

2011408e2

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 215.555, F.S.; revising the definition of
4 "losses," relating to the Florida Hurricane
5 Catastrophe Fund, to exclude certain losses; providing
6 applicability; amending s. 215.5595, F.S.; authorizing
7 an insurer to renegotiate the terms a surplus note
8 issued before a certain date; providing limitations;
9 amending s. 624.407, F.S.; revising the amount of
10 surplus funds required for domestic insurers applying
11 for a certificate of authority after a certain date;
12 amending s. 624.408, F.S.; revising the minimum
13 surplus that must be maintained by certain insurers;
14 authorizing the Office of Insurance Regulation to
15 reduce the surplus requirement under specified
16 circumstances; amending s. 624.4095, F.S.; excluding
17 certain premiums for federal multiple-peril crop
18 insurance from calculations for an insurer's gross
19 writing ratio; requiring insurers to disclose the
20 gross written premiums for federal multiple-peril crop
21 insurance in a financial statement; amending s.
22 624.424, F.S.; revising the frequency that an insurer
23 may use the same accountant or partner to prepare an
24 annual audited financial report; amending s. 626.7452,
25 F.S.; deleting an exception relating to the
26 examination of managing general agents; amending s.
27 626.852, F.S.; providing an exemption from licensure
28 as an adjuster to persons who provide mortgage-related
29 claims adjusting services to certain institutions;

2011408e2

30 providing an exception to the exemption; amending s.
31 626.854, F.S.; providing limitations on the amount of
32 compensation that may be received by a public adjuster
33 for a reopened or supplemental claim; providing
34 statements that may be considered deceptive or
35 misleading if made in any public adjuster's
36 advertisement or solicitation; providing a definition
37 for the term "written advertisement"; requiring that a
38 disclaimer be included in any public adjuster's
39 written advertisement; providing requirements for such
40 disclaimer; requiring certain persons who act on
41 behalf of an insurer to provide notice to the insurer,
42 claimant, public adjuster, or legal representative for
43 an onsite inspection of the insured property;
44 authorizing the insured or claimant to deny access to
45 the property if notice is not provided; requiring the
46 public adjuster to ensure prompt notice of certain
47 property loss claims; providing that an insurer be
48 allowed to interview the insured directly about the
49 loss claim; prohibiting the insurer from obstructing
50 or preventing the public adjuster from communicating
51 with the insured; requiring that the insurer
52 communicate with the public adjuster in an effort to
53 reach an agreement as to the scope of the covered loss
54 under the insurance policy; prohibiting a public
55 adjuster from restricting or preventing persons acting
56 on behalf of the insured from having reasonable access
57 to the insured or the insured's property; prohibiting
58 a public adjuster from restricting or preventing the

2011408e2

59 insured's adjuster from having reasonable access to or
60 inspecting the insured's property; authorizing the
61 insured's adjuster to be present for the inspection;
62 prohibiting a licensed contractor or subcontractor
63 from adjusting a claim on behalf of an insured if such
64 contractor or subcontractor is not a licensed public
65 adjuster; providing an exception; amending s.
66 626.8651, F.S.; requiring that a public adjuster
67 apprentice complete a minimum number of hours of
68 continuing education to qualify for licensure;
69 amending s. 626.8796, F.S.; providing requirements for
70 a public adjuster contract; creating s. 626.70132,
71 F.S.; requiring that notice of a claim, supplemental
72 claim, or reopened claim be given to the insurer
73 within a specified period after a windstorm or
74 hurricane occurs; providing a definition for the terms
75 "supplemental claim" or "reopened claim"; providing
76 applicability; repealing s. 627.0613(4), F.S.,
77 relating to the requirement that the consumer advocate
78 for the Chief Financial Officer prepare an annual
79 report card for each personal residential property
80 insurer; amending s. 627.062, F.S.; requiring that the
81 office issue an approval rather than a notice of
82 intent to approve following its approval of a file and
83 use filing; authorizing the office to disapprove a
84 rate filing because the coverage is inadequate or the
85 insurer charges a higher premium due to certain
86 discriminatory factors; extending the expiration date
87 for making a "file and use" filing; prohibiting the

2011408e2

88 Office of Insurance Regulation from, directly or
89 indirectly, impeding the right of an insurer to
90 acquire policyholders, advertise or appoint agents, or
91 regulate agent commissions; revising the information
92 that must be included in a rate filing relating to
93 certain reinsurance or financing products; deleting a
94 provision that prohibited an insurer from making
95 certain rate filings within a certain period of time
96 after a rate increase; deleting a provision
97 prohibiting an insurer from filing for a rate increase
98 within 6 months after it makes certain rate filings;
99 deleting obsolete provisions relating to legislation
100 enacted during the 2003 Special Session D of the
101 Legislature; providing for the submission of
102 additional or supplementary information pursuant to a
103 rate filing; amending s. 627.06281, F.S.; providing
104 limitations on fees charged for use of the public
105 hurricane model; amending s. 627.0629, F.S.; deleting
106 obsolete provisions; deleting a requirement that the
107 Office of Insurance Regulation propose a method for
108 establishing discounts, debits, credits, and other
109 rate differentials for hurricane mitigation by a
110 certain date; requiring the Financial Services
111 Commission to adopt rules relating to such debits by a
112 certain date; deleting a provision that prohibits an
113 insurer from including an expense or profit load in
114 the cost of reinsurance to replace the Temporary
115 Increase in Coverage Limits; conforming provisions to
116 changes made by the act; amending s. 627.351, F.S.;

2011408e2

117 requiring the Citizens Property Insurance
118 Corporation's logo to include certain language;
119 requiring policies issued by the corporation to
120 include a provision that prohibits policyholders from
121 engaging the services of a public adjuster until after
122 the corporation has tendered an offer; limiting an
123 adjuster's fee for a claim against the corporation;
124 renaming the "high-risk account" as the "coastal
125 account"; revising the conditions under which the
126 Citizens policyholder surcharge may be imposed;
127 providing that members of the Citizens Property
128 Insurance Corporation Board of Governors are not
129 prohibited from practicing in a certain profession if
130 not prohibited by law or ordinance; limiting coverage
131 for damage from sinkholes after a certain date and
132 providing that the corporation must require repair of
133 the property as a condition of any payment;
134 prohibiting board members from voting on certain
135 measures; exempting sinkhole coverage from the
136 corporation's annual rate increase requirements;
137 deleting a requirement that the board reduce the
138 boundaries of certain high-risk areas eligible for
139 wind-only coverages under certain circumstances;
140 amending s. 627.3511, F.S.; conforming provisions to
141 changes made by the act; amending s. 627.4133, F.S.;
142 revising the requirements for providing an insured
143 with notice of nonrenewal, cancellation, or
144 termination of personal lines or commercial
145 residential property insurance; authorizing an insurer

2011408e2

146 to cancel policies after 45 days' notice if the Office
147 of Insurance Regulation determines that the
148 cancellation of policies is necessary to protect the
149 interests of the public or policyholders; authorizing
150 the Office of Insurance Regulation to place an insurer
151 under administrative supervision or appoint a receiver
152 upon the consent of the insurer under certain
153 circumstances; creating s. 627.43141, F.S.; providing
154 definitions; requiring the delivery of a "Notice of
155 Change in Policy Terms" under certain circumstances;
156 specifying requirements for such notice; specifying
157 actions constituting proof of notice; authorizing
158 policy renewals to contain a change in policy terms;
159 providing that receipt of payment by an insurer is
160 deemed acceptance of new policy terms by an insured;
161 providing that the original policy remains in effect
162 until the occurrence of specified events if an insurer
163 fails to provide notice; providing intent; amending s.
164 627.7011, F.S.; requiring the insurer to pay the
165 actual cash value of an insured loss for a dwelling,
166 less any applicable deductible; requiring a
167 policyholder to enter into a contract for the
168 performance of building and structural repairs unless
169 waived by the insurer; restricting insurers and
170 contractors from requiring advance payments for
171 repairs and expenses; requiring the insurer to offer
172 coverage under which the insurer is obligated to pay
173 replacement costs; authorizing the insurer to offer
174 coverage that limits the initial payment for personal

2011408e2

175 property to the actual cash value of the property to
176 be replaced and to require the insured to provide
177 receipts for purchases; requiring the insurer to
178 provide notice of this process in the insurance
179 contract; prohibiting an insurer from requiring the
180 insured to advance payment; amending s. 627.70131,
181 F.S.; specifying application of certain time periods
182 to initial or supplemental property insurance claim
183 notices and payments; providing legislative findings
184 with respect to 2005 statutory changes relating to
185 sinkhole insurance coverage and statutory changes in
186 this act; amending s. 627.706, F.S.; authorizing an
187 insurer to limit coverage for catastrophic ground
188 cover collapse to the principal building and to have
189 discretion to provide additional coverage; allowing
190 the deductible to include costs relating to an
191 investigation of whether sinkhole activity is present;
192 revising definitions; defining the term "structural
193 damage"; providing an insurer with discretion to
194 provide a policyholder with an opportunity to purchase
195 an endorsement to sinkhole coverage; placing a 2-year
196 statute of repose on claims for sinkhole coverage;
197 amending s. 627.7061, F.S.; conforming provisions to
198 changes made by the act; repealing s. 627.7065, F.S.,
199 relating to the establishment of a sinkhole database;
200 amending s. 627.707, F.S.; revising provisions
201 relating to the investigation of sinkholes by
202 insurers; deleting a requirement that the insurer
203 provide a policyholder with a statement regarding

2011408e2

204 testing for sinkhole activity; requiring the insurer
205 to provide repairs in accordance with the insurer's
206 engineer's recommendations or tender the policy limits
207 to the policyholder; providing a time limitation for
208 demanding sinkhole testing by a policyholder and
209 entering into a contract for repairs; requiring all
210 repairs to be completed within a certain time;
211 providing exceptions; providing a criminal penalty on
212 a policyholder for accepting rebates from persons
213 performing repairs; amending s. 627.7073, F.S.;
214 revising provisions relating to inspection reports;
215 providing that the presumption that the report is
216 correct shifts the burden of proof; revising the
217 reports that an insurer must file with the clerk of
218 the court; requiring the policyholder to file certain
219 reports as a precondition to accepting payment;
220 requiring the professional engineer responsible for
221 monitoring sinkhole repairs to issue a report and
222 certification to the property owner and file such
223 report with the court; providing that the act does not
224 create liability for an insurer based on a
225 representation or certification by the engineer;
226 amending s. 627.7074, F.S.; revising provisions
227 relating to neutral evaluation; requiring evaluation
228 in order to make certain determinations; requiring
229 that the neutral evaluator be allowed access to
230 structures being evaluated; providing grounds for
231 disqualifying an evaluator; allowing the Department of
232 Financial Services to appoint an evaluator if the

2011408e2

233 parties cannot come to agreement; revising the
234 timeframes for scheduling a neutral evaluation
235 conference; authorizing an evaluator to enlist another
236 evaluator or other professionals; providing a time
237 certain for issuing a report; providing that certain
238 information is confidential; revising provisions
239 relating to compliance with the evaluator's
240 recommendations; providing that the evaluator is an
241 agent of the department for the purposes of immunity
242 from suit; requiring the department to adopt rules;
243 amending s. 627.711, F.S.; deleting the requirement
244 that the insurer pay for verification of a uniform
245 mitigation verification form that the insurer
246 requires; amending s. 627.712, F.S.; conforming
247 provisions to changes made by the act; providing for
248 applicability; providing effective dates.

249
250 Be It Enacted by the Legislature of the State of Florida:

251
252 Section 1. Effective June 1, 2011, paragraph (d) of
253 subsection (2) of section 215.555, Florida Statutes, is amended
254 to read:

255 215.555 Florida Hurricane Catastrophe Fund.—

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

257 (d) "Losses" means all ~~direct~~ incurred losses under covered
258 policies, including ~~which shall include losses for~~ additional
259 living expenses not to exceed 40 percent of the insured value of
260 a residential structure or its contents and amounts paid as fees
261 on behalf of or inuring to the benefit of a policyholder ~~shall~~

2011408e2

262 ~~exclude loss adjustment expenses.~~ The term "Losses" does not
263 include:

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

266 2. Losses under liability coverages;

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

271 4. Amounts paid as the result of a voluntary expansion of
272 coverage by the insurer, including, but not limited to, a waiver
273 of an applicable deductible;

274 5. Amounts paid to reimburse a policyholder for condominium
275 association or homeowners' association loss assessments or under
276 similar coverages for contractual liabilities;

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

279 7. Amounts in excess of the coverage limits under the
280 covered policy; or

281 8. Allocated or unallocated loss adjustment expenses.

282 Section 2. The amendment to s. 215.555, Florida Statutes,
283 made by this act applies first to the Florida Hurricane
284 Catastrophe Fund reimbursement contract that takes effect June
285 1, 2011.

286 Section 3. Subsection (12) is added to section 215.5595,
287 Florida Statutes, to read:

288 215.5595 Insurance Capital Build-Up Incentive Program.—

289 (12) The insurer may request that the board renegotiate the
290 terms of any surplus note issued under this section before

2011408e2

291 January 1, 2011. The request must be submitted to the board by
292 January 1, 2012. If the insurer agrees to accelerate the payment
293 period of the note by at least 5 years, the board must agree to
294 exempt the insurer from the premium-to-surplus ratios required
295 under paragraph (2) (d). If the insurer agrees to an acceleration
296 of the payment period for less than 5 years, the board may,
297 after consultation with the Office of Insurance Regulation,
298 agree to an appropriate revision of the premium-to-surplus
299 ratios required under paragraph (2) (d) for the remaining term of
300 the note if the revised ratios are not lower than a minimum
301 writing ratio of net premium to surplus of at least 1 to 1 and,
302 alternatively, a minimum writing ratio of gross premium to
303 surplus of at least 3 to 1.

304 Section 4. Section 624.407, Florida Statutes, is amended to
305 read:

306 624.407 Surplus Capital funds required; new insurers.—

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

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

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

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

2011408e2

320 (d) For all insurers other than life insurers and life and
321 health insurers, 10 percent of the insurer's total liabilities;
322 or

323 (e) Notwithstanding paragraph (a) or paragraph (d), for a
324 domestic insurer that transacts residential property insurance
325 and is:

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

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

332 (2) Notwithstanding subsection (1), a new insurer may not
333 be required, but no insurer shall be required under this
334 subsection to have surplus as to policyholders greater than \$100
335 million.

336 (3)~~(2)~~ The requirements of this section shall be based upon
337 all the kinds of insurance actually transacted or to be
338 transacted by the insurer in any and all areas in which it
339 operates, whether or not only a portion of such kinds of
340 insurance are ~~to be~~ transacted in this state.

341 (4)~~(3)~~ As to surplus funds as to policyholders required for
342 qualification to transact one or more kinds of insurance,
343 domestic mutual insurers are governed by chapter 628, and
344 domestic reciprocal insurers are governed by chapter 629.

345 (5)~~(4)~~ For the purposes of this section, liabilities do
346 ~~shall~~ not include liabilities required under s. 625.041(4). For
347 purposes of computing minimum surplus funds as to policyholders
348 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities

2011408e2

349 required under s. 625.041(4).

350 ~~(6)(5)~~ The provisions of this section, as amended by
 351 chapter 89-360, Laws of Florida ~~this act~~, shall apply only to
 352 insurers applying for a certificate of authority on or after
 353 October 1, 1989 ~~the effective date of this act~~.

354 Section 5. Section 624.408, Florida Statutes, is amended to
 355 read:

356 624.408 Surplus funds ~~as to policyholders~~ required; current
 357 ~~new and existing~~ insurers.-

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

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

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

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

370 ~~(d)4.~~ For all insurers other than mortgage guaranty
 371 insurers, life insurers, and life and health insurers, 10
 372 percent of the insurer's total liabilities.

373 ~~(e)5.~~ For property and casualty insurers, \$4 million,
 374 except for property and casualty insurers authorized to
 375 underwrite any line of residential property insurance.

376 ~~(f)(b)~~ For residential ~~any~~ property insurers not ~~and~~
 377 ~~casualty insurer~~ holding a certificate of authority before July

2011408e2

378 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

379 (g) For residential property insurers holding a certificate
380 of authority before July 1, 2011, and until June 30, 2016, \$5
381 million; on or after July 1, 2016, and until June 30, 2021, \$10
382 million; on or after July 1, 2021, \$15 million. The office may
383 reduce this surplus requirement if the insurer is not writing
384 new business, has premiums in force of less than \$1 million per
385 year in residential property insurance, or is a mutual insurance
386 company. ~~following amounts apply instead of the \$4 million~~
387 ~~required by subparagraph (a)5.:~~

388 ~~1. On December 31, 2001, and until December 30, 2002, \$3~~
389 ~~million.~~

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

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

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

395 (2) For purposes of this section, liabilities do ~~shall~~ not
396 include liabilities required under s. 625.041(4). For purposes
397 of computing minimum surplus as to policyholders pursuant to s.
398 625.305(1), liabilities ~~shall~~ include liabilities required under
399 s. 625.041(4).

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

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

405 Section 6. Subsection (7) is added to section 624.4095,
406 Florida Statutes, to read:

2011408e2

407 624.4095 Premiums written; restrictions.—

408 (7) For the purposes of this section and ss. 624.407 and
409 624.408, with respect to capital and surplus requirements, gross
410 written premiums for federal multiple-peril crop insurance which
411 are ceded to the Federal Crop Insurance Corporation or
412 authorized reinsurers may not be included in the calculation of
413 an insurer's gross writing ratio. The liabilities for ceded
414 reinsurance premiums payable for federal multiple-peril crop
415 insurance ceded to the Federal Crop Insurance Corporation and
416 authorized reinsurers shall be netted against the asset for
417 amounts recoverable from reinsurers. Each insurer that writes
418 other insurance products together with federal multiple-peril
419 crop insurance must disclose in the notes to its annual and
420 quarterly financial statements, or in a supplement to those
421 statements, the gross written premiums for federal multiple-
422 peril crop insurance.

423 Section 7. Paragraph (d) of subsection (8) of section
424 624.424, Florida Statutes, is amended to read:

425 624.424 Annual statement and other information.—

426 (8)

427 (d) An insurer may not use the same accountant or partner
428 of an accounting firm responsible for preparing the report
429 required by this subsection for more than 5 ~~7~~ consecutive years.
430 Following this period, the insurer may not use such accountant
431 or partner for a period of 5 ~~2~~ years, but may use another
432 accountant or partner of the same firm. An insurer may request
433 the office to waive this prohibition based upon an unusual
434 hardship to the insurer and a determination that the accountant
435 is exercising independent judgment that is not unduly influenced

2011408e2

436 by the insurer considering such factors as the number of
437 partners, expertise of the partners or the number of insurance
438 clients of the accounting firm; the premium volume of the
439 insurer; and the number of jurisdictions in which the insurer
440 transacts business.

441 Section 8. Section 626.7452, Florida Statutes, is amended
442 to read:

443 626.7452 Managing general agents; examination authority.—
444 The acts of the managing general agent are considered to be the
445 acts of the insurer on whose behalf it is acting. A managing
446 general agent may be examined as if it were the insurer ~~except~~
447 ~~in the case where the managing general agent solely represents a~~
448 ~~single domestic insurer.~~

449 Section 9. Subsection (7) is added to section 626.852,
450 Florida Statutes, to read:

451 626.852 Scope of this part.—

452 (7) Notwithstanding any other provision of law, a person
453 who provides claims adjusting services solely to institutions
454 that service or guarantee mortgages with regard to policies
455 covering the mortgaged properties is exempt from licensure as an
456 adjuster. This exemption does not apply to any person who
457 provides insurance, property repair, or preservation services or
458 to any affiliate of such persons.

459 Section 10. Effective June 1, 2011, subsection (11) of
460 section 626.854, Florida Statutes, is amended to read:

461 626.854 "Public adjuster" defined; prohibitions.—The
462 Legislature finds that it is necessary for the protection of the
463 public to regulate public insurance adjusters and to prevent the
464 unauthorized practice of law.

2011408e2

465 (11) (a) If a public adjuster enters into a contract with an
466 insured or claimant to reopen a claim or ~~to~~ file a supplemental
467 claim that seeks additional payments for a claim that has been
468 previously paid in part or in full or settled by the insurer,
469 the public adjuster may not charge, agree to, or accept any
470 compensation, payment, commission, fee, or other thing of value
471 based on a previous settlement or previous claim payments by the
472 insurer for the same cause of loss. The charge, compensation,
473 payment, commission, fee, or other thing of value must ~~may~~ be
474 based only on the claim payments or settlement obtained through
475 the work of the public adjuster after entering into the contract
476 with the insured or claimant. Compensation for the reopened or
477 supplemental claim may not exceed 20 percent of the reopened or
478 supplemental claim payment. The contracts described in this
479 paragraph are not subject to the limitations in paragraph (b).

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

483 1. Ten percent of the amount of insurance claim payments
484 made by the insurer for claims based on events that are the
485 subject of a declaration of a state of emergency by the
486 Governor. This provision applies to claims made during the
487 ~~period of 1 year~~ after the declaration of emergency. After that
488 year, the limitations in subparagraph 2. apply.

489 2. Twenty percent of the amount of ~~all other~~ insurance
490 claim payments made by the insurer for claims that are not based
491 on events that are the subject of a declaration of a state of
492 emergency by the Governor.

493

2011408e2

494 The provisions of subsections (5)-(13) apply only to residential
495 property insurance policies and condominium association policies
496 as defined in s. 718.111(11).

497 Section 11. Effective January 1, 2012, section 626.854,
498 Florida Statutes, as amended by this act, is amended to read:

499 626.854 "Public adjuster" defined; prohibitions.—The
500 Legislature finds that it is necessary for the protection of the
501 public to regulate public insurance adjusters and to prevent the
502 unauthorized practice of law.

503 (1) A "public adjuster" is any person, except a duly
504 licensed attorney at law as exempted under ~~hereinafter in~~ s.
505 626.860 ~~provided~~, who, for money, commission, or any other thing
506 of value, prepares, completes, or files an insurance claim form
507 for an insured or third-party claimant or who, for money,
508 commission, or any other thing of value, acts ~~or aids in any~~
509 ~~manner~~ on behalf of, or aids an insured or third-party claimant
510 in negotiating for or effecting the settlement of a claim or
511 claims for loss or damage covered by an insurance contract or
512 who advertises for employment as an adjuster of such claims. The
513 term, ~~and~~ also includes any person who, for money, commission,
514 or any other thing of value, solicits, investigates, or adjusts
515 such claims on behalf of a ~~any such~~ public adjuster.

516 (2) This definition does not apply to:

517 (a) A licensed health care provider or employee thereof who
518 prepares or files a health insurance claim form on behalf of a
519 patient.

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

522 (3) A public adjuster may not give legal advice or. ~~A~~

2011408e2

523 ~~public adjuster may not~~ act on behalf of or aid any person in
524 negotiating or settling a claim relating to bodily injury,
525 death, or noneconomic damages.

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

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

534 (6) A public adjuster may not directly or indirectly
535 through any other person or entity initiate contact or engage in
536 face-to-face or telephonic solicitation or enter into a contract
537 with any insured or claimant under an insurance policy until at
538 least 48 hours after the occurrence of an event that may be the
539 subject of a claim under the insurance policy unless contact is
540 initiated by the insured or claimant.

