  
82 provided by a company whose primary business is providing such  
83 services.

84 2. "Paintless dent-removal" means the process of  
85 removing dents, dings, and creases, including hail damage, from  
86 a vehicle without affecting the existing paint finish, but does  
87 not include services that involve the replacement of vehicle  
88 body panels or sanding, bonding, or painting.

89 Section 2. Paragraph (b) of subsection (3) of section  
90 634.121, Florida Statutes, is amended, and paragraphs (c), (d),  
91 and (e) are added to that subsection, to read:

92 634.121 Forms, required procedures, provisions.—

93 (3)

94 (b) After the service agreement has been in effect for 60  
95 days, it may not be canceled by the insurer or service agreement  
96 company unless:

97 1. There has been a material misrepresentation or fraud at  
98 the time of sale of the service agreement;

99 2. The agreement holder has failed to maintain the motor  
100 vehicle as prescribed by the manufacturer;

101 3. The odometer has been tampered with or disabled and the  
102 agreement holder has failed to repair the odometer; or

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103 4. For nonpayment of premium by the agreement holder, in  
104 which case the service agreement company shall provide the  
105 agreement holder notice of cancellation by certified mail.  
106

107 If the service agreement is canceled by the insurer or service  
108 agreement company, the return of premium must not be less than  
109 100 percent of the paid unearned pro rata premium, less any  
110 claims paid on the agreement. If, after 60 days, the service  
111 agreement is canceled by the service agreement holder, the  
112 insurer or service agreement company shall return directly to  
113 the agreement holder not less than 90 percent of the unearned  
114 pro rata premium, less any claims paid on the agreement. The  
115 service agreement company remains responsible for full refunds  
116 to the consumer on canceled service agreements. However, the  
117 salesperson and agent are responsible for the refund of the  
118 unearned pro rata commission. A service agreement company may  
119 effectuate refunds through the issuing salesperson or agent in  
120 accordance with paragraphs (c) and (d).

121 (c) If the service agreement company effectuates refunds  
122 through the issuing salesperson or agent, the service agreement  
123 company must send the unearned pro rata premium refund due, less  
124 any unearned pro rata commission, to the salesperson or agent  
125 effectuating the refund. Upon receipt, the salesperson or agent  
126 must refund the unearned pro rata premium, including any  
127 unearned pro rata commission, and the sales tax refund owed to  
128 the service agreement holder.

129 (d) The salesperson, agent, or service agreement company  
130 shall maintain a copy of one of the following documents, as

Amendment No.

131 applicable, demonstrating that the refund owed pursuant to  
132 paragraph (c) has been refunded:

133 1. A copy of the front and back of the cancelled check for  
134 the applicable refund amount owed to the service agreement  
135 holder;

136 2. A copy of the front of the check for the applicable  
137 refund amount owed to the service agreement holder and a copy of  
138 the statement from the bank account on which the check was drawn  
139 showing that the check was cashed;

140 3. A copy of the front of the check issued by the service  
141 agreement company to the salesperson or agent in the amount of  
142 the service agreement company's portion of the refund owed to  
143 the service agreement holder and a copy of the statement from  
144 the bank account on which the check was drawn showing that the  
145 check was cashed;

146 4. A copy of a completed buyer's order demonstrating that  
147 the applicable refund amount owed to the service agreement  
148 holder was credited toward the purchase or lease of another  
149 vehicle;

150 5. Any document received from or sent to a lender, finance  
151 company, or creditor demonstrating that a loan or amount  
152 financed by the agreement holder was decreased by the amount of  
153 the applicable refund amount owed to the service agreement  
154 holder; or

155 6. Any other evidence approved by the office in a written  
156 communication to a person licensed pursuant to this part  
157 demonstrating that the applicable refund amount due to the  
158 service agreement holder was properly made.



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159  
160 A salesperson or agent effectuating a refund shall maintain a  
161 copy of the documentation required by this paragraph, and shall  
162 provide a copy to the service agreement company within 45 days  
163 after a request is made to either the service agreement company  
164 or the salesperson by the department or the office.

165 (e) If the office finds that a salesperson or agent  
166 exhibits a pattern or practice of failing to properly effectuate  
167 refunds owed or to maintain and remit to the service agreement  
168 company the documentation required by paragraph (d), the office  
169 shall notify the department of its finding.