541 (7) An insured or claimant may cancel a public adjuster's
542 contract to adjust a claim without penalty or obligation within
543 3 business days after the date on which the contract is executed
544 or within 3 business days after the date on which the insured or
545 claimant has notified the insurer of the claim, by phone or in
546 writing, whichever is later. The public adjuster's contract must
547 ~~shall~~ disclose to the insured or claimant his or her right to
548 cancel the contract and advise the insured or claimant that
549 notice of cancellation must be submitted in writing and sent by
550 certified mail, return receipt requested, or other form of
551 mailing that ~~which~~ provides proof thereof, to the public

2011408e2

552 adjuster at the address specified in the contract; provided,
553 during any state of emergency as declared by the Governor and
554 for ~~a period of~~ 1 year after the date of loss, the insured or
555 claimant has ~~shall have~~ 5 business days after the date on which
556 the contract is executed to cancel a public adjuster's contract.

557 (8) It is an unfair and deceptive insurance trade practice
558 pursuant to s. 626.9541 for a public adjuster or any other
559 person to circulate or disseminate any advertisement,
560 announcement, or statement containing any assertion,
561 representation, or statement with respect to the business of
562 insurance which is untrue, deceptive, or misleading.

563 (a) The following statements, made in any public adjuster's
564 advertisement or solicitation, are considered deceptive or
565 misleading:

566 1. A statement or representation that invites an insured
567 policyholder to submit a claim when the policyholder does not
568 have covered damage to insured property.

569 2. A statement or representation that invites an insured
570 policyholder to submit a claim by offering monetary or other
571 valuable inducement.

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

575 4. A statement or representation, or use of a logo or
576 shield, that implies or could mistakenly be construed to imply
577 that the solicitation was issued or distributed by a
578 governmental agency or is sanctioned or endorsed by a
579 governmental agency.

580 (b) For purposes of this paragraph, the term "written

2011408e2

581 advertisement" includes only newspapers, magazines, flyers, and
582 bulk mailers. The following disclaimer, which is not required to
583 be printed on standard size business cards, must be added in
584 bold print and capital letters in typeface no smaller than the
585 typeface of the body of the text to all written advertisements
586 by a public adjuster:

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

591
592 (9) A public adjuster, a public adjuster apprentice, or any
593 person or entity acting on behalf of a public adjuster or public
594 adjuster apprentice may not give or offer to give a monetary
595 loan or advance to a client or prospective client.

596 (10) A public adjuster, public adjuster apprentice, or any
597 individual or entity acting on behalf of a public adjuster or
598 public adjuster apprentice may not give or offer to give,
599 directly or indirectly, any article of merchandise having a
600 value in excess of \$25 to any individual for the purpose of
601 advertising or as an inducement to entering into a contract with
602 a public adjuster.

603 (11) (a) If a public adjuster enters into a contract with an
604 insured or claimant to reopen a claim or file a supplemental
605 claim that seeks additional payments for a claim that has been
606 previously paid in part or in full or settled by the insurer,
607 the public adjuster may not charge, agree to, or accept any
608 compensation, payment, commission, fee, or other thing of value
609 based on a previous settlement or previous claim payments by the

2011408e2

610 insurer for the same cause of loss. The charge, compensation,
611 payment, commission, fee, or other thing of value must be based
612 only on the claim payments or settlement obtained through the
613 work of the public adjuster after entering into the contract
614 with the insured or claimant. Compensation for the reopened or
615 supplemental claim may not exceed 20 percent of the reopened or
616 supplemental claim payment. The contracts described in this
617 paragraph are not subject to the limitations in paragraph (b).

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

621 1. Ten percent of the amount of insurance claim payments
622 made by the insurer for claims based on events that are the
623 subject of a declaration of a state of emergency by the
624 Governor. This provision applies to claims made during the year
625 after the declaration of emergency. After that year, the
626 limitations in subparagraph 2. apply.

627 2. Twenty percent of the amount of insurance claim payments
628 made by the insurer for claims that are not based on events that
629 are the subject of a declaration of a state of emergency by the
630 Governor.

631 (12) Each public adjuster must ~~shall~~ provide to the
632 claimant or insured a written estimate of the loss to assist in
633 the submission of a proof of loss or any other claim for payment
634 of insurance proceeds. The public adjuster shall retain such
635 written estimate for at least 5 years and shall make the ~~such~~
636 estimate available to the claimant or insured, the insurer, and
637 the department upon request.

638 (13) A public adjuster, public adjuster apprentice, or any

2011408e2

639 person acting on behalf of a public adjuster or apprentice may
640 not accept referrals of business from any person with whom the
641 public adjuster conducts business if there is any form or manner
642 of agreement to compensate the person, ~~whether~~ directly or
643 indirectly, for referring business to the public adjuster. A
644 public adjuster may not compensate any person, except for
645 another public adjuster, ~~whether~~ directly or indirectly, for the
646 principal purpose of referring business to the public adjuster.

647 (14) A company employee adjuster, independent adjuster,
648 attorney, investigator, or other persons acting on behalf of an
649 insurer that needs access to an insured or claimant or to the
650 insured property that is the subject of a claim must provide at
651 least 48 hours' notice to the insured or claimant, public
652 adjuster, or legal representative before scheduling a meeting
653 with the claimant or an onsite inspection of the insured
654 property. The insured or claimant may deny access to the
655 property if the notice has not been provided. The insured or
656 claimant may waive the 48-hour notice.

657 (15) A public adjuster must ensure prompt notice of
658 property loss claims submitted to an insurer by or through a
659 public adjuster or on which a public adjuster represents the
660 insured at the time the claim or notice of loss is submitted to
661 the insurer. The public adjuster must ensure that notice is
662 given to the insurer, the public adjuster's contract is provided
663 to the insurer, the property is available for inspection of the
664 loss or damage by the insurer, and the insurer is given an
665 opportunity to interview the insured directly about the loss and
666 claim. The insurer must be allowed to obtain necessary
667 information to investigate and respond to the claim.

2011408e2

668 (a) The insurer may not exclude the public adjuster from
669 its in-person meetings with the insured. The insurer shall meet
670 or communicate with the public adjuster in an effort to reach
671 agreement as to the scope of the covered loss under the
672 insurance policy. This section does not impair the terms and
673 conditions of the insurance policy in effect at the time the
674 claim is filed.

675 (b) A public adjuster may not restrict or prevent an
676 insurer, company employee adjuster, independent adjuster,
677 attorney, investigator, or other person acting on behalf of the
678 insurer from having reasonable access at reasonable times to an
679 insured or claimant or to the insured property that is the
680 subject of a claim.

681 (c) A public adjuster may not act or fail to reasonably act
682 in any manner that obstructs or prevents an insurer or insurer's
683 adjuster from timely conducting an inspection of any part of the
684 insured property for which there is a claim for loss or damage.
685 The public adjuster representing the insured may be present for
686 the insurer's inspection, but if the unavailability of the
687 public adjuster otherwise delays the insurer's timely inspection
688 of the property, the public adjuster or the insured must allow
689 the insurer to have access to the property without the
690 participation or presence of the public adjuster or insured in
691 order to facilitate the insurer's prompt inspection of the loss
692 or damage.

693 (16) A licensed contractor under part I of chapter 489, or
694 a subcontractor, may not adjust a claim on behalf of an insured
695 unless licensed and compliant as a public adjuster under this
696 chapter. However, the contractor may discuss or explain a bid

2011408e2

697 for construction or repair of covered property with the
698 residential property owner who has suffered loss or damage
699 covered by a property insurance policy, or the insurer of such
700 property, if the contractor is doing so for the usual and
701 customary fees applicable to the work to be performed as stated
702 in the contract between the contractor and the insured.

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

706 Section 12. Effective January 1, 2012, subsection (6) of
707 section 626.8651, Florida Statutes, is amended to read:

708 626.8651 Public adjuster apprentice license;
709 qualifications.—

710 (6) To qualify for licensure as a public adjuster, a public
711 adjuster apprentice must ~~shall~~ complete: ~~at~~

712 (a) A minimum of 100 hours of employment per month for 12
713 months of employment under the supervision of a licensed and
714 appointed all-lines public adjuster ~~in order to qualify for~~
715 ~~licensure as a public adjuster.~~ The department may adopt rules
716 that establish standards for such employment requirements.

717 (b) A minimum of 8 hours of continuing education specific
718 to the practice of a public adjuster, 2 hours of which must
719 relate to ethics. The continuing education must be designed to
720 inform the licensee about the current insurance laws of this
721 state for the purpose of enabling him or her to engage in
722 business as an insurance adjuster fairly and without injury to
723 the public and to adjust all claims in accordance with the
724 insurance contract and the laws of this state.

725 Section 13. Effective January 1, 2012, section 626.8796,

2011408e2

726 Florida Statutes, is amended to read:

727 626.8796 Public adjuster contracts; fraud statement.—

728 (1) All contracts for public adjuster services must be in
729 writing and ~~must~~ prominently display the following statement on
730 the contract: "Pursuant to s. 817.234, Florida Statutes, any
731 person who, with the intent to injure, defraud, or deceive an
732 ~~any~~ insurer or insured, prepares, presents, or causes to be
733 presented a proof of loss or estimate of cost or repair of
734 damaged property in support of a claim under an insurance policy
735 knowing that the proof of loss or estimate of claim or repairs
736 contains ~~any~~ false, incomplete, or misleading information
737 concerning any fact or thing material to the claim commits a
738 felony of the third degree, punishable as provided in s.
739 775.082, s. 775.083, or s. 775.084, Florida Statutes."

740 (2) A public adjuster contract must contain the full name,
741 permanent business address, and license number of the public
742 adjuster; the full name of the public adjusting firm; and the
743 insured's full name and street address, together with a brief
744 description of the loss. The contract must state the percentage
745 of compensation for the public adjuster's services; the type of
746 claim, including an emergency claim, nonemergency claim, or
747 supplemental claim; the signatures of the public adjuster and
748 all named insureds; and the signature date. If all of the named
749 insureds signatures are not available, the public adjuster must
750 submit an affidavit signed by the available named insureds
751 attesting that they have authority to enter into the contract
752 and settle all claim issues on behalf of the named insureds. An
753 unaltered copy of the executed contract must be remitted to the
754 insurer within 30 days after execution.

2011408e2

755 Section 14. Effective June 1, 2011, section 626.70132,
756 Florida Statutes, is created to read:

757 626.70132 Notice of windstorm or hurricane claim.—A claim,
758 supplemental claim, or reopened claim under an insurance policy
759 that provides property insurance, as defined in s. 624.604, for
760 loss or damage caused by the peril of windstorm or hurricane is
761 barred unless notice of the claim, supplemental claim, or
762 reopened claim was given to the insurer in accordance with the
763 terms of the policy within 3 years after the hurricane first
764 made landfall or the windstorm caused the covered damage. For
765 purposes of this section, the term “supplemental claim” or
766 “reopened claim” means any additional claim for recovery from
767 the insurer for losses from the same hurricane or windstorm
768 which the insurer has previously adjusted pursuant to the
769 initial claim. This section does not affect any applicable
770 limitation on civil actions provided in s. 95.11 for claims,
771 supplemental claims, or reopened claims timely filed under this
772 section.

773 Section 15. Subsection (4) of section 627.0613, Florida
774 Statutes, is repealed.

775 Section 16. Section 627.062, Florida Statutes, is amended
776 to read:

777 627.062 Rate standards.—

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

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

782 (a) Insurers or rating organizations shall establish and
783 use rates, rating schedules, or rating manuals that ~~to~~ allow the

2011408e2

784 insurer a reasonable rate of return on the ~~such~~ classes of
785 insurance written in this state. A copy of rates, rating
786 schedules, rating manuals, premium credits or discount
787 schedules, and surcharge schedules, and changes thereto, must
788 ~~shall~~ be filed with the office under one of the following
789 procedures ~~except as provided in subparagraph 3.:~~

790 1. If the filing is made at least 90 days before the
791 proposed effective date and ~~the filing~~ is not implemented during
792 the office's review of the filing and any proceeding and
793 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file
794 and use" filing. In such case, the office shall finalize its
795 review by issuance of an approval ~~a notice of intent to approve~~
796 or a notice of intent to disapprove within 90 days after receipt
797 of the filing. The approval ~~notice of intent to approve~~ and the
798 notice of intent to disapprove constitute agency action for
799 purposes of the Administrative Procedure Act. Requests for
800 supporting information, requests for mathematical or mechanical
801 corrections, or notification to the insurer by the office of its
802 preliminary findings does ~~shall~~ not toll the 90-day period
803 during any such proceedings and subsequent judicial review. The
804 rate shall be deemed approved if the office does not issue an
805 approval ~~a notice of intent to approve~~ or a notice of intent to
806 disapprove within 90 days after receipt of the filing.

807 2. If the filing is not made in accordance with ~~the~~
808 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as
809 soon as practicable, but within ~~no later than~~ 30 days after the
810 effective date, and is ~~shall be~~ considered a "use and file"
811 filing. An insurer making a "use and file" filing is potentially
812 subject to an order by the office to return to policyholders

2011408e2

813 those portions of rates found to be excessive, as provided in
814 paragraph (h).

815 3. For all property insurance filings made or submitted
816 after January 25, 2007, but before May 1, 2012 ~~December 31,~~
817 ~~2010~~, an insurer seeking a rate that is greater than the rate
818 most recently approved by the office shall make a "file and use"
819 filing. For purposes of this subparagraph, motor vehicle
820 collision and comprehensive coverages are not considered ~~to be~~
821 property coverages.

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

827 1. Past and prospective loss experience within and without
828 this state.

829 2. Past and prospective expenses.

830 3. The degree of competition among insurers for the risk
831 insured.

832 4. Investment income reasonably expected by the insurer,
833 consistent with the insurer's investment practices, from
834 investable premiums anticipated in the filing, plus any other
835 expected income from currently invested assets representing the
836 amount expected on unearned premium reserves and loss reserves.
837 The commission may adopt rules using reasonable techniques of
838 actuarial science and economics to specify the manner in which
839 insurers ~~shall~~ calculate investment income attributable to ~~such~~
840 classes of insurance written in this state and the manner in
841 which ~~such~~ investment income is ~~shall be~~ used to calculate

2011408e2

842 insurance rates. Such manner must ~~shall~~ contemplate allowances
843 for an underwriting profit factor and full consideration of
844 investment income which produce a reasonable rate of return;
845 however, investment income from invested surplus may not be
846 considered.

847 5. The reasonableness of the judgment reflected in the
848 filing.

849 6. Dividends, savings, or unabsorbed premium deposits
850 allowed or returned to Florida policyholders, members, or
851 subscribers.

852 7. The adequacy of loss reserves.

853 8. The cost of reinsurance. The office may ~~shall~~ not
854 disapprove a rate as excessive solely due to the insurer having
855 obtained catastrophic reinsurance to cover the insurer's
856 estimated 250-year probable maximum loss or any lower level of
857 loss.

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

860 10. Conflagration and catastrophe hazards, if applicable.

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

865 12. A reasonable margin for underwriting profit and
866 contingencies.

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

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

870 (c) In the case of fire insurance rates, consideration must

2011408e2

871 ~~shall~~ be given to the availability of water supplies and the
872 experience of the fire insurance business during a period of not
873 less than the most recent 5-year period for which such
874 experience is available.

875 (d) If conflagration or catastrophe hazards are considered
876 ~~given consideration~~ by an insurer in its rates or rating plan,
877 including surcharges and discounts, the insurer shall establish
878 a reserve for that portion of the premium allocated to such
879 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
880 ~~Any~~ Removal of such premiums from the reserve for purposes other
881 than paying claims associated with a catastrophe or purchasing
882 reinsurance for catastrophes must be approved by ~~shall be~~
883 ~~subject to approval of~~ the office. Any ceding commission
884 received by an insurer purchasing reinsurance for catastrophes
885 must ~~shall~~ be placed in the catastrophe reserve.

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

890 1. Rates shall be deemed excessive if they are likely to
891 produce a profit from Florida business which ~~that~~ is
892 unreasonably high in relation to the risk involved in the class
893 of business or if expenses are unreasonably high in relation to
894 services rendered.

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

899 3. Rates shall be deemed inadequate if they are clearly

2011408e2

900 insufficient, together with the investment income attributable
901 to them, to sustain projected losses and expenses in the class
902 of business to which they apply.

903 4. A rating plan, including discounts, credits, or
904 surcharges, shall be deemed unfairly discriminatory if it fails
905 to clearly and equitably reflect consideration of the
906 policyholder's participation in a risk management program
907 adopted pursuant to s. 627.0625.

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

913 6. A rate shall be deemed unfairly discriminatory as to a
914 risk or group of risks if the application of premium discounts,
915 credits, or surcharges among such risks does not bear a
916 reasonable relationship to the expected loss and expense
917 experience among the various risks.

918 (f) In reviewing a rate filing, the office may require the
919 insurer to provide, at the insurer's expense, all information
920 necessary to evaluate the condition of the company and the
921 reasonableness of the filing according to the criteria
922 enumerated in this section.

923 (g) The office may at any time review a rate, rating
924 schedule, rating manual, or rate change; the pertinent records
925 of the insurer; and market conditions. If the office finds on a
926 preliminary basis that a rate may be excessive, inadequate, or
927 unfairly discriminatory, the office shall initiate proceedings
928 to disapprove the rate and shall so notify the insurer. However,

2011408e2

929 the office may not disapprove as excessive any rate for which it
930 has given final approval or which has been deemed approved for a
931 ~~period of~~ 1 year after the effective date of the filing unless
932 the office finds that a material misrepresentation or material
933 error was made by the insurer or was contained in the filing.
934 Upon being ~~so~~ notified, the insurer or rating organization
935 shall, within 60 days, file with the office all information that
936 ~~which~~, in the belief of the insurer or organization, proves the
937 reasonableness, adequacy, and fairness of the rate or rate
938 change. The office shall issue an approval ~~a notice of intent to~~
939 ~~approve~~ or a notice of intent to disapprove pursuant to ~~the~~
940 ~~procedures of~~ paragraph (a) within 90 days after receipt of the
941 insurer's initial response. In such instances and in any
942 administrative proceeding relating to the legality of the rate,
943 the insurer or rating organization shall carry the burden of
944 proof by a preponderance of the evidence to show that the rate
945 is not excessive, inadequate, or unfairly discriminatory. After
946 the office notifies an insurer that a rate may be excessive,
947 inadequate, or unfairly discriminatory, unless the office
948 withdraws the notification, the insurer may ~~shall~~ not alter the
949 rate except to conform to ~~with~~ the office's notice until the
950 earlier of 120 days after the date the notification was provided
951 or 180 days after the date of implementing ~~the implementation of~~
952 the rate. The office ~~may~~, subject to chapter 120, may disapprove
953 without the 60-day notification any rate increase filed by an
954 insurer within the prohibited time period or during the time
955 that the legality of the increased rate is being contested.

956 (h) If ~~In the event~~ the office finds that a rate or rate
957 change is excessive, inadequate, or unfairly discriminatory, the

2011408e2

958 office shall issue an order of disapproval specifying that a new
959 rate or rate schedule, which responds to the findings of the
960 office, be filed by the insurer. The office shall further order,
961 for any "use and file" filing made in accordance with
962 subparagraph (a)2., that premiums charged each policyholder
963 constituting the portion of the rate above that which was
964 actuarially justified be returned to the ~~such~~ policyholder in
965 the form of a credit or refund. If the office finds that an
966 insurer's rate or rate change is inadequate, the new rate or
967 rate schedule filed with the office in response to such a
968 finding is ~~shall be~~ applicable only to new or renewal business
969 of the insurer written on or after the effective date of the
970 responsive filing.

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

973 1. Prohibit any insurer, including any residual market plan
974 or joint underwriting association, from paying acquisition costs
975 based on the full amount of premium, as defined in s. 627.403,
976 applicable to any policy, or prohibit any such insurer from
977 including the full amount of acquisition costs in a rate filing;
978 or-

979 2. Impede, abridge, or otherwise compromise an insurer's
980 right to acquire policyholders, advertise, or appoint agents,
981 including the calculation, manner, or amount of such agent
982 commissions, if any.

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

986 (k)1. An insurer may make a separate filing limited solely

2011408e2

987 to an adjustment of its rates for reinsurance or financing costs
988 incurred in the purchase of reinsurance or financing products to
989 replace or finance the payment of the amount covered by the
990 Temporary Increase in Coverage Limits (TICL) portion of the
991 Florida Hurricane Catastrophe Fund including replacement
992 reinsurance for the TICL reductions made pursuant to s.
993 215.555(17) (e); the actual cost paid due to the application of
994 the TICL premium factor pursuant to s. 215.555(17) (f); and the
995 actual cost paid due to the application of the cash build-up
996 factor pursuant to s. 215.555(5) (b) if the insurer:

997 a. Elects to purchase financing products such as a
998 liquidity instrument or line of credit, in which case the cost
999 included in ~~the~~ filing for the liquidity instrument or line of
1000 credit may not result in a premium increase exceeding 3 percent
1001 for any individual policyholder. All costs contained in the
1002 filing may not result in an overall premium increase of more
1003 than 10 percent for any individual policyholder.

1004 b. An insurer that makes a separate filing relating to
1005 reinsurance or financing products must include ~~Includes in the~~
1006 ~~filing~~ a copy of all of its reinsurance, liquidity instrument,
1007 or line of credit contracts; proof of the billing or payment for
1008 the contracts; and the calculation upon which the proposed rate
1009 change is based demonstrating ~~demonstrates~~ that the costs meet
1010 the criteria of this section ~~and are not loaded for expenses or~~
1011 ~~profit for the insurer making the filing.~~

1012 ~~e. Includes no other changes to its rates in the filing.~~

1013 ~~d. Has not implemented a rate increase within the 6 months~~
1014 ~~immediately preceding the filing.~~

1015 ~~e. Does not file for a rate increase under any other~~

2011408e2

1016 ~~paragraph within 6 months after making a filing under this~~
1017 ~~paragraph.~~

1018 ~~c.f.~~ An insurer that purchases reinsurance or financing
1019 products from an affiliated company may make a separate filing
1020 ~~in compliance with this paragraph does so~~ only if the costs for
1021 such reinsurance or financing products are charged at or below
1022 charges made for comparable coverage by nonaffiliated reinsurers
1023 or financial entities making such coverage or financing products
1024 available in this state.

1025 2. An insurer may ~~only~~ make only one filing per ~~in any~~ 12-
1026 month period under this paragraph.

1027 3. An insurer that elects to implement a rate change under
1028 this paragraph must file its rate filing with the office at
1029 least 45 days before the effective date of the rate change.
1030 After an insurer submits a complete filing that meets all of the
1031 requirements of this paragraph, the office has 45 days after the
1032 date of the filing to review the rate filing and determine if
1033 the rate is excessive, inadequate, or unfairly discriminatory.

1034 (1) The office may disapprove a rate for sinkhole coverage
1035 only if the rate is inadequate or the insurer charges an
1036 applicant or an insured a higher premium solely because of the
1037 applicant's or the insured's race, religion, sex, national
1038 origin, or marital status. Policies subject to this paragraph
1039 may not be counted in the calculation under s. 627.171(2).

1040
1041 The provisions of this subsection do ~~shall~~ not apply to workers'
1042 compensation, and employer's liability insurance, and ~~to~~ motor
1043 vehicle insurance.

1044 (3) (a) For individual risks that are not rated in

2011408e2

1045 accordance with the insurer's rates, rating schedules, rating
1046 manuals, and underwriting rules filed with the office and that
1047 ~~which~~ have been submitted to the insurer for individual rating,
1048 the insurer must maintain documentation on each risk subject to
1049 individual risk rating. The documentation must identify the
1050 named insured and specify the characteristics and classification
1051 of the risk supporting the reason for the risk being
1052 individually risk rated, including any modifications to existing
1053 approved forms to be used on the risk. The insurer must maintain
1054 these records for ~~a period of~~ at least 5 years after the
1055 effective date of the policy.

1056 (b) Individual risk rates and modifications to existing
1057 approved forms are not subject to this part or part II, except
1058 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
1059 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
1060 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
1061 627.4265, 627.427, and 627.428, but are subject to all other
1062 applicable provisions of this code and rules adopted thereunder.

1063 (c) This subsection does not apply to private passenger
1064 motor vehicle insurance.

1065 (d)1. The following categories or kinds of insurance and
1066 types of commercial lines risks are not subject to paragraph
1067 (2) (a) or paragraph (2) (f):

- 1068 a. Excess or umbrella.
- 1069 b. Surety and fidelity.
- 1070 c. Boiler and machinery and leakage and fire extinguishing
1071 equipment.
- 1072 d. Errors and omissions.
- 1073 e. Directors and officers, employment practices, and

2011408e2

1074 management liability.

1075 f. Intellectual property and patent infringement liability.

1076 g. Advertising injury and Internet liability insurance.

1077 h. Property risks rated under a highly protected risks
1078 rating plan.

1079 i. Any other commercial lines categories or kinds of
1080 insurance or types of commercial lines risks that the office
1081 determines should not be subject to paragraph (2)(a) or
1082 paragraph (2)(f) because of the existence of a competitive
1083 market for such insurance, similarity of such insurance to other
1084 categories or kinds of insurance not subject to paragraph (2)(a)
1085 or paragraph (2)(f), or to improve the general operational
1086 efficiency of the office.

1087 2. Insurers or rating organizations shall establish and use
1088 rates, rating schedules, or rating manuals to allow the insurer
1089 a reasonable rate of return on insurance and risks described in
1090 subparagraph 1. which are written in this state.

1091 3. An insurer must notify the office of any changes to
1092 rates for insurance and risks described in subparagraph 1.
1093 within ~~no later than~~ 30 days after the effective date of the
1094 change. The notice must include the name of the insurer, the
1095 type or kind of insurance subject to rate change, total premium
1096 written during the immediately preceding year by the insurer for
1097 the type or kind of insurance subject to the rate change, and
1098 the average statewide percentage change in rates. Underwriting
1099 files, premiums, losses, and expense statistics with regard to
1100 such insurance and risks ~~described in subparagraph 1.~~ written by
1101 an insurer must ~~shall~~ be maintained by the insurer and subject
1102 to examination by the office. Upon examination, the office

2011408e2

1103 ~~shall~~, in accordance with generally accepted and reasonable
1104 actuarial techniques, shall consider the rate factors in
1105 paragraphs (2)(b), (c), and (d) and the standards in paragraph
1106 (2)(e) to determine if the rate is excessive, inadequate, or
1107 unfairly discriminatory.

1108 4. A rating organization must notify the office of any
1109 changes to loss cost for insurance and risks described in
1110 subparagraph 1. within ~~no later than~~ 30 days after the effective
1111 date of the change. The notice must include the name of the
1112 rating organization, the type or kind of insurance subject to a
1113 loss cost change, loss costs during the immediately preceding
1114 year for the type or kind of insurance subject to the loss cost
1115 change, and the average statewide percentage change in loss
1116 cost. Loss and exposure statistics with regard to risks
1117 applicable to loss costs for a rating organization not subject
1118 to paragraph (2)(a) or paragraph (2)(f) must ~~shall~~ be maintained
1119 by the rating organization and are subject to examination by the
1120 office. Upon examination, the office ~~shall~~, in accordance with
1121 generally accepted and reasonable actuarial techniques, shall
1122 consider the rate factors in paragraphs (2)(b)-(d) and the
1123 standards in paragraph (2)(e) to determine if the rate is
1124 excessive, inadequate, or unfairly discriminatory.

1125 5. In reviewing a rate, the office may require the insurer
1126 to provide, at the insurer's expense, all information necessary
1127 to evaluate the condition of the company and the reasonableness
1128 of the rate according to the applicable criteria described in
1129 this section.

1130 (4) The establishment of any rate, rating classification,
1131 rating plan or schedule, or variation thereof in violation of

2011408e2

1132 part IX of chapter 626 is also in violation of this section. ~~In~~
1133 ~~order to enhance the ability of consumers to compare premiums~~
1134 ~~and to increase the accuracy and usefulness of rate-comparison~~
1135 ~~information provided by the office to the public, the office~~
1136 ~~shall develop a proposed standard rating territory plan to be~~
1137 ~~used by all authorized property and casualty insurers for~~
1138 ~~residential property insurance. In adopting the proposed plan,~~
1139 ~~the office may consider geographical characteristics relevant to~~
1140 ~~risk, county lines, major roadways, existing rating territories~~
1141 ~~used by a significant segment of the market, and other relevant~~
1142 ~~factors. Such plan shall be submitted to the President of the~~
1143 ~~Senate and the Speaker of the House of Representatives by~~
1144 ~~January 15, 2006. The plan may not be implemented unless~~
1145 ~~authorized by further act of the Legislature.~~

1146 (5) With respect to a rate filing involving coverage of the
1147 type for which the insurer is required to pay a reimbursement
1148 premium to the Florida Hurricane Catastrophe Fund, the insurer
1149 may fully recoup in its property insurance premiums any
1150 reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~
1151 ~~fund, together with reasonable costs of other reinsurance;~~
1152 however, but except as otherwise provided in this section, the
1153 insurer may not recoup reinsurance costs that duplicate coverage
1154 provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer
1155 may not recoup more than 1 year of reimbursement premium at a
1156 time. Any under-recoupment from the prior year may be added to
1157 the following year's reimbursement premium, and any over-
1158 recoupment must ~~shall~~ be subtracted from the following year's
1159 reimbursement premium.

1160 (6) (a) If an insurer requests an administrative hearing

2011408e2

1161 pursuant to s. 120.57 related to a rate filing under this
1162 section, the director of the Division of Administrative Hearings
1163 shall expedite the hearing and assign an administrative law
1164 judge who shall commence the hearing within 30 days after the
1165 receipt of the formal request and ~~shall~~ enter a recommended
1166 order within 30 days after the hearing or within 30 days after
1167 receipt of the hearing transcript by the administrative law
1168 judge, whichever is later. Each party shall have ~~be allowed~~ 10
1169 days in which to submit written exceptions to the recommended
1170 order. The office shall enter a final order within 30 days after
1171 the entry of the recommended order. The provisions of this
1172 paragraph may be waived upon stipulation of all parties.

1173 (b) Upon entry of a final order, the insurer may request a
1174 expedited appellate review pursuant to the Florida Rules of
1175 Appellate Procedure. It is the intent of the Legislature that
1176 the First District Court of Appeal grant an insurer's request
1177 for an expedited appellate review.

1178 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~
1179 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
1180 control to the extent of any conflict with other provisions of
1181 this section.

1182 (a) ~~(b)~~ Any portion of a judgment entered or settlement paid
1183 as a result of a statutory or common-law bad faith action and
1184 any portion of a judgment entered which awards punitive damages
1185 against an insurer may not be included in the insurer's rate
1186 base, and ~~shall not be~~ used to justify a rate or rate change.
1187 Any common-law bad faith action identified as such, any portion
1188 of a settlement entered as a result of a statutory or common-law
1189 action, or any portion of a settlement wherein an insurer agrees

2011408e2

1190 to pay specific punitive damages may not be used to justify a
1191 rate or rate change. The portion of the taxable costs and
1192 attorney's fees which is identified as being related to the bad
1193 faith and punitive damages ~~in these judgments and settlements~~
1194 may not be included in the insurer's rate base and used ~~may not~~
1195 ~~be utilized~~ to justify a rate or rate change.

1196 (b) ~~(e)~~ Upon reviewing a rate filing and determining whether
1197 the rate is excessive, inadequate, or unfairly discriminatory,
1198 the office shall consider, in accordance with generally accepted
1199 and reasonable actuarial techniques, past and present
1200 prospective loss experience, ~~either~~ using loss experience solely
1201 for this state or giving greater credibility to this state's
1202 loss data after applying actuarially sound methods of assigning
1203 credibility to such data.

1204 (c) ~~(d)~~ Rates shall be deemed excessive if, among other
1205 standards established by this section, the rate structure
1206 provides for replenishment of reserves or surpluses from
1207 premiums when the replenishment is attributable to investment
1208 losses.

1209 (d) ~~(e)~~ The insurer must apply a discount or surcharge based
1210 on the health care provider's loss experience or ~~shall~~ establish
1211 an alternative method giving due consideration to the provider's
1212 loss experience. The insurer must include in the filing a copy
1213 of the surcharge or discount schedule or a description of the
1214 alternative method used, and ~~must~~ provide a copy ~~of such~~
1215 ~~schedule or description~~, as approved by the office, to
1216 policyholders at the time of renewal and to prospective
1217 policyholders at the time of application for coverage.

1218 (e) ~~(f)~~ Each medical malpractice insurer must make a rate

2011408e2

1219 filing under this section, sworn to by at least two executive
1220 officers of the insurer, at least once each calendar year.

1221 ~~(8)(a)1. No later than 60 days after the effective date of~~
1222 ~~medical malpractice legislation enacted during the 2003 Special~~
1223 ~~Session D of the Florida Legislature, the office shall calculate~~
1224 ~~a presumed factor that reflects the impact that the changes~~
1225 ~~contained in such legislation will have on rates for medical~~
1226 ~~malpractice insurance and shall issue a notice informing all~~
1227 ~~insurers writing medical malpractice coverage of such presumed~~
1228 ~~factor. In determining the presumed factor, the office shall use~~
1229 ~~generally accepted actuarial techniques and standards provided~~
1230 ~~in this section in determining the expected impact on losses,~~
1231 ~~expenses, and investment income of the insurer. To the extent~~
1232 ~~that the operation of a provision of medical malpractice~~
1233 ~~legislation enacted during the 2003 Special Session D of the~~
1234 ~~Florida Legislature is stayed pending a constitutional~~
1235 ~~challenge, the impact of that provision shall not be included in~~
1236 ~~the calculation of a presumed factor under this subparagraph.~~

1237 ~~2. No later than 60 days after the office issues its notice~~
1238 ~~of the presumed rate change factor under subparagraph 1., each~~
1239 ~~insurer writing medical malpractice coverage in this state shall~~
1240 ~~submit to the office a rate filing for medical malpractice~~
1241 ~~insurance, which will take effect no later than January 1, 2004,~~
1242 ~~and apply retroactively to policies issued or renewed on or~~
1243 ~~after the effective date of medical malpractice legislation~~
1244 ~~enacted during the 2003 Special Session D of the Florida~~
1245 ~~Legislature. Except as authorized under paragraph (b), the~~
1246 ~~filing shall reflect an overall rate reduction at least as great~~
1247 ~~as the presumed factor determined under subparagraph 1. With~~

2011408e2

1248 ~~respect to policies issued on or after the effective date of~~
1249 ~~such legislation and prior to the effective date of the rate~~
1250 ~~filing required by this subsection, the office shall order the~~
1251 ~~insurer to make a refund of the amount that was charged in~~
1252 ~~excess of the rate that is approved.~~

1253 ~~(b) Any insurer or rating organization that contends that~~
1254 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1255 ~~or unfairly discriminatory shall separately state in its filing~~
1256 ~~the rate it contends is appropriate and shall state with~~
1257 ~~specificity the factors or data that it contends should be~~
1258 ~~considered in order to produce such appropriate rate. The~~
1259 ~~insurer or rating organization shall be permitted to use all of~~
1260 ~~the generally accepted actuarial techniques provided in this~~
1261 ~~section in making any filing pursuant to this subsection. The~~
1262 ~~office shall review each such exception and approve or~~
1263 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1264 ~~actuarially justify any deviations from the rates required to be~~
1265 ~~filed under paragraph (a). The insurer making a filing under~~
1266 ~~this paragraph shall include in the filing the expected impact~~
1267 ~~of medical malpractice legislation enacted during the 2003~~
1268 ~~Special Session D of the Florida Legislature on losses,~~
1269 ~~expenses, and rates.~~

1270 ~~(c) If any provision of medical malpractice legislation~~
1271 ~~enacted during the 2003 Special Session D of the Florida~~
1272 ~~Legislature is held invalid by a court of competent~~
1273 ~~jurisdiction, the office shall permit an adjustment of all~~
1274 ~~medical malpractice rates filed under this section to reflect~~
1275 ~~the impact of such holding on such rates so as to ensure that~~
1276 ~~the rates are not excessive, inadequate, or unfairly~~

2011408e2

1277 ~~discriminatory.~~

1278 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1279 ~~malpractice insurance shall remain in effect until the effective~~
1280 ~~date of a new rate filing approved under this subsection.~~

1281 ~~(e) The calculation and notice by the office of the~~
1282 ~~presumed factor pursuant to paragraph (a) is not an order or~~
1283 ~~rule that is subject to chapter 120. If the office enters into a~~
1284 ~~contract with an independent consultant to assist the office in~~
1285 ~~calculating the presumed factor, such contract shall not be~~
1286 ~~subject to the competitive solicitation requirements of s.~~
1287 ~~287.057.~~

1288 ~~(8)~~(9)(a) The chief executive officer or chief financial
1289 officer of a property insurer and the chief actuary of a
1290 property insurer must certify under oath and subject to the
1291 penalty of perjury, on a form approved by the commission, the
1292 following information, which must accompany a rate filing:

1293 1. The signing officer and actuary have reviewed the rate
1294 filing;

1295 2. Based on the signing officer's and actuary's knowledge,
1296 the rate filing does not contain any untrue statement of a
1297 material fact or omit to state a material fact necessary ~~in~~
1298 ~~order~~ to make the statements made, in light of the circumstances
1299 under which such statements were made, not misleading;

1300 3. Based on the signing officer's and actuary's knowledge,
1301 the information and other factors described in paragraph (2) (b),
1302 including, but not limited to, investment income, fairly present
1303 in all material respects the basis of the rate filing for the
1304 periods presented in the filing; and

1305 4. Based on the signing officer's and actuary's knowledge,

2011408e2

1306 the rate filing reflects all premium savings that are reasonably
1307 expected to result from legislative enactments and are in
1308 accordance with generally accepted and reasonable actuarial
1309 techniques.

1310 (b) A signing officer or actuary who knowingly makes ~~making~~
1311 a false certification under this subsection commits a violation
1312 of s. 626.9541(1)(e) and is subject to the penalties under s.
1313 626.9521.

1314 (c) Failure to provide such certification by the officer
1315 and actuary shall result in the rate filing being disapproved
1316 without prejudice to be refiled.

1317 (d) The certification made pursuant to paragraph (a) is not
1318 rendered false if, after making the subject rate filing, the
1319 insurer provides the office with additional or supplementary
1320 information pursuant to a formal or informal request from the
1321 office. However, the actuary who is primarily responsible for
1322 preparing and submitting such information must certify the
1323 information in accordance with the certification required under
1324 paragraph (a) and the penalties in paragraph (b), except that
1325 the chief executive officer, chief financial officer, or chief
1326 actuary need not certify the additional or supplementary
1327 information.

1328 (e) ~~(d)~~ The commission may adopt rules and forms ~~pursuant to~~
1329 ~~ss. 120.536(1) and 120.54~~ to administer this subsection.

1330 (9) ~~(10)~~ The burden is on the office to establish that rates
1331 are excessive for personal lines residential coverage with a
1332 dwelling replacement cost of \$1 million or more or for a single
1333 condominium unit with a combined dwelling and contents
1334 replacement cost of \$1 million or more. Upon request of the

2011408e2

1335 office, the insurer shall provide ~~to the office~~ such loss and
1336 expense information as the office reasonably needs to meet this
1337 burden.

1338 (10)~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may
1339 not be included in the insurer's rate base and may not be used
1340 to justify a rate or rate change.

1341 Section 17. Paragraph (b) of subsection (3) of section
1342 627.06281, Florida Statutes, is amended to read:

1343 627.06281 Public hurricane loss projection model; reporting
1344 of data by insurers.—

1345 (3)

1346 (b) The fees charged for private sector access and use of
1347 the model shall be the reasonable costs associated with the
1348 operation and maintenance of the model by the office. Such fees
1349 do not apply to access and use of the model by the office. By
1350 ~~January 1, 2009, The office shall establish by rule a fee~~
1351 ~~schedule for access to and the use of the model. The fee~~
1352 ~~schedule must be reasonably calculated to cover only the actual~~
1353 ~~costs of providing access to and the use of the model.~~

1354 Section 18. Subsections (1) and (5) and paragraph (b) of
1355 subsection (8) of section 627.0629, Florida Statutes, are
1356 amended to read:

1357 627.0629 Residential property insurance; rate filings.—

1358 (1)~~(a)~~ It is the intent of the Legislature that insurers
1359 ~~must~~ provide savings to consumers who install or implement
1360 windstorm damage mitigation techniques, alterations, or
1361 solutions to their properties to prevent windstorm losses. A
1362 rate filing for residential property insurance must include
1363 actuarially reasonable discounts, credits, or other rate

2011408e2

1364 differentials, or appropriate reductions in deductibles, for
1365 properties on which fixtures or construction techniques
1366 demonstrated to reduce the amount of loss in a windstorm have
1367 been installed or implemented. The fixtures or construction
1368 techniques must ~~shall~~ include, but are not ~~be~~ limited to,
1369 fixtures or construction techniques that ~~which~~ enhance roof
1370 strength, roof covering performance, roof-to-wall strength,
1371 wall-to-floor-to-foundation strength, opening protection, and
1372 window, door, and skylight strength. Credits, discounts, or
1373 other rate differentials, or appropriate reductions in
1374 deductibles, for fixtures and construction techniques that ~~which~~
1375 meet the minimum requirements of the Florida Building Code must
1376 be included in the rate filing. All insurance companies must
1377 make a rate filing that ~~which~~ includes the credits, discounts,
1378 or other rate differentials or reductions in deductibles by
1379 February 28, 2003. By July 1, 2007, the office shall reevaluate
1380 the discounts, credits, other rate differentials, and
1381 appropriate reductions in deductibles for fixtures and
1382 construction techniques that meet the minimum requirements of
1383 the Florida Building Code, based upon actual experience or any
1384 other loss relativity studies available to the office. The
1385 office shall determine the discounts, credits, other rate
1386 differentials, and appropriate reductions in deductibles that
1387 reflect the full actuarial value of such revaluation, which may
1388 be used by insurers in rate filings.

1389 ~~(b) By February 1, 2011, the Office of Insurance~~
1390 ~~Regulation, in consultation with the Department of Financial~~
1391 ~~Services and the Department of Community Affairs, shall develop~~
1392 ~~and make publicly available a proposed method for insurers to~~

2011408e2

1393 ~~establish discounts, credits, or other rate differentials for~~
1394 ~~hurricane mitigation measures which directly correlate to the~~
1395 ~~numerical rating assigned to a structure pursuant to the uniform~~
1396 ~~home grading scale adopted by the Financial Services Commission~~
1397 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1398 ~~uniform home grading scale. By October 1, 2011, the commission~~
1399 ~~shall adopt rules requiring insurers to make rate filings for~~
1400 ~~residential property insurance which revise insurers' discounts,~~
1401 ~~credits, or other rate differentials for hurricane mitigation~~
1402 ~~measures so that such rate differentials correlate directly to~~
1403 ~~the uniform home grading scale. The rules may include such~~
1404 ~~changes to the uniform home grading scale as the commission~~
1405 ~~determines are necessary, and may specify the minimum required~~
1406 ~~discounts, credits, or other rate differentials. Such rate~~
1407 ~~differentials must be consistent with generally accepted~~
1408 ~~actuarial principles and wind-loss mitigation studies. The rules~~
1409 ~~shall allow a period of at least 2 years after the effective~~
1410 ~~date of the revised mitigation discounts, credits, or other rate~~
1411 ~~differentials for a property owner to obtain an inspection or~~
1412 ~~otherwise qualify for the revised credit, during which time the~~
1413 ~~insurer shall continue to apply the mitigation credit that was~~
1414 ~~applied immediately prior to the effective date of the revised~~
1415 ~~credit. Discounts, credits, and other rate differentials~~
1416 ~~established for rate filings under this paragraph shall~~
1417 ~~supersede, after adoption, the discounts, credits, and other~~
1418 ~~rate differentials included in rate filings under paragraph (a).~~

1419 (5) In order to provide an appropriate transition period,
1420 an insurer may, ~~in its sole discretion,~~ implement an approved
1421 rate filing for residential property insurance over a period of

2011408e2

1422 years. Such ~~An~~ insurer ~~electing to phase in its rate filing~~ must
 1423 provide an informational notice to the office setting out its
 1424 schedule for implementation of the phased-in rate filing. The ~~An~~
 1425 insurer may include in its rate the actual cost of private
 1426 market reinsurance that corresponds to available coverage of the
 1427 Temporary Increase in Coverage Limits, TICL, from the Florida
 1428 Hurricane Catastrophe Fund. The insurer may also include the
 1429 cost of reinsurance to replace the TICL reduction implemented
 1430 pursuant to s. 215.555(17)(d)9. However, this cost ~~for~~
 1431 ~~reinsurance~~ may not ~~include any expense or profit load or result~~
 1432 in a total annual base rate increase in excess of 10 percent.

1433 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
 1434 SOUNDNESS.—

1435 (b) To the extent ~~that~~ funds are provided for this purpose
 1436 in the General Appropriations Act, ~~the Legislature hereby~~
 1437 ~~authorizes~~ the establishment of a program to be administered by
 1438 the Citizens Property Insurance Corporation for homeowners
 1439 insured in the coastal high-risk ~~high-risk~~ account is authorized.

1440 Section 19. Paragraphs (a), (b), (c), (d), (n), (v), and
 1441 (y) of subsection (6) of section 627.351, Florida Statutes, are
 1442 amended to read:

1443 627.351 Insurance risk apportionment plans.—

1444 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1445 (a) ~~1. It is~~ The public purpose of this subsection is to
 1446 ensure that there is ~~the existence of~~ an orderly market for
 1447 property insurance for residents ~~Floridians~~ and ~~Florida~~
 1448 businesses of this state.