170 Section 3. Section 634.141, Florida Statutes, is amended  
171 to read:

172 634.141 Examination of companies.—

173 ~~(1)~~ Motor vehicle service agreement companies licensed  
174 under this part may be subject to periodic examination by the  
175 office in the same manner and subject to the same terms and  
176 conditions as applies to insurers under part II of chapter 624.  
177 The office is not required to conduct periodic examinations  
178 pursuant to this section, but may examine a service agreement  
179 company at its discretion. An examination conducted pursuant to  
180 this section may cover a period of only the most recent 5 years.  
181 The costs of examinations conducted pursuant to ss.  
182 624.316(2)(e) and 624.3161(3) must not exceed ten percent of the  
183 companies prior year reported net income. ~~The commission may by~~  
184 ~~rule establish provisions whereby a company may be exempted from~~  
185 ~~examination.~~

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186 ~~(2) The office shall determine whether to conduct an~~  
187 ~~examination of a company by considering:~~

188 ~~(a) The amount of time that the company has been~~  
189 ~~continuously licensed and operating under the same management~~  
190 ~~and control.~~

191 ~~(b) The company's history of compliance with applicable~~  
192 ~~law.~~

193 ~~(c) The number of consumer complaints against the company.~~

194 ~~(d) The financial condition of the company, demonstrated~~  
195 ~~by the financial reports submitted pursuant to s. 634.137.~~

196 Section 4. Section 634.2855, Florida Statutes, is created  
197 to read:

198 634.2855 Unauthorized entities; gifts and grants.—A  
199 governmental unit, public agency, institution, person, firm, or  
200 legal entity may provide money to the department to enable the  
201 department to pursue unauthorized entities operating in  
202 violation of this part. The department may transfer funds to  
203 the office to investigate, discipline, sanction and take all  
204 action consistent with this part relative to unauthorized  
205 entities. All donations or grants of moneys to the department  
206 shall be deposited into the Insurance Regulatory Trust Fund and  
207 shall be separately accounted for in accordance with this  
208 section. Moneys deposited into the Insurance Regulatory Trust  
209 Fund pursuant to this section may be appropriated by the  
210 Legislature, pursuant to the provisions of chapter 216, for the  
211 purpose of enabling the department or the office to carry out  
212 the provisions of this section. Notwithstanding the provisions  
213 of s. 216.301 and pursuant to s. 216.351, any balance of moneys

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214 deposited into the Insurance Regulatory Trust Fund pursuant to  
215 this section remaining at the end of any fiscal year shall be  
216 available for carrying out the duties and responsibilities of  
217 the department or the office.

218 Section 5. Subsection (5) of section 634.312, Florida  
219 Statutes, is amended to read:

220 634.312 Forms; required provisions and procedures.—

221 (5) Each home warranty contract shall contain a  
222 cancellation provision. Any home warranty agreement may be  
223 canceled by the purchaser within 10 days after purchase. The  
224 refund must be 100 percent of the gross premium paid, less any  
225 claims paid on the agreement. A reasonable administrative fee  
226 may be charged, not to exceed 5 percent of the gross premium  
227 paid by the warranty agreement holder. After the home warranty  
228 agreement has been in effect for 10 days, if the contract is  
229 canceled by the warranty holder, a return of premium shall be  
230 based upon 90 percent of unearned pro rata premium less any  
231 claims that have been paid. If the contract is canceled by the  
232 association for any reason other than for fraud or  
233 misrepresentation, a return of premium shall be based upon 100  
234 percent of unearned pro rata premium, less any claims paid on  
235 the agreement. A home warranty association may effectuate a  
236 refund through the issuing sales representative.

237 Section 6. Section 634.314, Florida Statutes, is amended  
238 to read:

239 634.314 Examination of associations.—

240 ~~(1)~~ Home warranty associations licensed under this part  
241 may be subject to periodic examinations by the office, in the

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242 same manner and subject to the same terms and conditions as  
243 apply to insurers under part II of chapter 624 of the insurance  
244 code. The office is not required to conduct periodic  
245 examinations pursuant to this section, but may examine a home  
246 warranty company at its discretion. An examination conducted  
247 pursuant to this section may cover a period of only the most  
248 recent 5 years. The costs of examinations conducted pursuant to  
249 ss. 624.316(2)(e) and 624.3161(3) must not exceed not exceed ten  
250 percent of the companies prior year reported net income.

251 ~~(2) The office shall determine whether to conduct an~~  
252 ~~examination of a home warranty association by considering:~~

253 ~~(a) The amount of time that the association has been~~  
254 ~~continuously licensed and operating under the same management~~  
255 ~~and control.~~

256 ~~(b) The association's history of compliance with~~  
257 ~~applicable law.~~

258 ~~(c) The number of consumer complaints against the~~  
259 ~~association.~~

260 ~~(d) The financial condition of the association,~~  
261 ~~demonstrated by the financial reports submitted pursuant to s.~~  
262 ~~634.313.~~

263 Section 7. Section 634.3385, Florida Statutes, is created  
264 to read:

265 634.3385 Unauthorized entities; gifts and grants.-A  
266 governmental unit, public agency, institution, person, firm, or  
267 legal entity may provide money to the department to enable the  
268 department to pursue unauthorized entities operating in  
269 violation of this part. The department may transfer funds to