1449 1. The Legislature finds that private insurers are
 1450 unwilling or unable to provide affordable property insurance

2011408e2

1451 coverage in this state to the extent sought and needed. The
1452 absence of affordable property insurance threatens the public
1453 health, safety, and welfare and likewise threatens the economic
1454 health of the state. The state therefore has a compelling public
1455 interest and a public purpose to assist in assuring that
1456 property in the state is insured and that it is insured at
1457 affordable rates so as to facilitate the remediation,
1458 reconstruction, and replacement of damaged or destroyed property
1459 in order to reduce or avoid the negative effects otherwise
1460 resulting to the public health, safety, and welfare, to the
1461 economy of the state, and to the revenues of the state and local
1462 governments which are needed to provide for the public welfare.
1463 It is necessary, therefore, to provide affordable property
1464 insurance to applicants who are in good faith entitled to
1465 procure insurance through the voluntary market but are unable to
1466 do so. The Legislature intends, therefore, ~~by this subsection~~
1467 that affordable property insurance be provided and that it
1468 continue to be provided, as long as necessary, through Citizens
1469 Property Insurance Corporation, a government entity that is an
1470 integral part of the state, and that is not a private insurance
1471 company. To that end, the ~~Citizens Property Insurance~~
1472 corporation shall strive to increase the availability of
1473 affordable property insurance in this state, while achieving
1474 efficiencies and economies, and while providing service to
1475 policyholders, applicants, and agents which is no less than the
1476 quality generally provided in the voluntary market, for the
1477 achievement of the foregoing public purposes. Because it is
1478 essential for this government entity to have the maximum
1479 financial resources to pay claims following a catastrophic

2011408e2

1480 hurricane, it is the intent of the Legislature that the Citizens
1481 ~~Property Insurance~~ corporation continue to be an integral part
1482 of the state and that the income of the corporation be exempt
1483 from federal income taxation and that interest on the debt
1484 obligations issued by the corporation be exempt from federal
1485 income taxation. The corporate logo of the corporation must
1486 include the name of the corporation and the words "A Taxpayer-
1487 Funded Corporation."

1488 2. The Residential Property and Casualty Joint Underwriting
1489 Association originally created by this statute shall be known~~r~~
1490 ~~as of July 1, 2002,~~ as the Citizens Property Insurance
1491 Corporation. The corporation shall provide insurance for
1492 residential and commercial property, for applicants who are ~~in~~
1493 ~~good faith~~ entitled, but, in good faith, are unable~~r~~ to procure
1494 insurance through the voluntary market. The corporation shall
1495 operate pursuant to a plan of operation approved by order of the
1496 Financial Services Commission. The plan is subject to continuous
1497 review by the commission. The commission may, by order, withdraw
1498 approval of all or part of a plan if the commission determines
1499 that conditions have changed since approval was granted and that
1500 the purposes of the plan require changes in the plan. ~~The~~
1501 ~~corporation shall continue to operate pursuant to the plan of~~
1502 ~~operation approved by the Office of Insurance Regulation until~~
1503 ~~October 1, 2006.~~ For the purposes of this subsection,
1504 residential coverage includes both personal lines residential
1505 coverage, which consists of the type of coverage provided by
1506 homeowner's, mobile home owner's, dwelling, tenant's,
1507 condominium unit owner's, and similar policies;r and commercial
1508 lines residential coverage, which consists of the type of

2011408e2

1509 coverage provided by condominium association, apartment
1510 building, and similar policies.

1511 3. Effective January 1, 2009, a personal lines residential
1512 structure that has a dwelling replacement cost of \$2 million or
1513 more, or a single condominium unit that has a combined dwelling
1514 and contents ~~content~~ replacement cost of \$2 million or more is
1515 not eligible for coverage by the corporation. Such dwellings
1516 insured by the corporation on December 31, 2008, may continue to
1517 be covered by the corporation until the end of the policy term.
1518 However, such dwellings ~~that are insured by the corporation and~~
1519 ~~become ineligible for coverage due to the provisions of this~~
1520 ~~subparagraph~~ may reapply and obtain coverage if the property
1521 owner provides the corporation with a sworn affidavit from one
1522 or more insurance agents, on a form provided by the corporation,
1523 stating that the agents have made their best efforts to obtain
1524 coverage and that the property has been rejected for coverage by
1525 at least one authorized insurer and at least three surplus lines
1526 insurers. If such conditions are met, the dwelling may be
1527 insured by the corporation for up to 3 years, after which time
1528 the dwelling is ineligible for coverage. The office shall
1529 approve the method used by the corporation for valuing the
1530 dwelling replacement cost for the purposes of this subparagraph.
1531 If a policyholder is insured by the corporation prior to being
1532 determined to be ineligible pursuant to this subparagraph and
1533 such policyholder files a lawsuit challenging the determination,
1534 the policyholder may remain insured by the corporation until the
1535 conclusion of the litigation.

1536 4. It is the intent of the Legislature that policyholders,
1537 applicants, and agents of the corporation receive service and

2011408e2

1538 treatment of the highest possible level but never less than that
1539 generally provided in the voluntary market. It is also ~~is~~
1540 intended that the corporation be held to service standards no
1541 less than those applied to insurers in the voluntary market by
1542 the office with respect to responsiveness, timeliness, customer
1543 courtesy, and overall dealings with policyholders, applicants,
1544 or agents of the corporation.

1545 5. Effective January 1, 2009, a personal lines residential
1546 structure that is located in the "wind-borne debris region," as
1547 defined in s. 1609.2, International Building Code (2006), and
1548 that has an insured value on the structure of \$750,000 or more
1549 is not eligible for coverage by the corporation unless the
1550 structure has opening protections as required under the Florida
1551 Building Code for a newly constructed residential structure in
1552 that area. A residential structure shall be deemed to comply
1553 with ~~the requirements of~~ this subparagraph if it has shutters or
1554 opening protections on all openings and if such opening
1555 protections complied with the Florida Building Code at the time
1556 they were installed.

1557 6. In recognition of the corporation's status as a
1558 governmental entity, policies issued by the corporation must
1559 include a provision stating that as a condition of coverage with
1560 the corporation, policyholders may not engage the services of a
1561 public adjuster to represent the policyholder with respect to
1562 any claim filed under a policy issued by the corporation until
1563 after the corporation has tendered an offer with respect to such
1564 claim. For any claim filed under any policy of the corporation,
1565 a public adjuster may not charge, agree to, or accept any
1566 compensation, payment, commission, fee, or other thing of value

2011408e2

1567 greater than 10 percent of the additional amount actually paid
1568 over the amount that was originally offered by the corporation
1569 for any one claim.

1570 (b)1. All insurers authorized to write one or more subject
1571 lines of business in this state are subject to assessment by the
1572 corporation and, for the purposes of this subsection, are
1573 referred to collectively as "assessable insurers." Insurers
1574 writing one or more subject lines of business in this state
1575 pursuant to part VIII of chapter 626 are not assessable
1576 insurers, but insureds who procure one or more subject lines of
1577 business in this state pursuant to part VIII of chapter 626 are
1578 subject to assessment by the corporation and are referred to
1579 collectively as "assessable insureds." An ~~authorized~~ insurer's
1580 assessment liability begins ~~shall begin~~ on the first day of the
1581 calendar year following the year in which the insurer was issued
1582 a certificate of authority to transact insurance for subject
1583 lines of business in this state and terminates ~~shall terminate~~ 1
1584 year after the end of the first calendar year during which the
1585 insurer no longer holds a certificate of authority to transact
1586 insurance for subject lines of business in this state.

1587 2.a. All revenues, assets, liabilities, losses, and
1588 expenses of the corporation shall be divided into three separate
1589 accounts as follows:

1590 (I) A personal lines account for personal residential
1591 policies issued by the corporation, or issued by the Residential
1592 Property and Casualty Joint Underwriting Association and renewed
1593 by the corporation, which provides ~~that provide~~ comprehensive,
1594 multiperil coverage on risks that are not located in areas
1595 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting

2011408e2

1596 Association as those areas were defined on January 1, 2002, and
1597 for ~~such~~ policies that do not provide coverage for the peril of
1598 wind on risks that are located in such areas;

1599 (II) A commercial lines account for commercial residential
1600 and commercial nonresidential policies issued by the
1601 corporation, or issued by the Residential Property and Casualty
1602 Joint Underwriting Association and renewed by the corporation, which provides ~~that provide~~
1603 coverage for basic property perils
1604 on risks that are not located in areas eligible for coverage by
1605 ~~in~~ the Florida Windstorm Underwriting Association as those areas
1606 were defined on January 1, 2002, and for ~~such~~ policies that do
1607 not provide coverage for the peril of wind on risks that are
1608 located in such areas; and

1609 (III) A coastal ~~high-risk~~ account for personal residential
1610 policies and commercial residential and commercial
1611 nonresidential property policies issued by the corporation, or
1612 transferred to the corporation, which provides ~~that provide~~
1613 coverage for the peril of wind on risks that are located in
1614 areas eligible for coverage by ~~in~~ the Florida Windstorm
1615 Underwriting Association as those areas were defined on January
1616 1, 2002. The corporation may offer policies that provide
1617 multiperil coverage and the corporation shall continue to offer
1618 policies that provide coverage only for the peril of wind for
1619 risks located in areas eligible for coverage in the coastal
1620 ~~high-risk~~ account. In issuing multiperil coverage, the
1621 corporation may use its approved policy forms and rates for the
1622 personal lines account. An applicant or insured who is eligible
1623 to purchase a multiperil policy from the corporation may
1624 purchase a multiperil policy from an authorized insurer without

2011408e2

1625 prejudice to the applicant's or insured's eligibility to
1626 prospectively purchase a policy that provides coverage only for
1627 the peril of wind from the corporation. An applicant or insured
1628 who is eligible for a corporation policy that provides coverage
1629 only for the peril of wind may elect to purchase or retain such
1630 policy and also purchase or retain coverage excluding wind from
1631 an authorized insurer without prejudice to the applicant's or
1632 insured's eligibility to prospectively purchase a policy that
1633 provides multiperil coverage from the corporation. It is the
1634 goal of the Legislature that there ~~would~~ be an overall average
1635 savings of 10 percent or more for a policyholder who currently
1636 has a wind-only policy with the corporation, and an ex-wind
1637 policy with a voluntary insurer or the corporation, and who ~~then~~
1638 obtains a multiperil policy from the corporation. It is the
1639 intent of the Legislature that the offer of multiperil coverage
1640 in the coastal ~~high-risk~~ account be made and implemented in a
1641 manner that does not adversely affect the tax-exempt status of
1642 the corporation or creditworthiness of or security for currently
1643 outstanding financing obligations or credit facilities of the
1644 coastal ~~high-risk~~ account, the personal lines account, or the
1645 commercial lines account. The coastal ~~high-risk~~ account must
1646 also include quota share primary insurance under subparagraph
1647 (c)2. The area eligible for coverage under the coastal ~~high-risk~~
1648 account also includes the area within Port Canaveral, which is
1649 bordered on the south by the City of Cape Canaveral, bordered on
1650 the west by the Banana River, and bordered on the north by
1651 Federal Government property.

1652 b. The three separate accounts must be maintained as long
1653 as financing obligations entered into by the Florida Windstorm

2011408e2

1654 Underwriting Association or Residential Property and Casualty
1655 Joint Underwriting Association are outstanding, in accordance
1656 with the terms of the corresponding financing documents. If ~~When~~
1657 the financing obligations are no longer outstanding, ~~in~~
1658 ~~accordance with the terms of the corresponding financing~~
1659 ~~documents,~~ the corporation may use a single account for all
1660 revenues, assets, liabilities, losses, and expenses of the
1661 corporation. Consistent with ~~the requirement of this~~
1662 subparagraph and prudent investment policies that minimize the
1663 cost of carrying debt, the board shall exercise its best efforts
1664 to retire existing debt or ~~to~~ obtain the approval of necessary
1665 parties to amend the terms of existing debt, so as to structure
1666 the most efficient plan to consolidate the three separate
1667 accounts into a single account.

1668 c. Creditors of the Residential Property and Casualty Joint
1669 Underwriting Association and ~~of~~ the accounts specified in sub-
1670 sub-subparagraphs a.(I) and (II) may have a claim against, and
1671 recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~
1672 ~~subparagraphs a.(I) and (II) and shall have~~ no claim against, or
1673 recourse to, the account referred to in sub-sub-subparagraph
1674 a.(III). Creditors of the Florida Windstorm Underwriting
1675 Association ~~shall~~ have a claim against, and recourse to, the
1676 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~
1677 ~~have~~ no claim against, or recourse to, the accounts referred to
1678 in sub-sub-subparagraphs a.(I) and (II).

1679 d. Revenues, assets, liabilities, losses, and expenses not
1680 attributable to particular accounts shall be prorated among the
1681 accounts.

1682 e. The Legislature finds that the revenues of the

2011408e2

1683 corporation are revenues that are necessary to meet the
1684 requirements set forth in documents authorizing the issuance of
1685 bonds under this subsection.

1686 f. No part of the income of the corporation may inure to
1687 the benefit of any private person.

1688 3. With respect to a deficit in an account:

1689 a. After accounting for the ~~Citizens~~ policyholder surcharge
1690 imposed under sub-subparagraph h. i., if ~~when~~ the remaining
1691 projected deficit incurred in a particular calendar year:

1692 (I) Is not greater than 6 percent of the aggregate
1693 statewide direct written premium for the subject lines of
1694 business for the prior calendar year, the entire deficit shall
1695 be recovered through regular assessments of assessable insurers
1696 under paragraph (q) and assessable insureds.

1697 (II) ~~b. After accounting for the Citizens policyholder~~
1698 ~~surcharge imposed under sub-subparagraph i., when the remaining~~
1699 ~~projected deficit incurred in a particular calendar year Exceeds~~
1700 6 percent of the aggregate statewide direct written premium for
1701 the subject lines of business for the prior calendar year, the
1702 corporation shall levy regular assessments on assessable
1703 insurers under paragraph (q) and on assessable insureds in an
1704 amount equal to the greater of 6 percent of the deficit or 6
1705 percent of the aggregate statewide direct written premium for
1706 the subject lines of business for the prior calendar year. Any
1707 remaining deficit shall be recovered through emergency
1708 assessments under sub-subparagraph c. d.

1709 b.e. Each assessable insurer's share of the amount being
1710 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~
1711 ~~shall~~ be in the proportion that the assessable insurer's direct

2011408e2

1712 written premium for the subject lines of business for the year
1713 preceding the assessment bears to the aggregate statewide direct
1714 written premium for the subject lines of business for that year.
1715 The applicable assessment percentage ~~applicable to each~~
1716 ~~assessable insured~~ is the ratio of the amount being assessed
1717 under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the
1718 aggregate statewide direct written premium for the subject lines
1719 of business for the prior year. Assessments levied by the
1720 corporation on assessable insurers under sub-subparagraph a.
1721 must ~~sub-subparagraphs a. and b. shall~~ be paid as required by
1722 the corporation's plan of operation and paragraph (q).
1723 Assessments levied by the corporation on assessable insureds
1724 under sub-subparagraph a. ~~sub-subparagraphs a. and b.~~ shall be
1725 collected by the surplus lines agent at the time the surplus
1726 lines agent collects the surplus lines tax required by s.
1727 626.932, and ~~shall be~~ paid to the Florida Surplus Lines Service
1728 Office at the time the surplus lines agent pays the surplus
1729 lines tax to that ~~the Florida Surplus Lines Service~~ office. Upon
1730 receipt of regular assessments from surplus lines agents, the
1731 Florida Surplus Lines Service Office shall transfer the
1732 assessments directly to the corporation as determined by the
1733 corporation.

1734 ~~c.d.~~ Upon a determination by the board of governors that a
1735 deficit in an account exceeds the amount that will be recovered
1736 through regular assessments under sub-subparagraph a. ~~or sub-~~
1737 ~~subparagraph b.~~, plus the amount that is expected to be
1738 recovered through surcharges under sub-subparagraph h. i., ~~as to~~
1739 ~~the remaining projected deficit~~ the board ~~shall levy~~, after
1740 verification by the office, shall levy emergency assessments,

2011408e2

1741 for as many years as necessary to cover the deficits, to be
1742 collected by assessable insurers and the corporation and
1743 collected from assessable insureds upon issuance or renewal of
1744 policies for subject lines of business, excluding National Flood
1745 Insurance policies. The amount ~~of the emergency assessment~~
1746 collected in a particular year must ~~shall~~ be a uniform
1747 percentage of that year's direct written premium for subject
1748 lines of business and all accounts of the corporation, excluding
1749 National Flood Insurance Program policy premiums, as annually
1750 determined by the board and verified by the office. The office
1751 shall verify the arithmetic calculations involved in the board's
1752 determination within 30 days after receipt of the information on
1753 which the determination was based. Notwithstanding any other
1754 provision of law, the corporation and each assessable insurer
1755 that writes subject lines of business shall collect emergency
1756 assessments from its policyholders without such obligation being
1757 affected by any credit, limitation, exemption, or deferment.
1758 Emergency assessments levied by the corporation on assessable
1759 insureds shall be collected by the surplus lines agent at the
1760 time the surplus lines agent collects the surplus lines tax
1761 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus
1762 Lines Service Office at the time the surplus lines agent pays
1763 the surplus lines tax to that ~~the Florida Surplus Lines Service~~
1764 office. The emergency assessments ~~so~~ collected shall be
1765 transferred directly to the corporation on a periodic basis as
1766 determined by the corporation and ~~shall be~~ held by the
1767 corporation solely in the applicable account. The aggregate
1768 amount of emergency assessments levied for an account under this
1769 sub-subparagraph in any calendar year may, ~~at the discretion of~~

2011408e2

1770 ~~the board of governors,~~ be less than but may not exceed the
1771 greater of 10 percent of the amount needed to cover the deficit,
1772 plus interest, fees, commissions, required reserves, and other
1773 costs associated with financing ~~of~~ the original deficit, or 10
1774 percent of the aggregate statewide direct written premium for
1775 subject lines of business and ~~for~~ all accounts of the
1776 corporation for the prior year, plus interest, fees,
1777 commissions, required reserves, and other costs associated with
1778 financing the deficit.

1779 d.e. The corporation may pledge the proceeds of
1780 assessments, projected recoveries from the Florida Hurricane
1781 Catastrophe Fund, other insurance and reinsurance recoverables,
1782 policyholder surcharges and other surcharges, and other funds
1783 available to the corporation as the source of revenue for and to
1784 secure bonds issued under paragraph (q), bonds or other
1785 indebtedness issued under subparagraph (c)3., or lines of credit
1786 or other financing mechanisms issued or created under this
1787 subsection, or to retire any other debt incurred as a result of
1788 deficits or events giving rise to deficits, or in any other way
1789 that the board determines will efficiently recover such
1790 deficits. The purpose of the lines of credit or other financing
1791 mechanisms is to provide additional resources to assist the
1792 corporation in covering claims and expenses attributable to a
1793 catastrophe. As used in this subsection, the term "assessments"
1794 includes regular assessments under sub-subparagraph a., ~~sub-~~
1795 ~~subparagraph b.,~~ or subparagraph (q)1. and emergency assessments
1796 under sub-subparagraph d. Emergency assessments collected under
1797 sub-subparagraph d. are not part of an insurer's rates, are not
1798 premium, and are not subject to premium tax, fees, or

2011408e2

1799 commissions; however, failure to pay the emergency assessment
1800 shall be treated as failure to pay premium. The emergency
1801 assessments under sub-subparagraph c. ~~d.~~ shall continue as long
1802 as any bonds issued or other indebtedness incurred with respect
1803 to a deficit for which the assessment was imposed remain
1804 outstanding, unless adequate provision has been made for the
1805 payment of such bonds or other indebtedness pursuant to the
1806 documents governing such bonds or ~~other~~ indebtedness.

1807 e.f. As used in this subsection for purposes of any deficit
1808 incurred on or after January 25, 2007, the term "subject lines
1809 of business" means insurance written by assessable insurers or
1810 procured by assessable insureds for all property and casualty
1811 lines of business in this state, but not including workers'
1812 compensation or medical malpractice. As used in this ~~the~~ sub-
1813 subparagraph, the term "property and casualty lines of business"
1814 includes all lines of business identified on Form 2, Exhibit of
1815 Premiums and Losses, in the annual statement required of
1816 authorized insurers under ~~by~~ s. 624.424 and any rule adopted
1817 under this section, except for those lines identified as
1818 accident and health insurance and except for policies written
1819 under the National Flood Insurance Program or the Federal Crop
1820 Insurance Program. For purposes of this sub-subparagraph, the
1821 term "workers' compensation" includes both workers' compensation
1822 insurance and excess workers' compensation insurance.

1823 f.g. The Florida Surplus Lines Service Office shall
1824 determine annually the aggregate statewide written premium in
1825 subject lines of business procured by assessable insureds and
1826 ~~shall~~ report that information to the corporation in a form and
1827 at a time the corporation specifies to ensure that the

2011408e2

1828 corporation can meet the requirements of this subsection and the
1829 corporation's financing obligations.

1830 ~~g.h.~~ The Florida Surplus Lines Service Office shall verify
1831 the proper application by surplus lines agents of assessment
1832 percentages for regular assessments and emergency assessments
1833 levied under this subparagraph on assessable insureds and ~~shall~~
1834 assist the corporation in ensuring the accurate, timely
1835 collection and payment of assessments by surplus lines agents as
1836 required by the corporation.

1837 ~~h.i.~~ If a deficit is incurred in any account in 2008 or
1838 thereafter, the board of governors shall levy a ~~Citizens~~
1839 policyholder surcharge against all policyholders of the
1840 corporation. ~~for a 12-month period, which~~

1841 (I) The surcharge shall be levied ~~collected at the time of~~
1842 ~~issuance or renewal of a policy,~~ as a uniform percentage of the
1843 premium for the policy of up to 15 percent of such premium,
1844 which funds shall be used to offset the deficit.

1845 (II) The surcharge is payable upon cancellation or
1846 termination of the policy, upon renewal of the policy, or upon
1847 issuance of a new policy by the corporation within the first 12
1848 months after the date of the levy or the period of time
1849 necessary to fully collect the surcharge amount.

1850 (III) The corporation may not levy any regular assessments
1851 under paragraph (q) pursuant to sub-subparagraph a. or sub-
1852 subparagraph b. with respect to a particular year's deficit
1853 until the corporation has first levied the full amount of the
1854 surcharge authorized by this sub-subparagraph.

1855 (IV) The surcharge is ~~Citizens policyholder surcharges~~
1856 ~~under this sub-subparagraph are not considered premium and is~~

2011408e2

1857 ~~are~~ not subject to commissions, fees, or premium taxes. However,
1858 failure to pay the surcharge ~~such surcharges~~ shall be treated as
1859 failure to pay premium.

1860 ~~i.j.~~ If the amount of any assessments or surcharges
1861 collected from corporation policyholders, assessable insurers or
1862 their policyholders, or assessable insureds exceeds the amount
1863 of the deficits, such excess amounts shall be remitted to and
1864 retained by the corporation in a reserve to be used by the
1865 corporation, as determined by the board of governors and
1866 approved by the office, to pay claims or reduce any past,
1867 present, or future plan-year deficits or to reduce outstanding
1868 debt.

1869 (c) The corporation's plan of operation ~~of the corporation~~:

1870 1. Must provide for adoption of residential property and
1871 casualty insurance policy forms and commercial residential and
1872 nonresidential property insurance forms, which ~~forms~~ must be
1873 approved by the office before ~~prior to~~ use. The corporation
1874 shall adopt the following policy forms:

1875 a. Standard personal lines policy forms that are
1876 comprehensive multiperil policies providing full coverage of a
1877 residential property equivalent to the coverage provided in the
1878 private insurance market under an HO-3, HO-4, or HO-6 policy.

1879 b. Basic personal lines policy forms that are policies
1880 similar to an HO-8 policy or a dwelling fire policy that provide
1881 coverage meeting the requirements of the secondary mortgage
1882 market, but which ~~coverage~~ is more limited than the coverage
1883 under a standard policy.

1884 c. Commercial lines residential and nonresidential policy
1885 forms that are generally similar to the basic perils of full

2011408e2

1886 coverage obtainable for commercial residential structures and
1887 commercial nonresidential structures in the admitted voluntary
1888 market.

1889 d. Personal lines and commercial lines residential property
1890 insurance forms that cover the peril of wind only. The forms are
1891 applicable only to residential properties located in areas
1892 eligible for coverage under the coastal ~~high-risk~~ account
1893 referred to in sub-subparagraph (b)2.a.

1894 e. Commercial lines nonresidential property insurance forms
1895 that cover the peril of wind only. The forms are applicable only
1896 to nonresidential properties located in areas eligible for
1897 coverage under the coastal ~~high-risk~~ account referred to in sub-
1898 subparagraph (b)2.a.

1899 f. The corporation may adopt variations of the policy forms
1900 listed in sub-subparagraphs a.-e. which ~~that~~ contain more
1901 restrictive coverage.

1902 ~~2.a.~~ Must provide that the corporation adopt a program in
1903 which the corporation and authorized insurers enter into quota
1904 share primary insurance agreements for hurricane coverage, as
1905 defined in s. 627.4025(2) (a), for eligible risks, and adopt
1906 property insurance forms for eligible risks which cover the
1907 peril of wind only.

1908 a. As used in this subsection, the term:

1909 (I) "Quota share primary insurance" means an arrangement in
1910 which the primary hurricane coverage of an eligible risk is
1911 provided in specified percentages by the corporation and an
1912 authorized insurer. The corporation and authorized insurer are
1913 each solely responsible for a specified percentage of hurricane
1914 coverage of an eligible risk as set forth in a quota share

2011408e2

1915 primary insurance agreement between the corporation and an
1916 authorized insurer and the insurance contract. The
1917 responsibility of the corporation or authorized insurer to pay
1918 its specified percentage of hurricane losses of an eligible
1919 risk, as set forth in the ~~quota share primary insurance~~
1920 agreement, may not be altered by the inability of the other
1921 party ~~to the agreement~~ to pay its specified percentage of
1922 hurricane losses. Eligible risks that are provided hurricane
1923 coverage through a quota share primary insurance arrangement
1924 must be provided policy forms that set forth the obligations of
1925 the corporation and authorized insurer under the arrangement,
1926 clearly specify the percentages of quota share primary insurance
1927 provided by the corporation and authorized insurer, and
1928 conspicuously and clearly state that ~~neither~~ the authorized
1929 insurer and ~~nor~~ the corporation may not be held responsible
1930 beyond their ~~its~~ specified percentage of coverage of hurricane
1931 losses.

1932 (II) "Eligible risks" means personal lines residential and
1933 commercial lines residential risks that meet the underwriting
1934 criteria of the corporation and are located in areas that were
1935 eligible for coverage by the Florida Windstorm Underwriting
1936 Association on January 1, 2002.

1937 b. The corporation may enter into quota share primary
1938 insurance agreements with authorized insurers at corporation
1939 coverage levels of 90 percent and 50 percent.

1940 c. If the corporation determines that additional coverage
1941 levels are necessary to maximize participation in quota share
1942 primary insurance agreements by authorized insurers, the
1943 corporation may establish additional coverage levels. However,

2011408e2

1944 the corporation's quota share primary insurance coverage level
1945 may not exceed 90 percent.

1946 d. Any quota share primary insurance agreement entered into
1947 between an authorized insurer and the corporation must provide
1948 for a uniform specified percentage of coverage of hurricane
1949 losses, by county or territory as set forth by the corporation
1950 board, for all eligible risks of the authorized insurer covered
1951 under the ~~quota share primary insurance~~ agreement.

1952 e. Any quota share primary insurance agreement entered into
1953 between an authorized insurer and the corporation is subject to
1954 review and approval by the office. However, such agreement shall
1955 be authorized only as to insurance contracts entered into
1956 between an authorized insurer and an insured who is already
1957 insured by the corporation for wind coverage.

1958 f. For all eligible risks covered under quota share primary
1959 insurance agreements, the exposure and coverage levels for both
1960 the corporation and authorized insurers shall be reported by the
1961 corporation to the Florida Hurricane Catastrophe Fund. For all
1962 policies of eligible risks covered under such ~~quota share~~
1963 ~~primary insurance~~ agreements, the corporation and the authorized
1964 insurer must ~~shall~~ maintain complete and accurate records for
1965 the purpose of exposure and loss reimbursement audits as
1966 required by ~~Florida Hurricane Catastrophe~~ fund rules. The
1967 corporation and the authorized insurer shall each maintain
1968 duplicate copies of policy declaration pages and supporting
1969 claims documents.

1970 g. The corporation board shall establish in its plan of
1971 operation standards for quota share agreements which ensure that
1972 there is no discriminatory application among insurers as to the

2011408e2

1973 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~
1974 agreements, incentive provisions if any, and consideration paid
1975 for servicing policies or adjusting claims.

1976 h. The quota share primary insurance agreement between the
1977 corporation and an authorized insurer must set forth the
1978 specific terms under which coverage is provided, including, but
1979 not limited to, the sale and servicing of policies issued under
1980 the agreement by the insurance agent of the authorized insurer
1981 producing the business, the reporting of information concerning
1982 eligible risks, the payment of premium to the corporation, and
1983 arrangements for the adjustment and payment of hurricane claims
1984 incurred on eligible risks by the claims adjuster and personnel
1985 of the authorized insurer. Entering into a quota sharing
1986 insurance agreement between the corporation and an authorized
1987 insurer is ~~shall be~~ voluntary and at the discretion of the
1988 authorized insurer.

1989 3. May provide that the corporation may employ or otherwise
1990 contract with individuals or other entities to provide
1991 administrative or professional services that may be appropriate
1992 to effectuate the plan. The corporation may ~~shall have the power~~
1993 ~~to~~ borrow funds, by issuing bonds or by incurring other
1994 indebtedness, and shall have other powers reasonably necessary
1995 to effectuate the requirements of this subsection, including,
1996 without limitation, the power to issue bonds and incur other
1997 indebtedness in order to refinance outstanding bonds or other
1998 indebtedness. The corporation ~~may, but is not required to,~~ seek
1999 judicial validation of its bonds or other indebtedness under
2000 chapter 75. The corporation may issue bonds or incur other
2001 indebtedness, or have bonds issued on its behalf by a unit of

2011408e2

2002 local government pursuant to subparagraph (q)2.7 in the absence
2003 of a hurricane or other weather-related event, upon a
2004 determination by the corporation, subject to approval by the
2005 office, that such action would enable it to efficiently meet the
2006 financial obligations of the corporation and that such
2007 financings are reasonably necessary to effectuate the
2008 requirements of this subsection. The corporation may ~~is~~
2009 ~~authorized to~~ take all actions needed to facilitate tax-free
2010 status for ~~any~~ such bonds or indebtedness, including formation
2011 of trusts or other affiliated entities. The corporation may
2012 ~~shall have the authority to~~ pledge assessments, projected
2013 recoveries from the Florida Hurricane Catastrophe Fund, other
2014 reinsurance recoverables, market equalization and other
2015 surcharges, and other funds available to the corporation as
2016 security for bonds or other indebtedness. In recognition of s.
2017 10, Art. I of the State Constitution, prohibiting the impairment
2018 of obligations of contracts, it is the intent of the Legislature
2019 that no action be taken whose purpose is to impair any bond
2020 indenture or financing agreement or any revenue source committed
2021 by contract to such bond or other indebtedness.

2022 4.a. ~~Must~~ require that the corporation operate subject to
2023 the supervision and approval of a board of governors consisting
2024 of eight individuals who are residents of this state, from
2025 different geographical areas of this state.

2026 a. The Governor, the Chief Financial Officer, the President
2027 of the Senate, and the Speaker of the House of Representatives
2028 shall each appoint two members of the board. At least one of the
2029 two members appointed by each appointing officer must have
2030 demonstrated expertise in insurance, and is deemed to be within

2011408e2

2031 the scope of the exemption provided in s. 112.313(7) (b). The
2032 Chief Financial Officer shall designate one of the appointees as
2033 chair. All board members serve at the pleasure of the appointing
2034 officer. All members of the board ~~of governors~~ are subject to
2035 removal at will by the officers who appointed them. All board
2036 members, including the chair, must be appointed to serve for 3-
2037 year terms beginning annually on a date designated by the plan.
2038 However, for the first term beginning on or after July 1, 2009,
2039 each appointing officer shall appoint one member of the board
2040 for a 2-year term and one member for a 3-year term. A ~~Any~~ board
2041 vacancy shall be filled for the unexpired term by the appointing
2042 officer. The Chief Financial Officer shall appoint a technical
2043 advisory group to provide information and advice to the board ~~of~~
2044 ~~governors~~ in connection with the board's duties under this
2045 subsection. The executive director and senior managers of the
2046 corporation shall be engaged by the board and serve at the
2047 pleasure of the board. Any executive director appointed on or
2048 after July 1, 2006, is subject to confirmation by the Senate.
2049 The executive director is responsible for employing other staff
2050 as the corporation may require, subject to review and
2051 concurrence by the board.

2052 b. The board shall create a Market Accountability Advisory
2053 Committee to assist the corporation in developing awareness of
2054 its rates and its customer and agent service levels in
2055 relationship to the voluntary market insurers writing similar
2056 coverage.

2057 (I) The members of the advisory committee ~~shall~~ consist of
2058 the following 11 persons, one of whom must be elected chair by
2059 the members of the committee: four representatives, one

2011408e2

2060 appointed by the Florida Association of Insurance Agents, one by
2061 the Florida Association of Insurance and Financial Advisors, one
2062 by the Professional Insurance Agents of Florida, and one by the
2063 Latin American Association of Insurance Agencies; three
2064 representatives appointed by the insurers with the three highest
2065 voluntary market share of residential property insurance
2066 business in the state; one representative from the Office of
2067 Insurance Regulation; one consumer appointed by the board who is
2068 insured by the corporation at the time of appointment to the
2069 committee; one representative appointed by the Florida
2070 Association of Realtors; and one representative appointed by the
2071 Florida Bankers Association. All members shall be appointed to
2072 ~~must serve for~~ 3-year terms and may serve for consecutive terms.

2073 (II) The committee shall report to the corporation at each
2074 board meeting on insurance market issues which may include rates
2075 and rate competition with the voluntary market; service,
2076 including policy issuance, claims processing, and general
2077 responsiveness to policyholders, applicants, and agents; and
2078 matters relating to depopulation.

2079 5. Must provide a procedure for determining the eligibility
2080 of a risk for coverage, as follows:

2081 a. Subject to ~~the provisions of~~ s. 627.3517, with respect
2082 to personal lines residential risks, if the risk is offered
2083 coverage from an authorized insurer at the insurer's approved
2084 rate under ~~either~~ a standard policy including wind coverage or,
2085 if consistent with the insurer's underwriting rules as filed
2086 with the office, a basic policy including wind coverage, for a
2087 new application to the corporation for coverage, the risk is not
2088 eligible for any policy issued by the corporation unless the

2011408e2

2089 premium for coverage from the authorized insurer is more than 15
2090 percent greater than the premium for comparable coverage from
2091 the corporation. If the risk is not able to obtain ~~any~~ such
2092 offer, the risk is eligible for ~~either~~ a standard policy
2093 including wind coverage or a basic policy including wind
2094 coverage issued by the corporation; however, if the risk could
2095 not be insured under a standard policy including wind coverage
2096 regardless of market conditions, the risk is ~~shall be~~ eligible
2097 for a basic policy including wind coverage unless rejected under
2098 subparagraph 8. However, ~~with regard to~~ a policyholder of the
2099 corporation or a policyholder removed from the corporation
2100 through an assumption agreement until the end of the assumption
2101 period, ~~the policyholder~~ remains eligible for coverage from the
2102 corporation regardless of any offer of coverage from an
2103 authorized insurer or surplus lines insurer. The corporation
2104 shall determine the type of policy to be provided on the basis
2105 of objective standards specified in the underwriting manual and
2106 based on generally accepted underwriting practices.

2107 (I) If the risk accepts an offer of coverage through the
2108 market assistance plan or ~~an offer of coverage~~ through a
2109 mechanism established by the corporation before a policy is
2110 issued to the risk by the corporation or during the first 30
2111 days of coverage by the corporation, and the producing agent who
2112 submitted the application to the plan or to the corporation is
2113 not currently appointed by the insurer, the insurer shall:

2114 (A) Pay to the producing agent of record of the policy, ~~for~~ for
2115 the first year, an amount that is the greater of the insurer's
2116 usual and customary commission for the type of policy written or
2117 a fee equal to the usual and customary commission of the

2011408e2

2118 corporation; or

2119 (B) Offer to allow the producing agent of record of the
2120 policy to continue servicing the policy for at least ~~a period of~~
2121 ~~not less than~~ 1 year and offer to pay the agent the greater of
2122 the insurer's or the corporation's usual and customary
2123 commission for the type of policy written.

2124

2125 If the producing agent is unwilling or unable to accept
2126 appointment, the new insurer shall pay the agent in accordance
2127 with sub-sub-sub-subparagraph (A).

2128 (II) If ~~When~~ the corporation enters into a contractual
2129 agreement for a take-out plan, the producing agent of record of
2130 the corporation policy is entitled to retain any unearned
2131 commission on the policy, and the insurer shall:

2132 (A) Pay to the producing agent of record ~~of the corporation~~
2133 ~~policy~~, for the first year, an amount that is the greater of the
2134 insurer's usual and customary commission for the type of policy
2135 written or a fee equal to the usual and customary commission of
2136 the corporation; or

2137 (B) Offer to allow the producing agent of record ~~of the~~
2138 ~~corporation policy~~ to continue servicing the policy for at least
2139 ~~a period of not less than~~ 1 year and offer to pay the agent the
2140 greater of the insurer's or the corporation's usual and
2141 customary commission for the type of policy written.

2142

2143 If the producing agent is unwilling or unable to accept
2144 appointment, the new insurer shall pay the agent in accordance
2145 with sub-sub-sub-subparagraph (A).

2146 b. With respect to commercial lines residential risks, for

2011408e2

2147 a new application to the corporation for coverage, if the risk
2148 is offered coverage under a policy including wind coverage from
2149 an authorized insurer at its approved rate, the risk is not
2150 eligible for a ~~any~~ policy issued by the corporation unless the
2151 premium for coverage from the authorized insurer is more than 15
2152 percent greater than the premium for comparable coverage from
2153 the corporation. If the risk is not able to obtain any such
2154 offer, the risk is eligible for a policy including wind coverage
2155 issued by the corporation. However, ~~with regard to~~ a
2156 policyholder of the corporation or a policyholder removed from
2157 the corporation through an assumption agreement until the end of
2158 the assumption period, ~~the policyholder~~ remains eligible for
2159 coverage from the corporation regardless of an ~~any~~ offer of
2160 coverage from an authorized insurer or surplus lines insurer.

2161 (I) If the risk accepts an offer of coverage through the
2162 market assistance plan or ~~an offer of coverage~~ through a
2163 mechanism established by the corporation before a policy is
2164 issued to the risk by the corporation or during the first 30
2165 days of coverage by the corporation, and the producing agent who
2166 submitted the application to the plan or the corporation is not
2167 currently appointed by the insurer, the insurer shall:

2168 (A) Pay to the producing agent of record of the policy, for
2169 the first year, an amount that is the greater of the insurer's
2170 usual and customary commission for the type of policy written or
2171 a fee equal to the usual and customary commission of the
2172 corporation; or

2173 (B) Offer to allow the producing agent of record of the
2174 policy to continue servicing the policy for at least ~~a period of~~
2175 ~~not less than~~ 1 year and offer to pay the agent the greater of

2011408e2

2176 the insurer's or the corporation's usual and customary
2177 commission for the type of policy written.

2178

2179 If the producing agent is unwilling or unable to accept
2180 appointment, the new insurer shall pay the agent in accordance
2181 with sub-sub-sub-subparagraph (A).

2182 (II) ~~If~~ When the corporation enters into a contractual
2183 agreement for a take-out plan, the producing agent of record of
2184 the corporation policy is entitled to retain any unearned
2185 commission on the policy, and the insurer shall:

2186 (A) Pay to the producing agent of record ~~of the corporation~~
2187 policy, for the first year, an amount that is the greater of the
2188 insurer's usual and customary commission for the type of policy
2189 written or a fee equal to the usual and customary commission of
2190 the corporation; or

2191 (B) Offer to allow the producing agent of record ~~of the~~
2192 ~~corporation policy~~ to continue servicing the policy for at least
2193 ~~a period of not less than~~ 1 year and offer to pay the agent the
2194 greater of the insurer's or the corporation's usual and
2195 customary commission for the type of policy written.

2196

2197 If the producing agent is unwilling or unable to accept
2198 appointment, the new insurer shall pay the agent in accordance
2199 with sub-sub-sub-subparagraph (A).

2200 c. For purposes of determining comparable coverage under
2201 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based
2202 on those forms and coverages that are reasonably comparable. The
2203 corporation may rely on a determination of comparable coverage
2204 and premium made by the producing agent who submits the

2011408e2

2205 application to the corporation, made in the agent's capacity as
2206 the corporation's agent. A comparison may be made solely of the
2207 premium with respect to the main building or structure only on
2208 the following basis: the same coverage A or other building
2209 limits; the same percentage hurricane deductible that applies on
2210 an annual basis or that applies to each hurricane for commercial
2211 residential property; the same percentage of ordinance and law
2212 coverage, if the same limit is offered by both the corporation
2213 and the authorized insurer; the same mitigation credits, to the
2214 extent the same types of credits are offered both by the
2215 corporation and the authorized insurer; the same method for loss
2216 payment, such as replacement cost or actual cash value, if the
2217 same method is offered both by the corporation and the
2218 authorized insurer in accordance with underwriting rules; and
2219 any other form or coverage that is reasonably comparable as
2220 determined by the board. If an application is submitted to the
2221 corporation for wind-only coverage in the coastal ~~high-risk~~
2222 account, the premium for the corporation's wind-only policy plus
2223 the premium for the ex-wind policy that is offered by an
2224 authorized insurer to the applicant must ~~shall~~ be compared to
2225 the premium for multiperil coverage offered by an authorized
2226 insurer, subject to the standards for comparison specified in
2227 this subparagraph. If the corporation or the applicant requests
2228 from the authorized insurer a breakdown of the premium of the
2229 offer by types of coverage so that a comparison may be made by
2230 the corporation or its agent and the authorized insurer refuses
2231 or is unable to provide such information, the corporation may
2232 treat the offer as not being an offer of coverage from an
2233 authorized insurer at the insurer's approved rate.

2011408e2

2234 6. Must include rules for classifications of risks and
2235 rates ~~therefor~~.

2236 7. Must provide that if premium and investment income for
2237 an account attributable to a particular calendar year are in
2238 excess of projected losses and expenses for the account
2239 attributable to that year, such excess shall be held in surplus
2240 in the account. Such surplus must ~~shall~~ be available to defray
2241 deficits in that account as to future years and ~~shall be~~ used
2242 for that purpose before ~~prior to~~ assessing assessable insurers
2243 and assessable insureds as to any calendar year.

2244 8. Must provide objective criteria and procedures to be
2245 uniformly applied to ~~for~~ all applicants in determining whether
2246 an individual risk is so hazardous as to be uninsurable. In
2247 making this determination and in establishing the criteria and
2248 procedures, the following must ~~shall~~ be considered:

2249 a. Whether the likelihood of a loss for the individual risk
2250 is substantially higher than for other risks of the same class;
2251 and

2252 b. Whether the uncertainty associated with the individual
2253 risk is such that an appropriate premium cannot be determined.
2254

2255 The acceptance or rejection of a risk by the corporation shall
2256 be construed as the private placement of insurance, and the
2257 provisions of chapter 120 do ~~shall~~ not apply.

2258 9. Must provide that the corporation ~~shall~~ make its best
2259 efforts to procure catastrophe reinsurance at reasonable rates,
2260 to cover its projected 100-year probable maximum loss as
2261 determined by the board of governors.

2262 10. The policies issued by the corporation must provide

2011408e2

2263 that, if the corporation or the market assistance plan obtains
2264 an offer from an authorized insurer to cover the risk at its
2265 approved rates, the risk is no longer eligible for renewal
2266 through the corporation, except as otherwise provided in this
2267 subsection.

2268 11. Corporation policies and applications must include a
2269 notice that the corporation policy could, under this section, be
2270 replaced with a policy issued by an authorized insurer which
2271 ~~that~~ does not provide coverage identical to the coverage
2272 provided by the corporation. The notice must ~~shall~~ also specify
2273 that acceptance of corporation coverage creates a conclusive
2274 presumption that the applicant or policyholder is aware of this
2275 potential.

2276 12. May establish, subject to approval by the office,
2277 different eligibility requirements and operational procedures
2278 for any line or type of coverage for any specified county or
2279 area if the board determines that such changes ~~to the~~
2280 ~~eligibility requirements and operational procedures~~ are
2281 justified due to the voluntary market being sufficiently stable
2282 and competitive in such area or for such line or type of
2283 coverage and that consumers who, in good faith, are unable to
2284 obtain insurance through the voluntary market through ordinary
2285 methods ~~would~~ continue to have access to coverage from the
2286 corporation. If ~~When~~ coverage is sought in connection with a
2287 real property transfer, the ~~such~~ requirements and procedures may
2288 ~~shall~~ not provide ~~for~~ an effective date of coverage later than
2289 the date of the closing of the transfer as established by the
2290 transferor, the transferee, and, if applicable, the lender.

2291 13. Must provide that, with respect to the coastal high-

2011408e2

2292 ~~risk~~ account, any assessable insurer with a surplus as to
2293 policyholders of \$25 million or less writing 25 percent or more
2294 of its total countrywide property insurance premiums in this
2295 state may petition the office, within the first 90 days of each
2296 calendar year, to qualify as a limited apportionment company. A
2297 regular assessment levied by the corporation on a limited
2298 apportionment company for a deficit incurred by the corporation
2299 for the coastal ~~high-risk~~ account ~~in 2006 or thereafter~~ may be
2300 paid to the corporation on a monthly basis as the assessments
2301 are collected by the limited apportionment company from its
2302 insureds pursuant to s. 627.3512, but the regular assessment
2303 must be paid in full within 12 months after being levied by the
2304 corporation. A limited apportionment company shall collect from
2305 its policyholders any emergency assessment imposed under sub-
2306 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the
2307 office determines that any regular assessment will result in an
2308 impairment of the surplus of a limited apportionment company,
2309 the office may direct that all or part of such assessment be
2310 deferred as provided in subparagraph (q)4. However, ~~there shall~~
2311 ~~be no limitation or deferment of~~ an emergency assessment to be
2312 collected from policyholders under sub-subparagraph (b)3.d. may
2313 not be limited or deferred.