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270 the office to investigate, discipline, sanction and take all  
271 action consistent with this part relative to unauthorized  
272 entities. All donations or grants of moneys to the department  
273 shall be deposited into the Insurance Regulatory Trust Fund and  
274 shall be separately accounted for in accordance with this  
275 section. Moneys deposited into the Insurance Regulatory Trust  
276 Fund pursuant to this section may be appropriated by the  
277 Legislature, pursuant to the provisions of chapter 216, for the  
278 purpose of enabling the department or the office to carry out  
279 the provisions of this section. Notwithstanding the provisions  
280 of s. 216.301 and pursuant to s. 216.351, any balance of moneys  
281 deposited into the Insurance Regulatory Trust Fund pursuant to  
282 this section remaining at the end of any fiscal year shall be  
283 available for carrying out the duties and responsibilities of  
284 the department or the office.

285 Section 8. Section 634.414, Florida Statutes, is amended  
286 to read:

287 634.414 Forms; required provisions.--

288 (1) Each service warranty contract shall contain a  
289 cancellation provision. If the contract is canceled by the  
290 warranty holder, return of premium shall be based upon no less  
291 than 90 percent of unearned pro rata premium less any claims  
292 that have been paid or less the cost of repairs made on behalf  
293 of the warranty holder. If the contract is canceled by the  
294 association, return of premium shall be based upon 100 percent  
295 of unearned pro rata premium, less any claims paid or the cost  
296 of repairs made on behalf of the warranty holder. Service

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297 warranty associations may effectuate refunds through the issuing  
298 sales representative.

299 (2) Refunds owed pursuant to this section may be made by  
300 cash, check, store credit, gift card, or other similar means.  
301 Upon request of the service warranty holder the refund shall be  
302 remitted by check.

303 (3)~~(2)~~ By July 1, 2011, each service warranty contract  
304 sold in this state must be accompanied by a written disclosure  
305 to the consumer that the rate charged for the contract is not  
306 subject to regulation by the office. A service warranty  
307 association may comply with this requirement by including such  
308 disclosure in its service warranty contract form or in a  
309 separate written notice provided to the consumer at the time of  
310 sale.

311 Section 9. Section 634.416, Florida Statutes, is amended  
312 to read:

313 634.416 Examination of associations.-

314 ~~(1)(a)~~ Service warranty associations licensed under this  
315 part may be subject to periodic examination by the office, in  
316 the same manner and subject to the same terms and conditions  
317 that apply to insurers under part II of chapter 624. The office  
318 is not required to conduct periodic examinations pursuant to  
319 this section, but may examine a service warranty company at its  
320 discretion. An examination conducted pursuant to this section  
321 may cover a period of only the most recent 5 years. The costs of  
322 examinations conducted pursuant to ss. 624.316(2)(e) and  
323 624.3161(3) must not exceed not exceed ten percent of the  
324 companies prior year reported net income.

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325 ~~(b) The office shall determine whether to conduct an~~  
326 ~~examination of a service warranty association by considering:~~

327 ~~1. The amount of time that the association has been~~  
328 ~~continuously licensed and operating under the same management~~  
329 ~~and control.~~

330 ~~2. The association's history of compliance with applicable~~  
331 ~~law.~~

332 ~~3. The number of consumer complaints against the~~  
333 ~~association.~~

334 ~~4. The financial condition of the association,~~  
335 ~~demonstrated by the financial reports submitted pursuant to s.~~  
336 ~~634.313.~~

337 ~~(2) The rate charged a service warranty association by~~  
338 ~~the office for examination may be adjusted to reflect the amount~~  
339 ~~collected for the Form 10 K filing fee as provided in this~~  
340 ~~section.~~

341 ~~(3) On or before May 1 of each year, an association may~~  
342 ~~submit to the office the Form 10 K, as filed with the United~~  
343 ~~States Securities and Exchange Commission pursuant to the~~  
344 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~  
345 ~~review of the most current Form 10 K, the office may waive the~~  
346 ~~examination requirement; if the office determines not to waive~~  
347 ~~the examination, such examination will be limited to that~~  
348 ~~examination necessary to ensure compliance with this part. The~~  
349 ~~Form 10 K shall be accompanied by a filing fee of \$2,000 to be~~  
350 ~~deposited into the Insurance Regulatory Trust Fund.~~

351 ~~(4) The office is not required to examine an association~~  
352 ~~that has less than \$20,000 in gross written premiums as~~

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353 ~~reflected in its most recent annual statement. The office may~~  
354 ~~examine such an association if it has reason to believe that the~~  
355 ~~association may be in violation of this part or is otherwise in~~  
356 ~~an unsound financial condition. If the office examines an~~  
357 association that has less than \$20,000 in gross written  
358 premiums, the examination fee may not exceed 5 percent of the  
359 gross written premiums of the association.