2314 14. Must provide that the corporation appoint as its
2315 licensed agents only those agents who also hold an appointment
2316 as defined in s. 626.015(3) with an insurer who at the time of
2317 the agent's initial appointment by the corporation is authorized
2318 to write and is actually writing personal lines residential
2319 property coverage, commercial residential property coverage, or
2320 commercial nonresidential property coverage within the state.

2011408e2

2321 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan
2322 option to its policyholders which, ~~allows~~ at a minimum, allows
2323 for quarterly and semiannual payment of premiums. A monthly
2324 payment plan may, but is not required to, be offered.

2325 16. Must limit coverage on mobile homes or manufactured
2326 homes built before ~~prior to~~ 1994 to actual cash value of the
2327 dwelling rather than replacement costs of the dwelling.

2328 17. May provide such limits of coverage as the board
2329 determines, consistent with the requirements of this subsection.

2330 18. May require commercial property to meet specified
2331 hurricane mitigation construction features as a condition of
2332 eligibility for coverage.

2333 19. Must offer sinkhole coverage. However, effective
2334 February 1, 2012, coverage is not included for losses to
2335 appurtenant structures, driveways, sidewalks, decks, or patios
2336 that are directly or indirectly caused by sinkhole activity. The
2337 corporation shall exclude such coverage using a notice of
2338 coverage change, which may be included with the policy renewal,
2339 and not by issuance of a notice of nonrenewal of the excluded
2340 coverage upon renewal of the current policy.

2341 20. As a condition for making payment for damage caused by
2342 the peril of sinkhole, regardless of whether such payment is
2343 made pursuant to the contract, mediation, neutral evaluation,
2344 appraisal, arbitration, settlement, or litigation, the payment
2345 must be dedicated entirely to the costs of repairing the
2346 structure or remediation of the land. Unless this condition is
2347 met, the corporation is prohibited from making payment.

2348 (d)1. All prospective employees for senior management
2349 positions, as defined by the plan of operation, are subject to

2011408e2

2350 background checks as a prerequisite for employment. The office
2351 shall conduct the background checks ~~on such prospective~~
2352 ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2353 2. On or before July 1 of each year, employees of the
2354 corporation must ~~are required to~~ sign and submit a statement
2355 attesting that they do not have a conflict of interest, as
2356 defined in part III of chapter 112. As a condition of
2357 employment, all prospective employees must ~~are required to~~ sign
2358 and submit to the corporation a conflict-of-interest statement.

2359 3. Senior managers and members of the board of governors
2360 are subject to ~~the provisions of~~ part III of chapter 112,
2361 including, but not limited to, the code of ethics and public
2362 disclosure and reporting of financial interests, pursuant to s.
2363 112.3145. Notwithstanding s. 112.3143(2), a board member may not
2364 vote on any measure that would inure to his or her special
2365 private gain or loss; that he or she knows would inure to the
2366 special private gain or loss of any principal by whom he or she
2367 is retained or to the parent organization or subsidiary of a
2368 corporate principal by which he or she is retained, other than
2369 an agency as defined in s. 112.312; or that he or she knows
2370 would inure to the special private gain or loss of a relative or
2371 business associate of the public officer. Before the vote is
2372 taken, such member shall publicly state to the assembly the
2373 nature of his or her interest in the matter from which he or she
2374 is abstaining from voting and, within 15 days after the vote
2375 occurs, disclose the nature of his or her interest as a public
2376 record in a memorandum filed with the person responsible for
2377 recording the minutes of the meeting, who shall incorporate the
2378 memorandum in the minutes. Senior managers and board members are

2011408e2

2379 also required to file such disclosures with the Commission on
2380 Ethics and the Office of Insurance Regulation. The executive
2381 director of the corporation or his or her designee shall notify
2382 each existing and newly appointed ~~and existing appointed~~ member
2383 of the board of governors and senior managers of their duty to
2384 comply with the reporting requirements of part III of chapter
2385 112. At least quarterly, the executive director or his or her
2386 designee shall submit to the Commission on Ethics a list of
2387 names of the senior managers and members of the board of
2388 governors who are subject to the public disclosure requirements
2389 under s. 112.3145.

2390 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other
2391 provision of law, an employee or board member may not knowingly
2392 accept, directly or indirectly, any gift or expenditure from a
2393 person or entity, or an employee or representative of such
2394 person or entity, which ~~that~~ has a contractual relationship with
2395 the corporation or who is under consideration for a contract. An
2396 employee or board member who fails to comply with subparagraph
2397 3. or this subparagraph is subject to penalties provided under
2398 ss. 112.317 and 112.3173.

2399 5. Any senior manager of the corporation who is employed on
2400 or after January 1, 2007, regardless of the date of hire, who
2401 subsequently retires or terminates employment is prohibited from
2402 representing another person or entity before the corporation for
2403 2 years after retirement or termination of employment from the
2404 corporation.

2405 6. Any senior manager of the corporation who is employed on
2406 or after January 1, 2007, regardless of the date of hire, who
2407 subsequently retires or terminates employment is prohibited from

2011408e2

2408 having any employment or contractual relationship for 2 years
2409 with an insurer that has entered into a take-out bonus agreement
2410 with the corporation.

2411 (n)1. Rates for coverage provided by the corporation must
2412 ~~shall~~ be actuarially sound and subject to ~~the requirements of s.~~
2413 627.062, except as otherwise provided in this paragraph. The
2414 corporation shall file its recommended rates with the office at
2415 least annually. The corporation shall provide any additional
2416 information regarding the rates which the office requires. The
2417 office shall consider the recommendations of the board and issue
2418 a final order establishing the rates for the corporation within
2419 45 days after the recommended rates are filed. The corporation
2420 may not pursue an administrative challenge or judicial review of
2421 the final order of the office.

2422 2. In addition to the rates otherwise determined pursuant
2423 to this paragraph, the corporation shall impose and collect an
2424 amount equal to the premium tax provided ~~for~~ in s. 624.509 to
2425 augment the financial resources of the corporation.

2426 3. After the public hurricane loss-projection model under
2427 s. 627.06281 has been found to be accurate and reliable by the
2428 Florida Commission on Hurricane Loss Projection Methodology, the
2429 ~~that~~ model shall serve as the minimum benchmark for determining
2430 the windstorm portion of the corporation's rates. This
2431 subparagraph does not require or allow the corporation to adopt
2432 rates lower than the rates otherwise required or allowed by this
2433 paragraph.

2434 4. The rate filings for the corporation which were approved
2435 by the office and ~~which~~ took effect January 1, 2007, are
2436 rescinded, except for those rates that were lowered. As soon as

2011408e2

2437 possible, the corporation shall begin using the lower rates that
2438 were in effect on December 31, 2006, and ~~shall~~ provide refunds
2439 to policyholders who ~~have~~ paid higher rates as a result of that
2440 rate filing. The rates in effect on December 31, 2006, ~~shall~~
2441 remain in effect for the 2007 and 2008 calendar years except for
2442 any rate change that results in a lower rate. The next rate
2443 change that may increase rates shall take effect pursuant to a
2444 new rate filing recommended by the corporation and established
2445 by the office, subject to ~~the requirements of~~ this paragraph.

2446 5. Beginning on July 15, 2009, and annually ~~each year~~
2447 thereafter, the corporation must make a recommended actuarially
2448 sound rate filing for each personal and commercial line of
2449 business it writes, to be effective no earlier than January 1,
2450 2010.

2451 6. Beginning on or after January 1, 2010, and
2452 notwithstanding the board's recommended rates and the office's
2453 final order regarding the corporation's filed rates under
2454 subparagraph 1., the corporation shall annually implement a rate
2455 increase ~~each year~~ which, except for sinkhole coverage, does not
2456 exceed 10 percent for any single policy issued by the
2457 corporation, excluding coverage changes and surcharges.

2458 7. The corporation may also implement an increase to
2459 reflect the effect on the corporation of the cash buildup factor
2460 pursuant to s. 215.555(5) (b).

2461 8. The corporation's implementation of rates as prescribed
2462 in subparagraph 6. shall cease for any line of business written
2463 by the corporation upon the corporation's implementation of
2464 actuarially sound rates. Thereafter, the corporation shall
2465 annually make a recommended actuarially sound rate filing for

2011408e2

2466 each commercial and personal line of business the corporation
2467 writes.

2468 (v)1. Effective July 1, 2002, policies of the Residential
2469 Property and Casualty Joint Underwriting Association ~~shall~~
2470 become policies of the corporation. All obligations, rights,
2471 assets and liabilities of the ~~Residential Property and Casualty~~
2472 ~~Joint Underwriting~~ association, including bonds, note and debt
2473 obligations, and the financing documents pertaining to them
2474 become those of the corporation as of July 1, 2002. The
2475 corporation is not required to issue endorsements or
2476 certificates of assumption to insureds during the remaining term
2477 of in-force transferred policies.

2478 2. Effective July 1, 2002, policies of the Florida
2479 Windstorm Underwriting Association are transferred to the
2480 corporation and ~~shall~~ become policies of the corporation. All
2481 obligations, rights, assets, and liabilities of the ~~Florida~~
2482 ~~Windstorm Underwriting~~ association, including bonds, note and
2483 debt obligations, and the financing documents pertaining to them
2484 are transferred to and assumed by the corporation on July 1,
2485 2002. The corporation is not required to issue endorsements or
2486 certificates of assumption to insureds during the remaining term
2487 of in-force transferred policies.

2488 3. The Florida Windstorm Underwriting Association and the
2489 Residential Property and Casualty Joint Underwriting Association
2490 shall take all actions necessary ~~as may be proper~~ to further
2491 evidence the transfers and ~~shall~~ provide the documents and
2492 instruments of further assurance as may reasonably be requested
2493 by the corporation for that purpose. The corporation shall
2494 execute assumptions and instruments as the trustees or other

2011408e2

2495 parties to the financing documents of the Florida Windstorm
2496 Underwriting Association or the Residential Property and
2497 Casualty Joint Underwriting Association may reasonably request
2498 to further evidence the transfers and assumptions, which
2499 transfers and assumptions, however, are effective on the date
2500 provided under this paragraph whether or not, and regardless of
2501 the date on which, the assumptions or instruments are executed
2502 by the corporation. Subject to the relevant financing documents
2503 pertaining to their outstanding bonds, notes, indebtedness, or
2504 other financing obligations, the moneys, investments,
2505 receivables, choses in action, and other intangibles of the
2506 Florida Windstorm Underwriting Association shall be credited to
2507 the coastal ~~high-risk~~ account of the corporation, and those of
2508 the personal lines residential coverage account and the
2509 commercial lines residential coverage account of the Residential
2510 Property and Casualty Joint Underwriting Association shall be
2511 credited to the personal lines account and the commercial lines
2512 account, respectively, of the corporation.

2513 4. Effective July 1, 2002, a new applicant for property
2514 insurance coverage who would otherwise have been eligible for
2515 coverage in the Florida Windstorm Underwriting Association is
2516 eligible for coverage from the corporation as provided in this
2517 subsection.

2518 5. The transfer of all policies, obligations, rights,
2519 assets, and liabilities from the Florida Windstorm Underwriting
2520 Association to the corporation and the renaming of the
2521 Residential Property and Casualty Joint Underwriting Association
2522 as the corporation does not ~~shall in no way~~ affect the coverage
2523 with respect to covered policies as defined in s. 215.555(2)(c)

2011408e2

2524 provided to these entities by the Florida Hurricane Catastrophe
2525 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~
2526 fund to the Florida Windstorm Underwriting Association based on
2527 its exposures as of June 30, 2002, and each June 30 thereafter
2528 shall be redesignated as coverage for the coastal ~~high-risk~~
2529 account of the corporation. Notwithstanding any other provision
2530 of law, the coverage provided by the ~~Florida Hurricane~~
2531 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint
2532 Underwriting Association based on its exposures as of June 30,
2533 2002, and each June 30 thereafter shall be transferred to the
2534 personal lines account and the commercial lines account of the
2535 corporation. Notwithstanding any other provision of law, the
2536 coastal ~~high-risk~~ account shall be treated, for all Florida
2537 Hurricane Catastrophe Fund purposes, as if it were a separate
2538 participating insurer with its own exposures, reimbursement
2539 premium, and loss reimbursement. Likewise, the personal lines
2540 and commercial lines accounts shall be viewed together, for all
2541 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two
2542 accounts were one and represent a single, separate participating
2543 insurer with its own exposures, reimbursement premium, and loss
2544 reimbursement. The coverage provided by the ~~Florida Hurricane~~
2545 ~~Catastrophe~~ fund to the corporation shall constitute and operate
2546 as a full transfer of coverage from the Florida Windstorm
2547 Underwriting Association and Residential Property and Casualty
2548 Joint Underwriting to the corporation.

2549 (y) It is the intent of the Legislature that the amendments
2550 to this subsection enacted in 2002 should, over time, reduce the
2551 probable maximum windstorm losses in the residual markets and
2552 ~~should reduce~~ the potential assessments to be levied on property

2011408e2

2553 insurers and policyholders statewide. In furtherance of this
2554 intent,+

2555 ~~1.~~ the board shall, on or before February 1 of each year,
2556 provide a report to the President of the Senate and the Speaker
2557 of the House of Representatives showing the reduction or
2558 increase in the 100-year probable maximum loss attributable to
2559 wind-only coverages and the quota share program under this
2560 subsection combined, as compared to the benchmark 100-year
2561 probable maximum loss of the Florida Windstorm Underwriting
2562 Association. For purposes of this paragraph, the benchmark 100-
2563 year probable maximum loss of the Florida Windstorm Underwriting
2564 Association is ~~shall be~~ the calculation dated February 2001 and
2565 based on November 30, 2000, exposures. In order to ensure
2566 comparability of data, the board shall use the same methods for
2567 calculating its probable maximum loss as were used to calculate
2568 the benchmark probable maximum loss.

2569 ~~2. Beginning December 1, 2010, if the report under~~
2570 ~~subparagraph 1. for any year indicates that the 100-year~~
2571 ~~probable maximum loss attributable to wind-only coverages and~~
2572 ~~the quota share program combined does not reflect a reduction of~~
2573 ~~at least 25 percent from the benchmark, the board shall reduce~~
2574 ~~the boundaries of the high-risk area eligible for wind-only~~
2575 ~~coverages under this subsection in a manner calculated to reduce~~
2576 ~~such probable maximum loss to an amount at least 25 percent~~
2577 ~~below the benchmark.~~

2578 ~~3. Beginning February 1, 2015, if the report under~~
2579 ~~subparagraph 1. for any year indicates that the 100-year~~
2580 ~~probable maximum loss attributable to wind-only coverages and~~
2581 ~~the quota share program combined does not reflect a reduction of~~

2011408e2

2582 ~~at least 50 percent from the benchmark, the boundaries of the~~
2583 ~~high risk area eligible for wind only coverages under this~~
2584 ~~subsection shall be reduced by the elimination of any area that~~
2585 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~
2586 ~~Waterway.~~

2587 Section 20. Paragraph (a) of subsection (5) of section
2588 627.3511, Florida Statutes, is amended to read:

2589 627.3511 Depopulation of Citizens Property Insurance
2590 Corporation.—

2591 (5) APPLICABILITY.—

2592 (a) The take-out bonus provided by subsection (2) and the
2593 exemption from assessment provided by paragraph (3)(a) apply
2594 only if the corporation policy is replaced by ~~either~~ a standard
2595 policy including wind coverage or, if consistent with the
2596 insurer's underwriting rules ~~as~~ filed with the office, a basic
2597 policy including wind coverage; however, for ~~with respect to~~
2598 risks located in areas where coverage through the coastal high-
2599 ~~risk~~ account of the corporation is available, the replacement
2600 policy need not provide wind coverage. The insurer must renew
2601 the replacement policy at approved rates on substantially
2602 similar terms for four additional 1-year terms, unless canceled
2603 or not renewed by the policyholder. If an insurer assumes the
2604 corporation's obligations for a policy, it must issue a
2605 replacement policy for a 1-year term upon expiration of the
2606 corporation policy and must renew the replacement policy at
2607 approved rates on substantially similar terms for four
2608 additional 1-year terms, unless canceled or not renewed by the
2609 policyholder. For each replacement policy canceled or nonrenewed
2610 by the insurer for any reason during the 5-year coverage period

2011408e2

2611 ~~required by this paragraph~~, the insurer must remove from the
2612 corporation one additional policy covering a risk similar to the
2613 risk covered by the canceled or nonrenewed policy. In addition
2614 ~~to these requirements~~, the corporation must place the bonus
2615 moneys in escrow for ~~a period of~~ 5 years; such moneys may be
2616 released from escrow only to pay claims. If the policy is
2617 canceled or nonrenewed before the end of the 5-year period, the
2618 amount of the take-out bonus must be prorated for the time
2619 period the policy was insured. A take-out bonus provided by
2620 subsection (2) or subsection (6) is ~~shall not be considered~~
2621 premium income for purposes of taxes and assessments under the
2622 Florida Insurance Code and ~~shall~~ remain the property of the
2623 corporation, subject to the prior security interest of the
2624 insurer under the escrow agreement until it is released from
2625 escrow; ~~and~~ after it is released from escrow it is ~~shall be~~
2626 considered an asset of the insurer and credited to the insurer's
2627 capital and surplus.

2628 Section 21. Paragraph (b) of subsection (2) of section
2629 627.4133, Florida Statutes, is amended to read:

2630 627.4133 Notice of cancellation, nonrenewal, or renewal
2631 premium.—

2632 (2) With respect to any personal lines or commercial
2633 residential property insurance policy, including, but not
2634 limited to, any homeowner's, mobile home owner's, farmowner's,
2635 condominium association, condominium unit owner's, apartment
2636 building, or other policy covering a residential structure or
2637 its contents:

2638 (b) The insurer shall give the named insured written notice
2639 of nonrenewal, cancellation, or termination at least 90 ~~100~~ days

2011408e2

2640 ~~before~~ prior to the effective date of the nonrenewal,
2641 cancellation, or termination. ~~However, the insurer shall give at~~
2642 ~~least 100 days' written notice, or written notice by June 1,~~
2643 ~~whichever is earlier, for any nonrenewal, cancellation, or~~
2644 ~~termination that would be effective between June 1 and November~~
2645 ~~30. The notice must include the reason or reasons for the~~
2646 ~~nonrenewal, cancellation, or termination, except that:~~

2647 1. A policy covering both a home and motor vehicle may be
2648 nonrenewed for any reason applicable to either the property or
2649 motor vehicle insurance after providing 90 days' notice. The
2650 ~~insurer shall give the named insured written notice of~~
2651 ~~nonrenewal, cancellation, or termination at least 180 days prior~~
2652 ~~to the effective date of the nonrenewal, cancellation, or~~
2653 ~~termination for a named insured whose residential structure has~~
2654 ~~been insured by that insurer or an affiliated insurer for at~~
2655 ~~least a 5-year period immediately prior to the date of the~~
2656 ~~written notice.~~

2657 2. If ~~When~~ cancellation is for nonpayment of premium, at
2658 least 10 days' written notice of cancellation accompanied by the
2659 reason therefor must ~~shall~~ be given. As used in this
2660 subparagraph, the term "nonpayment of premium" means failure of
2661 the named insured to discharge when due ~~any of~~ her or his
2662 obligations in connection with the payment of premiums on a
2663 policy or any installment of such premium, whether the premium
2664 is payable directly to the insurer or its agent or indirectly
2665 under any premium finance plan or extension of credit, or
2666 failure to maintain membership in an organization if such
2667 membership is a condition precedent to insurance coverage. The
2668 term "Nonpayment of premium" also means the failure of a

2011408e2

2669 financial institution to honor an insurance applicant's check
2670 after delivery to a licensed agent for payment of a premium,
2671 even if the agent has previously delivered or transferred the
2672 premium to the insurer. If a dishonored check represents the
2673 initial premium payment, the contract and all contractual
2674 obligations are ~~shall be~~ void ab initio unless the nonpayment is
2675 cured within the earlier of 5 days after actual notice by
2676 certified mail is received by the applicant or 15 days after
2677 notice is sent to the applicant by certified mail or registered
2678 mail, and if the contract is void, any premium received by the
2679 insurer from a third party must ~~shall~~ be refunded to that party
2680 in full.

2681 3. If ~~When~~ such cancellation or termination occurs during
2682 the first 90 days ~~during which~~ the insurance is in force and the
2683 insurance is canceled or terminated for reasons other than
2684 nonpayment of premium, at least 20 days' written notice of
2685 cancellation or termination accompanied by the reason therefor
2686 must ~~shall~~ be given unless ~~except where~~ there has been a
2687 material misstatement or misrepresentation or failure to comply
2688 with the underwriting requirements established by the insurer.

2689 4. The requirement for providing written notice ~~of~~
2690 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
2691 between June 1 and November 30 does not apply to the following
2692 situations, but the insurer remains subject to the requirement
2693 to provide such notice at least 100 days before ~~prior to~~ the
2694 effective date of nonrenewal:

2695 a. A policy that is nonrenewed due to a revision in the
2696 coverage for sinkhole losses and catastrophic ground cover
2697 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~

2011408e2

2698 ~~2007-1, Laws of Florida.~~

2699 b. A policy that is nonrenewed by Citizens Property
2700 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2701 that has been assumed by an authorized insurer offering
2702 replacement ~~or renewal~~ coverage to the policyholder is exempt
2703 from the notice requirements of paragraph (a) and this
2704 paragraph. In such cases, the corporation must give the named
2705 insured written notice of nonrenewal at least 45 days before the
2706 effective date of the nonrenewal.

2707
2708 After the policy has been in effect for 90 days, the policy may
2709 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
2710 has been a material misstatement, a nonpayment of premium, a
2711 failure to comply with underwriting requirements established by
2712 the insurer within 90 days after ~~of~~ the date of effectuation of
2713 coverage, or a substantial change in the risk covered by the
2714 policy or if ~~when~~ the cancellation is for all insureds under
2715 such policies for a given class of insureds. This paragraph does
2716 not apply to individually rated risks having a policy term of
2717 less than 90 days.

2718 5. Notwithstanding any other provision of law, an insurer
2719 may cancel or nonrenew a property insurance policy after at
2720 least 45 days' notice if the office finds that the early
2721 cancellation of some or all of the insurer's policies is
2722 necessary to protect the best interests of the public or
2723 policyholders and the office approves the insurer's plan for
2724 early cancellation or nonrenewal of some or all of its policies.
2725 The office may base such finding upon the financial condition of
2726 the insurer, lack of adequate reinsurance coverage for hurricane

2011408e2

2727 risk, or other relevant factors. The office may condition its
2728 finding on the consent of the insurer to be placed under
2729 administrative supervision pursuant to s. 624.81 or to the
2730 appointment of a receiver under chapter 631.

2731 Section 22. Section 627.43141, Florida Statutes, is created
2732 to read:

2733 627.43141 Notice of change in policy terms.-

2734 (1) As used in this section, the term:

2735 (a) "Change in policy terms" means the modification,
2736 addition, or deletion of any term, coverage, duty, or condition
2737 from the previous policy. The correction of typographical or
2738 scrivener's errors or the application of mandated legislative
2739 changes is not a change in policy terms.

2740 (b) "Policy" means a written contract or written agreement
2741 for personal lines property and casualty insurance, or the
2742 certificate of such insurance, by whatever name called, and
2743 includes all clauses, riders, endorsements, and papers that are
2744 a part of such policy. The term does not include a binder as
2745 defined in s. 627.420 unless the duration of the binder period
2746 exceeds 60 days.

2747 (c) "Renewal" means the issuance and delivery by an insurer
2748 of a policy superseding at the end of the policy period a policy
2749 previously issued and delivered by the same insurer or the
2750 issuance and delivery of a certificate or notice extending the
2751 term of a policy beyond its policy period or term. Any policy
2752 that has a policy period or term of less than 6 months or that
2753 does not have a fixed expiration date shall, for purposes of
2754 this section, be considered as written for successive policy
2755 periods or terms of 6 months.

2011408e2

2756 (2) A renewal policy may contain a change in policy terms.
2757 If a renewal policy does contains such change, the insurer must
2758 give the named insured written notice of the change, which must
2759 be enclosed along with the written notice of renewal premium
2760 required by ss. 627.4133 and 627.728. Such notice shall be
2761 entitled "Notice of Change in Policy Terms."

2762 (3) Although not required, proof of mailing or registered
2763 mailing through the United States Postal Service of the Notice
2764 of Change in Policy Terms to the named insured at the address
2765 shown in the policy is sufficient proof of notice.

2766 (4) Receipt of the premium payment for the renewal policy
2767 by the insurer is deemed to be acceptance of the new policy
2768 terms by the named insured.

2769 (5) If an insurer fails to provide the notice required in
2770 subsection (2), the original policy terms remain in effect until
2771 the next renewal and the proper service of the notice, or until
2772 the effective date of replacement coverage obtained by the named
2773 insured, whichever occurs first.

2774 (6) The intent of this section is to:

2775 (a) Allow an insurer to make a change in policy terms
2776 without nonrenewing those policyholders that the insurer wishes
2777 to continue insuring.

2778 (b) Alleviate concern and confusion to the policyholder
2779 caused by the required policy nonrenewal for the limited issue
2780 if an insurer intends to renew the insurance policy, but the new
2781 policy contains a change in policy terms.

2782 (c) Encourage policyholders to discuss their coverages with
2783 their insurance agents.

2784 Section 23. Section 627.7011, Florida Statutes, is amended

2011408e2

2785 to read:

2786 627.7011 Homeowners' policies; offer of replacement cost
2787 coverage and law and ordinance coverage.—

2788 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
2789 insurance policy ~~on or after October 1, 2005, or prior to the~~
2790 ~~first renewal of a homeowner's insurance policy on or after~~
2791 ~~October 1, 2005,~~ the insurer must offer each of the following:

2792 (a) A policy or endorsement providing that any loss that
2793 ~~which~~ is repaired or replaced will be adjusted on the basis of
2794 replacement costs to the dwelling not exceeding policy limits ~~as~~
2795 ~~to the dwelling,~~ rather than actual cash value, but not
2796 including costs necessary to meet applicable laws and ordinances
2797 regulating the construction, use, or repair of any property or
2798 requiring the tearing down of any property, including the costs
2799 of removing debris.

2800 (b) A policy or endorsement providing that, subject to
2801 other policy provisions, any loss that ~~which~~ is repaired or
2802 replaced at any location will be adjusted on the basis of
2803 replacement costs to the dwelling not exceeding policy limits ~~as~~
2804 ~~to the dwelling,~~ rather than actual cash value, and also
2805 including costs necessary to meet applicable laws and ordinances
2806 regulating the construction, use, or repair of any property or
2807 requiring the tearing down of any property, including the costs
2808 of removing debris. ~~;~~ However, ~~such~~ additional costs necessary to
2809 meet applicable laws and ordinances may be limited to ~~either~~ 25
2810 percent or 50 percent of the dwelling limit, as selected by the
2811 policyholder, and such coverage applies ~~shall apply~~ only to
2812 repairs of the damaged portion of the structure unless the total
2813 damage to the structure exceeds 50 percent of the replacement

2011408e2

2814 cost of the structure.

2815

2816 An insurer is not required to make the offers required by this
2817 subsection with respect to the issuance or renewal of a
2818 homeowner's policy that contains the provisions specified in
2819 paragraph (b) for law and ordinance coverage limited to 25
2820 percent of the dwelling limit, except that the insurer must
2821 offer the law and ordinance coverage limited to 50 percent of
2822 the dwelling limit. This subsection does not prohibit the offer
2823 of a guaranteed replacement cost policy.

2824 (2) Unless the insurer obtains the policyholder's written
2825 refusal of the policies or endorsements specified in subsection
2826 (1), any policy covering the dwelling is deemed to include the
2827 law and ordinance coverage limited to 25 percent of the dwelling
2828 limit. The rejection or selection of alternative coverage shall
2829 be made on a form approved by the office. The form must ~~shall~~
2830 fully advise the applicant of the nature of the coverage being
2831 rejected. If this form is signed by a named insured, it is ~~will~~
2832 ~~be~~ conclusively presumed that there was an informed, knowing
2833 rejection of the coverage or election of the alternative
2834 coverage on behalf of all insureds. Unless the policyholder
2835 requests in writing the coverage specified in this section, it
2836 need not be provided in or supplemental to any other policy that
2837 renews, insures, extends, changes, supersedes, or replaces an
2838 existing policy if ~~when~~ the policyholder has rejected the
2839 coverage specified in this section or has selected alternative
2840 coverage. The insurer must provide the ~~such~~ policyholder with
2841 notice of the availability of such coverage in a form approved
2842 by the office at least once every 3 years. The failure to

2011408e2

2843 provide such notice constitutes a violation of this code, but
2844 does not affect the coverage provided under the policy.

2845 (3) In the event of a loss for which a dwelling or personal
2846 property is insured on the basis of replacement costs:

2847 (a) For a dwelling, the insurer must initially pay at least
2848 the actual cash value of the insured loss, less any applicable
2849 deductible. To receive payment from an insurer for replacement
2850 costs, the policyholder must enter into a contract for the
2851 performance of building and structural repairs, unless the
2852 requirement for a contract is waived by the insurer. The insurer
2853 shall pay any remaining amounts necessary to perform such
2854 repairs as work is performed and expenses are incurred. The
2855 insurer or any contractor or subcontractor may not require the
2856 policyholder to advance payment for such repairs or expenses,
2857 with the exception of incidental expenses to mitigate further
2858 damage. If a total loss of a dwelling occurs, the insurer shall
2859 pay the replacement cost coverage without reservation or
2860 holdback of any depreciation in value, pursuant to s. 627.702.

2861 (b) For personal property:

2862 1. The insurer must offer coverage under which the insurer
2863 is obligated to pay the replacement cost without reservation or
2864 holdback for any depreciation in value, whether or not the
2865 insured replaces the property.

2866 2. The insurer may also offer coverage under which the
2867 insurer may limit the initial payment to the actual cash value
2868 of the personal property to be replaced, require the insured to
2869 provide receipts for the purchase of the property financed by
2870 the initial payment, use such receipts to make the next payment
2871 requested by the insured for the replacement of insured

2011408e2

2872 property, and continue this process until the insured remits all
2873 receipts up to the policy limits for replacement costs. The
2874 insurer must provide clear notice of this process in the
2875 insurance contract. The insurer may not require the policyholder
2876 to advance payment for the replaced property, ~~the insurer shall~~
2877 ~~pay the replacement cost without reservation or holdback of any~~
2878 ~~depreciation in value, whether or not the insured replaces or~~
2879 ~~repairs the dwelling or property.~~

2880 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on~~
2881 ~~or after October 1, 2005,~~ must include in bold type no smaller
2882 than 18 points the following statement:

2883 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
2884 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
2885 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
2886 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
2887 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
2888 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

2889
2890 The intent of this subsection is to encourage policyholders to
2891 purchase sufficient coverage to protect them in case events
2892 excluded from the standard homeowners policy, such as law and
2893 ordinance enforcement and flood, combine with covered events to
2894 produce damage or loss to the insured property. The intent is
2895 also to encourage policyholders to discuss these issues with
2896 their insurance agent.

2897 (5) ~~Nothing in This section does not: shall be construed to~~
2898 (a) Apply to policies not considered to be "homeowners'
2899 policies," as that term is commonly understood in the insurance
2900 industry. ~~This section specifically does not~~

2011408e2

2901 **(b)** Apply to mobile home policies. ~~Nothing in this section~~
2902 **(c) Limit** shall be construed as limiting the ability of an
2903 ~~any~~ insurer to reject or nonrenew any insured or applicant on
2904 the grounds that the structure does not meet underwriting
2905 criteria applicable to replacement cost or law and ordinance
2906 policies or for other lawful reasons.

2907 **(d)** ~~(6) This section does not~~ Prohibit an insurer from
2908 limiting its liability under a policy or endorsement providing
2909 that loss will be adjusted on the basis of replacement costs to
2910 the lesser of:

2911 **1.** ~~(a)~~ The limit of liability shown on the policy
2912 declarations page;

2913 **2.** ~~(b)~~ The reasonable and necessary cost to repair the
2914 damaged, destroyed, or stolen covered property; or

2915 **3.** ~~(e)~~ The reasonable and necessary cost to replace the
2916 damaged, destroyed, or stolen covered property.

2917 **(e)** ~~(7) This section does not~~ Prohibit an insurer from
2918 exercising its right to repair damaged property in compliance
2919 with its policy and s. 627.702(7).

2920 Section 24. Paragraph (a) of subsection (5) of section
2921 627.70131, Florida Statutes, is amended to read:

2922 627.70131 Insurer's duty to acknowledge communications
2923 regarding claims; investigation.-

2924 (5) (a) Within 90 days after an insurer receives notice of
2925 an initial, reopened, or supplemental a property insurance claim
2926 from a policyholder, the insurer shall pay or deny such claim or
2927 a portion of the claim unless the failure to pay ~~such claim or a~~
2928 ~~portion of the claim~~ is caused by factors beyond the control of
2929 the insurer which reasonably prevent such payment. Any payment

2011408e2

2930 of an initial or supplemental a claim or portion of such a claim
2931 made paid 90 days after the insurer receives notice of the
2932 claim, or made paid more than 15 days after there are no longer
2933 factors beyond the control of the insurer which reasonably
2934 prevented such payment, whichever is later, bears ~~shall bear~~
2935 interest at the rate set forth in s. 55.03. Interest begins to
2936 accrue from the date the insurer receives notice of the claim.
2937 The provisions of this subsection may not be waived, voided, or
2938 nullified by the terms of the insurance policy. If there is a
2939 right to prejudgment interest, the insured shall select whether
2940 to receive prejudgment interest or interest under this
2941 subsection. Interest is payable when the claim or portion of the
2942 claim is paid. Failure to comply with this subsection
2943 constitutes a violation of this code. However, failure to comply
2944 with this subsection does ~~shall~~ not form the sole basis for a
2945 private cause of action.

2946 Section 25. The Legislature finds and declares:

2947 (1) There is a compelling state interest in maintaining a
2948 viable and orderly private-sector market for property insurance
2949 in this state. The lack of a viable and orderly property market
2950 reduces the availability of property insurance coverage to state
2951 residents, increases the cost of property insurance, and
2952 increases the state's reliance on a residual property insurance
2953 market and its potential for imposing assessments on
2954 policyholders throughout the state.

2955 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
2956 Florida Statutes, to adopt certain geological or technical
2957 terms; to increase reliance on objective, scientific testing
2958 requirements; and generally to reduce the number of sinkhole

2011408e2

2959 claims and related disputes arising under prior law. The
2960 Legislature determined that since the enactment of these
2961 statutory revisions, both private-sector insurers and Citizens
2962 Property Insurance Corporation have, nevertheless, continued to
2963 experience high claims frequency and severity for sinkhole
2964 insurance claims. In addition, many properties remain unrepaired
2965 even after loss payments, which reduces the local property tax
2966 base and adversely affects the real estate market. Therefore,
2967 the Legislature finds that losses associated with sinkhole
2968 claims adversely affect the public health, safety, and welfare
2969 of this state and its citizens.

2970 (3) Pursuant to sections 19 through 24 of this act,
2971 technical or scientific definitions adopted in the 2005
2972 legislation are clarified to implement and advance the
2973 Legislature's intended reduction of sinkhole claims and
2974 disputes. The legal presumption intended by the Legislature is
2975 clarified to reduce disputes and litigation associated with the
2976 technical reviews associated with sinkhole claims. Certain other
2977 revisions to ss. 627.706-627.7074, Florida Statutes, are enacted
2978 to advance legislative intent to rely on scientific or technical
2979 determinations relating to sinkholes and sinkhole claims, reduce
2980 the number and cost of disputes relating to sinkhole claims, and
2981 ensure that repairs are made commensurate with the scientific
2982 and technical determinations and insurance claims payments.

2983 Section 26. Section 627.706, Florida Statutes, is reordered
2984 and amended to read:

2985 627.706 Sinkhole insurance; catastrophic ground cover
2986 collapse; definitions.-

2987 (1) Every insurer authorized to transact property insurance

2011408e2

2988 in this state must ~~shall~~ provide coverage for a catastrophic
2989 ground cover collapse. However, the insurer may restrict such
2990 coverage to the principal building, as defined in the applicable
2991 policy. The insurer may ~~and shall~~ make available, for an
2992 appropriate additional premium, coverage for sinkhole losses on
2993 any structure, including the contents of personal property
2994 contained therein, to the extent provided in the form to which
2995 the coverage attaches. A policy for residential property
2996 insurance may include a deductible amount applicable to sinkhole
2997 losses, including any expenses incurred by an insurer
2998 investigating whether sinkhole activity is present. The
2999 deductible may be equal to 1 percent, 2 percent, 5 percent, or
3000 10 percent of the policy dwelling limits, with appropriate
3001 premium discounts offered with each deductible amount.

3002 (2) As used in ss. 627.706-627.7074, and as used in
3003 connection with any policy providing coverage for a catastrophic
3004 ground cover collapse or for sinkhole losses, the term:

3005 (a) "Catastrophic ground cover collapse" means geological
3006 activity that results in all the following:

- 3007 1. The abrupt collapse of the ground cover;
- 3008 2. A depression in the ground cover clearly visible to the
3009 naked eye;
- 3010 3. Structural damage to the covered building, including the
3011 foundation; and
- 3012 4. The insured structure being condemned and ordered to be
3013 vacated by the governmental agency authorized by law to issue
3014 such an order for that structure.

3015
3016 Contents coverage applies if there is a loss resulting from a

2011408e2

3017 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
3018 merely of the settling or cracking of a foundation, structure,
3019 or building does not constitute a loss resulting from a
3020 catastrophic ground cover collapse.

3021 (b) "Neutral evaluation" means the alternative dispute
3022 resolution provided in s. 627.7074.

3023 (c) "Neutral evaluator" means a professional engineer or a
3024 professional geologist who has completed a course of study in
3025 alternative dispute resolution designed or approved by the
3026 department for use in the neutral evaluation process and who is
3027 determined to be fair and impartial.

3028 (f) ~~(b)~~ "Sinkhole" means a landform created by subsidence of
3029 soil, sediment, or rock as underlying strata are dissolved by
3030 groundwater. A sinkhole forms ~~may form~~ by collapse into
3031 subterranean voids created by dissolution of limestone or
3032 dolostone or by subsidence as these strata are dissolved.

3033 (h) ~~(e)~~ "Sinkhole loss" means structural damage to the
3034 covered building, including the foundation, caused by sinkhole
3035 activity. Contents coverage and additional living expenses ~~shall~~
3036 apply only if there is structural damage to the covered building
3037 caused by sinkhole activity.

3038 (g) ~~(d)~~ "Sinkhole activity" means settlement or systematic
3039 weakening of the earth supporting ~~such~~ property only if the ~~when~~
3040 ~~such~~ settlement or systematic weakening results from
3041 contemporary movement or raveling of soils, sediments, or rock
3042 materials into subterranean voids created by the effect of water
3043 on a limestone or similar rock formation.

3044 (d) ~~(e)~~ "Professional engineer" means a person, as defined
3045 in s. 471.005, who has a bachelor's degree or higher in

2011408e2

3046 engineering ~~with a specialty in the geotechnical engineering~~
3047 field. A professional engineer must also have ~~geotechnical~~
3048 experience and expertise in the identification of sinkhole
3049 activity as well as other potential causes of structural damage
3050 ~~to the structure.~~

3051 ~~(e)-(f)~~ "Professional geologist" means a person, as defined
3052 ~~in~~ by s. 492.102, who has a bachelor's degree or higher in
3053 geology or related earth science and ~~with expertise in the~~
3054 ~~geology of Florida. A professional geologist must have~~
3055 ~~geological~~ experience and expertise in the identification of
3056 sinkhole activity as well as other potential geologic causes of
3057 structural damage ~~to the structure.~~

3058 (i) "Structural damage" means:

3059 1. A covered building that suffers foundation movement
3060 outside an acceptable variance under the applicable building
3061 code; and

3062 2. Damage to a covered building, including the foundation,
3063 which prevents the primary structural members or primary
3064 structural systems from supporting the loads and forces they
3065 were designed to support.

3066 ~~(3) On or before June 1, 2007, Every insurer authorized to~~
3067 ~~transact property insurance in this state shall make a proper~~
3068 ~~filing with the office for the purpose of extending the~~
3069 ~~appropriate forms of property insurance to include coverage for~~
3070 ~~catastrophic ground cover collapse or for sinkhole losses.~~
3071 ~~coverage for catastrophic ground cover collapse may not go into~~
3072 ~~effect until the effective date provided for in the filing~~
3073 ~~approved by the office.~~

3074 (3)-(4) Insurers offering policies that exclude coverage for

2011408e2

3075 sinkhole losses must ~~shall~~ inform policyholders in bold type of
3076 not less than 14 points as follows: "YOUR POLICY PROVIDES
3077 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
3078 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
3079 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. ~~YOU~~
3080 ~~MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN~~
3081 ~~ADDITIONAL PREMIUM."~~

3082 (4)~~(5)~~ An insurer offering sinkhole coverage to
3083 policyholders before or after the adoption of s. 30, chapter
3084 2007-1, Laws of Florida, may nonrenew the policies of
3085 policyholders maintaining sinkhole coverage ~~in Pasco County or~~
3086 ~~Hernando County,~~ at the option of the insurer, and provide an
3087 offer of coverage that ~~to such policyholders which~~ includes
3088 catastrophic ground cover collapse and excludes sinkhole
3089 coverage. Insurers acting in accordance with this subsection are
3090 subject to the following requirements:

3091 (a) Policyholders must be notified that a nonrenewal is for
3092 purposes of removing sinkhole coverage, and that the
3093 policyholder is ~~still~~ being offered a policy that provides
3094 coverage for catastrophic ground cover collapse.

3095 (b) Policyholders must be provided an actuarially
3096 reasonable premium credit or discount for the removal of
3097 sinkhole coverage and provision of only catastrophic ground
3098 cover collapse.

3099 (c) Subject to the provisions of this subsection and the
3100 insurer's approved underwriting or insurability guidelines, the
3101 insurer may ~~shall~~ provide each policyholder with the opportunity
3102 to purchase an endorsement to his or her policy providing
3103 sinkhole coverage and may require an inspection of the property

2011408e2

3104 before issuance of a sinkhole coverage endorsement.

3105 (d) Section 624.4305 does not apply to nonrenewal notices
3106 issued pursuant to this subsection.

3107 (5) Any claim, including, but not limited to, initial,
3108 supplemental, and reopened claims under an insurance policy that
3109 provides sinkhole coverage is barred unless notice of the claim
3110 was given to the insurer in accordance with the terms of the
3111 policy within 2 years after the policyholder knew or reasonably
3112 should have known about the sinkhole loss.

3113 Section 27. Section 627.7061, Florida Statutes, is amended
3114 to read:

3115 627.7061 Coverage inquiries.—Inquiries about coverage on a
3116 property insurance contract are not claim activity, unless an
3117 actual claim is filed by the policyholder which insured that
3118 results in a company investigation of the claim.

3119 Section 28. Section 627.7065, Florida Statutes, is
3120 repealed.

3121 Section 29. Section 627.707, Florida Statutes, is amended
3122 to read:

3123 627.707 ~~Standards for~~ Investigation of sinkhole claims by
3124 policyholders insurers; insurer payment; nonrenewals.—Upon
3125 receipt of a claim for a sinkhole loss to a covered building, an
3126 insurer must meet the following standards in investigating a
3127 claim:

3128 (1) The insurer must inspect ~~make an inspection of the~~
3129 policyholder's insured's premises to determine if there is
3130 structural ~~has been physical~~ damage that ~~to the structure which~~
3131 may be the result of sinkhole activity.

3132 (2) If the insurer confirms that structural damage exists

2011408e2

3133 but is unable to identify a valid cause of such damage or
3134 discovers that such damage is consistent with sinkhole loss
3135 ~~Following the insurer's initial inspection,~~ the insurer shall
3136 engage a professional engineer or a professional geologist to
3137 conduct testing as provided in s. 627.7072 to determine the
3138 cause of the loss within a reasonable professional probability
3139 and issue a report as provided in s. 627.7073, only if sinkhole
3140 loss is covered under the policy. Except as provided in
3141 subsection (6), the fees and costs of the professional engineer
3142 or professional geologist shall be paid by the insurer.÷

3143 ~~(a) The insurer is unable to identify a valid cause of the~~
3144 ~~damage or discovers damage to the structure which is consistent~~
3145 ~~with sinkhole loss; or~~

3146 ~~(b) The policyholder demands testing in accordance with~~
3147 ~~this section or s. 627.7072.~~

3148 (3) Following the initial inspection of the policyholder's
3149 ~~insured~~ premises, the insurer shall provide written notice to
3150 the policyholder disclosing the following information:

3151 (a) What the insurer has determined to be the cause of
3152 damage, if the insurer has made such a determination.

3153 (b) A statement of the circumstances under which the
3154 insurer is required to engage a professional engineer or a
3155 professional geologist to verify or eliminate sinkhole loss and
3156 to engage a professional engineer to make recommendations
3157 regarding land and building stabilization and foundation repair.

3158 ~~(c) A statement regarding the right of the policyholder to~~
3159 ~~request testing by a professional engineer or a professional~~
3160 ~~geologist and the circumstances under which the policyholder may~~
3161 ~~demand certain testing.~~

2011408e2

3162 (4) If the insurer determines that there is no sinkhole
3163 loss, the insurer may deny the claim. If coverage for sinkhole
3164 loss is available and ~~If the insurer denies the claim on such~~
3165 basis, without performing testing under s. 627.7072, the
3166 policyholder may demand testing by the insurer ~~under s.~~
3167 ~~627.7072.~~ The policyholder's demand for testing must be
3168 communicated to the insurer in writing within 60 days after the
3169 policyholder's receipt of the insurer's denial of the claim.

3170 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is
3171 verified, the insurer shall pay to stabilize the land and
3172 building and repair the foundation in accordance with the
3173 recommendations of the professional engineer retained pursuant
3174 to subsection (2), as provided under s. 627.7073, and in
3175 ~~consultation~~ with notice to the policyholder, subject to the
3176 coverage and terms of the policy. The insurer shall pay for
3177 other repairs to the structure and contents in accordance with
3178 the terms of the policy. If a covered building suffers a
3179 sinkhole loss or a catastrophic ground cover collapse, the
3180 insured must repair such damage or loss in accordance with the
3181 insurer's professional engineer's recommended repairs. However,
3182 if the insurer's professional engineer determines that the
3183 repair cannot be completed within policy limits, the insurer
3184 must pay to complete the repairs recommended by the insurer's
3185 professional engineer or tender the policy limits to the
3186 policyholder.