360 Section 10. Section 634.4385, Florida Statutes, is created  
361 to read:

362 634.4385 Unauthorized entities; gifts and grants.—A  
363 governmental unit, public agency, institution, person, firm, or  
364 legal entity may provide money to the department to enable the  
365 department to pursue unauthorized entities operating in  
366 violation of this part. The department may transfer funds to  
367 the office to investigate, discipline, sanction and take all  
368 action consistent with this part relative to unauthorized  
369 entities. All donations or grants of moneys to the department  
370 shall be deposited into the Insurance Regulatory Trust Fund and  
371 shall be separately accounted for in accordance with this  
372 section. Moneys deposited into the Insurance Regulatory Trust  
373 Fund pursuant to this section may be appropriated by the  
374 Legislature, pursuant to the provisions of chapter 216, for the  
375 purpose of enabling the department or the office to carry out  
376 the provisions of this section. Notwithstanding the provisions  
377 of s. 216.301 and pursuant to s. 216.351, any balance of moneys  
378 deposited into the Insurance Regulatory Trust Fund pursuant to  
379 this section remaining at the end of any fiscal year shall be



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380 | available for carrying out the duties and responsibilities of  
381 | the department or the office.

382 | Section 11. This act shall take effect July 1, 2012.

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

387 |

Remove the entire title and insert:

388 |

A bill to be entitled

389 |

An act relating to warranty associations; amending s. 634.011,

390 |

F.S.; redefining motor vehicle service agreement; amending s.

391 |

634.121, F.S.; providing criteria for a motor vehicle service

392 |

agreement company to effectuate refunds through the issuing

393 |

salesperson or agent; requiring the salesperson, agent, or

394 |

service agreement company to maintain a copy of certain

395 |

documents; requiring a salesperson or agent to provide a copy of

396 |

a document to the service agreement company if requested by the

397 |

Department of Financial Services or the Office of Insurance

398 |

Regulation; requiring the Office of Insurance Regulation to

399 |

provide to the department findings that a salesperson or agent

400 |

exhibits a pattern or practice of failing to effectuate refunds

401 |

or to maintain and remit to the service agreement company the

402 |

required documentation; amending s. 634.141, F.S.; authorizing

403 |

rather than requiring the Office of Insurance Regulation to

404 |

examine service agreement companies; limiting the examination

405 |

period to the most recent 5 years limiting the costs of certain

406 |

examinations; removing the requirement that the Financial

407 |

Services Commission establish rules for conducting examinations;

## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1011 (2012)

Amendment No.

408 removing the criteria for determining whether an examination is  
409 warranted; creating s. 634.2855, F.S.; authorizing a  
410 governmental entity, public agency, institution, person, firm,  
411 or legal entity to provide money to the Department of Financial  
412 Services to pursue unauthorized entities operating as motor  
413 vehicle service agreement companies; amending s. 634.312, F.S.;  
414 authorizing a home warranty association to effectuate a refund  
415 through the issuing sales representative; amending s. 634.314,  
416 F.S.; authorizing rather than requiring the Office of Insurance  
417 Regulation to examine home warranty associations; limiting the  
418 examination period to the most recent 5 years; removing the  
419 requirement that the Financial Services Commission establish  
420 rules for conducting examinations; removing the criteria for  
421 determining whether an examination is warranted; creating s.  
422 634.3385, F.S.; authorizing a governmental entity, public  
423 agency, institution, person, firm, or legal entity to provide  
424 money to the Department of Financial Services to pursue  
425 unauthorized entities operating as home warranty associations;  
426 amending s. 634.414, F.S.; authorizing service warranty  
427 associations to effectuate refunds through the issuing sales  
428 representative; authorizing a service warranty association to  
429 issue refunds by cash, check, store credit, gift card, or other  
430 similar means; amending s. 634.416, F.S.; authorizing rather  
431 than requiring the Office of Insurance Regulation to examine  
432 service warranty associations; limiting the examination period  
433 to the most recent 5 years limiting the costs of certain  
434 examinations; removing the requirement that the Financial  
435 Services Commission establish rules for conducting examinations;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1011 (2012)

Amendment No.

436 removing the criteria for determining whether an examination is  
437 warranted; removing provisions relating to the rates charged a  
438 to service warranty association for examinations; removing the  
439 provision authorizing the Office of Insurance Regulation to  
440 waive the examination requirement upon receipt and review of the  
441 Form 10-K; creating s. 634.4385, F.S.; authorizing a  
442 governmental entity, public agency, institution, person, firm,  
443 or legal entity to provide money to the Department of Financial  
444 Services to pursue unauthorized entities operating as service  
445 warranty associations; providing an effective date.