3187 ~~(a) (b)~~ The insurer may limit its total claims payment to
3188 the actual cash value of the sinkhole loss, which does not
3189 include ~~including~~ underpinning or grouting or any other repair
3190 technique performed below the existing foundation of the

2011408e2

3191 building, until the policyholder enters into a contract for the
3192 performance of building stabilization or foundation repairs in
3193 accordance with the recommendations set forth in the insurer's
3194 report issued pursuant to s. 627.7073.

3195 (b) In order to prevent additional damage to the building
3196 or structure, the policyholder must enter into a contract for
3197 the performance of building stabilization or foundation repairs
3198 within 90 days after the insurance company confirms coverage for
3199 the sinkhole loss and notifies the policyholder of such
3200 confirmation. This time period is tolled if either party invokes
3201 the neutral evaluation process.

3202 (c) After the policyholder enters into the contract for the
3203 performance of building stabilization or foundation repairs, the
3204 insurer shall pay the amounts necessary to begin and perform
3205 such repairs as the work is performed and the expenses are
3206 incurred. The insurer may not require the policyholder to
3207 advance payment for such repairs. If repair covered by a
3208 personal lines residential property insurance policy has begun
3209 and the professional engineer selected or approved by the
3210 insurer determines that the repair cannot be completed within
3211 the policy limits, the insurer must ~~either~~ complete the
3212 professional engineer's recommended repair or tender the policy
3213 limits to the policyholder without a reduction for the repair
3214 expenses incurred.

3215 (d) The stabilization and all other repairs to the
3216 structure and contents must be completed within 12 months after
3217 entering into the contract for repairs described in paragraph

3218 (b) unless:

3219 1. There is a mutual agreement between the insurer and the

2011408e2

3220 policyholder;

3221 2. The claim is involved with the neutral evaluation
3222 process;

3223 3. The claim is in litigation; or

3224 4. The claim is under appraisal.

3225 (e)~~(e)~~ Upon the insurer's obtaining the written approval of
3226 ~~the policyholder and any lienholder, the insurer may make~~
3227 ~~payment directly to the persons selected by the policyholder to~~
3228 ~~perform the land and building stabilization and foundation~~
3229 ~~repairs. The decision by the insurer to make payment to such~~
3230 ~~persons does not hold the insurer liable for the work performed.~~
3231 The policyholder may not accept a rebate from any person
3232 performing the repairs specified in this section. If a
3233 policyholder does receive a rebate, coverage is void and the
3234 policyholder must refund the amount of the rebate to the
3235 insurer. Any person making the repairs specified in this section
3236 who offers a rebate, or any policyholder who accepts a rebate
3237 for such repairs, commits insurance fraud punishable as a third
3238 degree felony as provided in s. 775.082, s. 775.083, or s.
3239 775.084.

3240 ~~(6) Except as provided in subsection (7), the fees and~~
3241 ~~costs of the professional engineer or the professional geologist~~
3242 ~~shall be paid by the insurer.~~

3243 (6)~~(7)~~ If the insurer obtains, pursuant to s. 627.7073,
3244 ~~written certification that there is no sinkhole loss or that the~~
3245 ~~cause of the damage was not sinkhole activity, and if the~~
3246 ~~policyholder has submitted the sinkhole claim without good faith~~
3247 ~~grounds for submitting such claim, the policyholder shall~~
3248 ~~reimburse the insurer for 50 percent of the actual costs of the~~

2011408e2

3249 analyses and services provided under ss. 627.7072 and 627.7073;
3250 however, a policyholder is not required to reimburse an insurer
3251 more than the deductible or \$2,500, whichever is greater, with
3252 respect to any claim. A policyholder is required to pay
3253 reimbursement under this subsection only if the policyholder
3254 requested the testing and report provided pursuant to ss.
3255 627.7072 and 627.7073 and the insurer, before ~~prior to~~ ordering
3256 the analysis under s. 627.7072, informs the policyholder in
3257 writing of the policyholder's potential liability for
3258 reimbursement and gives the policyholder the opportunity to
3259 withdraw the claim.

3260 ~~(7)-(8)~~ An ~~no~~ insurer may not shall nonrenew any policy of
3261 property insurance on the basis of filing of claims for partial
3262 loss caused by sinkhole damage or clay shrinkage if as long as
3263 the total of such payments does not equal or exceed the ~~current~~
3264 policy limits of coverage for the policy in effect on the date
3265 of loss, for property damage to the covered building, as set
3266 forth on the declarations page, or if and provided the
3267 policyholder insured has repaired the structure in accordance
3268 with the engineering recommendations made pursuant to subsection
3269 (2) upon which any payment or policy proceeds were based. If the
3270 insurer pays such limits, it may nonrenew the policy.

3271 ~~(8)-(9)~~ The insurer may engage a professional structural
3272 engineer to make recommendations as to the repair of the
3273 structure.

3274 Section 30. Section 627.7073, Florida Statutes, is amended
3275 to read:

3276 627.7073 Sinkhole reports.—

3277 (1) Upon completion of testing as provided in s. 627.7072,

2011408e2

3278 the professional engineer or professional geologist shall issue
3279 a report and certification to the insurer and the policyholder
3280 as provided in this section.

3281 (a) Sinkhole loss is verified if, based upon tests
3282 performed in accordance with s. 627.7072, a professional
3283 engineer or a professional geologist issues a written report and
3284 certification stating:

3285 1. That structural damage to the covered building has been
3286 identified within a reasonable professional probability.

3287 ~~2.1.~~ That the cause of the ~~actual physical and~~ structural
3288 damage is sinkhole activity within a reasonable professional
3289 probability.

3290 ~~3.2.~~ That the analyses conducted were of sufficient scope
3291 to identify sinkhole activity as the cause of damage within a
3292 reasonable professional probability.

3293 ~~4.3.~~ A description of the tests performed.

3294 ~~5.4.~~ A recommendation by the professional engineer of
3295 methods for stabilizing the land and building and for making
3296 repairs to the foundation.

3297 (b) If there is no structural damage or if sinkhole
3298 activity is eliminated as the cause of such damage to the
3299 covered building structure, the professional engineer or
3300 professional geologist shall issue a written report and
3301 certification to the policyholder and the insurer stating:

3302 1. That there is no structural damage or the cause of such
3303 ~~the~~ damage is not sinkhole activity within a reasonable
3304 professional probability.

3305 2. That the analyses and tests conducted were of sufficient
3306 scope to eliminate sinkhole activity as the cause of the

2011408e2

3307 structural damage within a reasonable professional probability.

3308 3. A statement of the cause of the structural damage within
3309 a reasonable professional probability.

3310 4. A description of the tests performed.

3311 (c) All of the respective findings, opinions, and
3312 recommendations of the insurer's professional engineer or
3313 professional geologist as to the cause of distress to the
3314 property and all of the findings, opinions, and recommendations
3315 of the insurer's professional engineer as to land and building
3316 stabilization and foundation repair set forth by s. 627.7072
3317 shall be presumed correct, which presumption shifts the burden
3318 of proof in accordance with s. 90.302(2). The presumption of
3319 correctness is based upon public policy concerns regarding the
3320 affordability of sinkhole coverage, consistency in claims
3321 handling, and a reduction in the number of disputed sinkhole
3322 claims.

3323 (2) ~~(a) An~~ Any insurer that has paid a claim for a sinkhole
3324 loss shall file a copy of the report and certification, prepared
3325 pursuant to subsection (1), including the legal description of
3326 the real property and the name of the property owner, the
3327 neutral evaluator's report, if any, which indicates that
3328 sinkhole activity caused the damage claimed, a copy of the
3329 certification indicating that stabilization has been completed,
3330 if applicable, and the amount of the payment, with the county
3331 clerk of court, who shall record the report and certification.
3332 The insurer shall bear the cost of filing and recording one or
3333 more reports and certifications ~~the report and certification.~~
3334 There shall be no cause of action or liability against an
3335 insurer for compliance with this section.

2011408e2

3336 (a) The recording of the report and certification does not:

3337 1. Constitute a lien, encumbrance, or restriction on the
3338 title to the real property or constitute a defect in the title
3339 to the real property;

3340 2. Create any cause of action or liability against any
3341 grantor of the real property for breach of any warranty of good
3342 title or warranty against encumbrances; or

3343 3. Create any cause of action or liability against any
3344 title insurer that insures the title to the real property.

3345 (b) As a precondition to accepting payment for a sinkhole
3346 loss, the policyholder must file a copy of any sinkhole report
3347 regarding the insured property which was prepared on behalf or
3348 at the request of the policyholder. The policyholder shall bear
3349 the cost of filing and recording the sinkhole report. The
3350 recording of the report does not:

3351 1. Constitute a lien, encumbrance, or restriction on the
3352 title to the real property or constitute a defect in the title
3353 to the real property;

3354 2. Create any cause of action or liability against any
3355 grantor of the real property for breach of any warranty of good
3356 title or warranty against encumbrances; or

3357 3. Create any cause of action or liability against a title
3358 insurer that insures the title to the real property.

3359 (c)~~(b)~~ The seller of real property upon which a sinkhole
3360 claim has been made by the seller and paid by the insurer must
3361 ~~shall~~ disclose to the buyer of such property, before the
3362 closing, that a claim has been paid and whether or not the full
3363 amount of the proceeds were used to repair the sinkhole damage.

3364 (3) Upon completion of any building stabilization or

2011408e2

3365 foundation repairs for a verified sinkhole loss, the
3366 professional engineer responsible for monitoring the repairs
3367 shall issue a report to the property owner which specifies what
3368 repairs have been performed and certifies within a reasonable
3369 degree of professional probability that such repairs have been
3370 properly performed. The professional engineer issuing the report
3371 shall file a copy of the report and certification, which
3372 includes a legal description of the real property and the name
3373 of the property owner, with the county clerk of the court, who
3374 shall record the report and certification. This subsection does
3375 not create liability for an insurer based on any representation
3376 or certification by a professional engineer related to the
3377 stabilization or foundation repairs for the verified sinkhole
3378 loss.

3379 Section 31. Section 627.7074, Florida Statutes, is amended
3380 to read:

3381 627.7074 Alternative procedure for resolution of disputed
3382 sinkhole insurance claims.—

3383 ~~(1) As used in this section, the term:~~

3384 ~~(a) "Neutral evaluation" means the alternative dispute~~
3385 ~~resolution provided for in this section.~~

3386 ~~(b) "Neutral evaluator" means a professional engineer or a~~
3387 ~~professional geologist who has completed a course of study in~~
3388 ~~alternative dispute resolution designed or approved by the~~
3389 ~~department for use in the neutral evaluation process, who is~~
3390 ~~determined to be fair and impartial.~~

3391 (1)(2)(a) The department shall:

3392 (a) Certify and maintain a list of persons who are neutral
3393 evaluators.

2011408e2

3394 (b) ~~The department shall~~ Prepare a consumer information
3395 pamphlet for distribution by insurers to policyholders which
3396 clearly describes the neutral evaluation process and includes
3397 information ~~and forms~~ necessary for the policyholder to request
3398 a neutral evaluation.

3399 (2) Neutral evaluation is available to either party if a
3400 sinkhole report has been issued pursuant to s. 627.7073. At a
3401 minimum, neutral evaluation must determine:

3402 (a) Causation;

3403 (b) All methods of stabilization and repair both above and
3404 below ground;

3405 (c) The costs for stabilization and all repairs; and

3406 (d) Information necessary to carry out subsection (12).

3407 (3) Following the receipt of the report provided under s.
3408 627.7073 or the denial of a claim for a sinkhole loss, the
3409 insurer shall notify the policyholder of his or her right to
3410 participate in the neutral evaluation program under this
3411 section. Neutral evaluation supersedes the alternative dispute
3412 resolution process under s. 627.7015, but does not invalidate
3413 the appraisal clause of the insurance policy. The insurer shall
3414 provide to the policyholder the consumer information pamphlet
3415 prepared by the department pursuant to subsection (1)
3416 electronically or by United States mail ~~paragraph (2) (b).~~

3417 (4) Neutral evaluation is nonbinding, but mandatory if
3418 requested by either party. A request for neutral evaluation may
3419 be filed with the department by the policyholder or the insurer
3420 on a form approved by the department. The request for neutral
3421 evaluation must state the reason for the request and must
3422 include an explanation of all the issues in dispute at the time

2011408e2

3423 of the request. Filing a request for neutral evaluation tolls
3424 the applicable time requirements for filing suit for ~~a period of~~
3425 60 days following the conclusion of the neutral evaluation
3426 process or the time prescribed in s. 95.11, whichever is later.

3427 (5) Neutral evaluation shall be conducted as an informal
3428 process in which formal rules of evidence and procedure need not
3429 be observed. A party to neutral evaluation is not required to
3430 attend neutral evaluation if a representative of the party
3431 attends and has the authority to make a binding decision on
3432 behalf of the party. All parties shall participate in the
3433 evaluation in good faith. The neutral evaluator must be allowed
3434 reasonable access to the interior and exterior of insured
3435 structures to be evaluated or for which a claim has been made.
3436 Any reports initiated by the policyholder, or an agent of the
3437 policyholder, confirming a sinkhole loss or disputing another
3438 sinkhole report regarding insured structures must be provided to
3439 the neutral evaluator before the evaluator's physical inspection
3440 of the insured property.

3441 (6) The insurer shall pay reasonable ~~the~~ costs associated
3442 with the neutral evaluation. However, if a party chooses to hire
3443 a court reporter or stenographer to contemporaneously record and
3444 document the neutral evaluation, that party must bear such
3445 costs.

3446 (7) Upon receipt of a request for neutral evaluation, the
3447 department shall provide the parties a list of certified neutral
3448 evaluators. ~~The parties shall mutually select a neutral~~
3449 ~~evaluator from the list and promptly inform the department. If~~
3450 ~~the parties cannot agree to a neutral evaluator within 10~~
3451 ~~business days,~~ The department shall allow the parties to submit

2011408e2

3452 requests to disqualify evaluators on the list for cause.

3453 (a) The department shall disqualify neutral evaluators for
3454 cause based only on any of the following grounds:

3455 1. A familial relationship exists between the neutral
3456 evaluator and either party or a representative of either party
3457 within the third degree.

3458 2. The proposed neutral evaluator has, in a professional
3459 capacity, previously represented either party or a
3460 representative of either party, in the same or a substantially
3461 related matter.

3462 3. The proposed neutral evaluator has, in a professional
3463 capacity, represented another person in the same or a
3464 substantially related matter and that person's interests are
3465 materially adverse to the interests of the parties. The term
3466 "substantially related matter" means participation by the
3467 neutral evaluator on the same claim, property, or adjacent
3468 property.

3469 4. The proposed neutral evaluator has, within the preceding
3470 5 years, worked as an employer or employee of any party to the
3471 case.

3472 (b) The parties shall appoint a neutral evaluator from the
3473 department list and promptly inform the department. If the
3474 parties cannot agree to a neutral evaluator within 14 days, the
3475 department shall appoint a neutral evaluator from the list of
3476 certified neutral evaluators. The department shall allow each
3477 party to disqualify two neutral evaluators without cause. Upon
3478 selection or appointment, the department shall promptly refer
3479 the request to the neutral evaluator.

3480 (c) Within 14 ~~5~~ business days after the referral, the

2011408e2

3481 neutral evaluator shall notify the policyholder and the insurer
3482 of the date, time, and place of the neutral evaluation
3483 conference. The conference may be held by telephone, if feasible
3484 and desirable. The neutral evaluator shall make reasonable
3485 efforts to hold the neutral evaluation conference shall be held
3486 within 90 45 days after the receipt of the request by the
3487 department. Failure of the neutral evaluator to hold the
3488 conference within 90 days does not invalidate either party's
3489 right to neutral evaluation or to a neutral evaluation
3490 conference held outside this timeframe.

3491 ~~(8) The department shall adopt rules of procedure for the~~
3492 ~~neutral evaluation process.~~

3493 ~~(8)(9)~~ For policyholders not represented by an attorney, a
3494 consumer affairs specialist of the department or an employee
3495 designated as the primary contact for consumers on issues
3496 relating to sinkholes under s. 20.121 shall be available for
3497 consultation to the extent that he or she may lawfully do so.

3498 ~~(9)(10)~~ Evidence of an offer to settle a claim during the
3499 neutral evaluation process, as well as any relevant conduct or
3500 statements made in negotiations concerning the offer to settle a
3501 claim, is inadmissible to prove liability or absence of
3502 liability for the claim or its value, except as provided in
3503 subsection (14) ~~(13)~~.

3504 ~~(10)(11)~~ Regardless of when noticed, any court proceeding
3505 related to the subject matter of the neutral evaluation shall be
3506 stayed pending completion of the neutral evaluation and for 5
3507 days after the filing of the neutral evaluator's report with the
3508 court.

3509 (11) If, based upon his or her professional training and

2011408e2

3510 credentials, a neutral evaluator is qualified to determine only
3511 disputes relating to causation or method of repair, the
3512 department shall allow the neutral evaluator to enlist the
3513 assistance of another professional from the neutral evaluators
3514 list not previously stricken, who, based upon his or her
3515 professional training and credentials, is able to provide an
3516 opinion as to other disputed issues. A professional who would be
3517 disqualified for any reason listed in subsection (7) must be
3518 disqualified. The neutral evaluator may also use the services of
3519 professional engineers and professional geologists who are not
3520 certified as neutral evaluators, as well as licensed building
3521 contractors, in order to ensure that all items in dispute are
3522 addressed and the neutral evaluation can be completed. Any
3523 professional engineer, professional geologist, or licensed
3524 building contractor retained may be disqualified for any of the
3525 reasons listed in subsection (7). The neutral evaluator may
3526 request the entity that performed the investigation pursuant to
3527 s. 627.7072 perform such additional and reasonable testing as
3528 deemed necessary in the professional opinion of the neutral
3529 evaluator.

3530 (12) ~~At~~ For matters that are not resolved by the parties at
3531 the conclusion of the neutral evaluation, the neutral evaluator
3532 shall prepare a report describing all matters that are the
3533 subject of the neutral evaluation, including whether, stating
3534 ~~that~~ in his or her opinion, the sinkhole loss has been verified
3535 or eliminated within a reasonable degree of professional
3536 probability and, if verified, whether the sinkhole activity
3537 caused structural damage to the covered building, and if so, the
3538 need for and estimated costs of stabilizing the land and any

2011408e2

3539 covered ~~structures or~~ buildings and other appropriate
3540 remediation or necessary building structural repairs due to the
3541 sinkhole loss. The evaluator's report shall be sent to all
3542 parties ~~in attendance at the neutral evaluation~~ and to the
3543 department, within 14 days after completing the neutral
3544 evaluation conference.

3545 (13) The recommendation of the neutral evaluator is not
3546 binding on any party, and the parties retain access to the
3547 court. The neutral evaluator's written recommendation, oral
3548 testimony, and full report shall be admitted ~~is admissible~~ in
3549 any ~~subsequent~~ action, litigation, or proceeding relating to the
3550 claim or to the cause of action giving rise to the claim.
3551 However, oral or written statements or nonverbal conduct
3552 intended to make an assertion made by a party or neutral
3553 evaluator during the course of neutral evaluation, other than
3554 those statements or conduct expressly required to be admitted by
3555 this subsection, are confidential and may not be disclosed to a
3556 person other than a party to neutral evaluation or a party's
3557 counsel.

3558 (14) If the neutral evaluator ~~first~~ verifies the existence
3559 of a sinkhole that caused structural damage and, ~~second,~~
3560 recommends the need for and estimates costs of stabilizing the
3561 land and any covered ~~structures or~~ buildings and other
3562 appropriate remediation or building structural repairs, ~~which~~
3563 ~~costs~~ exceed the amount that the insurer estimates as necessary
3564 to stabilize and repair, and the insurer refuses to comply with
3565 the neutral evaluator's findings and recommendations ~~has offered~~
3566 ~~to pay the policyholder,~~ the insurer is liable to the
3567 policyholder for up to \$2,500 in attorney's fees for the

2011408e2

3568 attorney's participation in the neutral evaluation process. ~~For~~
3569 ~~purposes of this subsection, the term "offer to pay" means a~~
3570 ~~written offer signed by the insurer or its legal representative~~
3571 ~~and delivered to the policyholder within 10 days after the~~
3572 ~~insurer receives notice that a request for neutral evaluation~~
3573 ~~has been made under this section.~~

3574 (15) If the insurer timely agrees in writing to comply and
3575 timely complies with the recommendation of the neutral
3576 evaluator, but the policyholder declines to resolve the matter
3577 in accordance with the recommendation of the neutral evaluator
3578 pursuant to this section:

3579 (a) The insurer is not liable for extracontractual damages
3580 related to a claim for a sinkhole loss but only as related to
3581 the issues determined by the neutral evaluation process. This
3582 section does not affect or impair claims for extracontractual
3583 damages unrelated to the issues determined by the neutral
3584 evaluation process contained in this section; and

3585 (b) The actions of the insurer are not a confession of
3586 judgment or admission of liability, and the insurer is not
3587 liable for attorney's fees under s. 627.428 or other provisions
3588 of the insurance code unless the policyholder obtains a judgment
3589 that is more favorable than the recommendation of the neutral
3590 evaluator.

3591 (16) If the insurer agrees to comply with the neutral
3592 evaluator's report, payments shall be made in accordance with
3593 the terms and conditions of the applicable insurance policy
3594 pursuant to s. 627.707(5).

3595 (17) Neutral evaluators are deemed to be agents of the
3596 department and have immunity from suit as provided in s. 44.107.

2011408e2

3597 (18) The department shall adopt rules of procedure for the
3598 neutral evaluation process.

3599 Section 32. Subsection (8) of section 627.711, Florida
3600 Statutes, is amended to read:

3601 627.711 Notice of premium discounts for hurricane loss
3602 mitigation; uniform mitigation verification inspection form.—

3603 (8) ~~At its expense,~~ The insurer may require that a any
3604 uniform mitigation verification form provided by a policyholder,
3605 a policyholder's agency, or an authorized mitigation inspector
3606 or inspection company be independently verified by an inspector,
3607 an inspection company, or an independent third-party quality
3608 assurance provider which possesses ~~does possess~~ a quality
3609 assurance program before ~~prior to~~ accepting the uniform
3610 mitigation verification form as valid.

3611 Section 33. Subsection (1) of section 627.712, Florida
3612 Statutes, is amended to read:

3613 627.712 Residential windstorm coverage required;
3614 availability of exclusions for windstorm or contents.—

3615 (1) An insurer issuing a residential property insurance
3616 policy must provide windstorm coverage. Except as provided in
3617 paragraph (2) (c), this section does not apply ~~with respect~~ to
3618 risks that are eligible for wind-only coverage from Citizens
3619 Property Insurance Corporation under s. 627.351(6), and ~~with~~
3620 ~~respect to~~ risks that are not eligible for coverage from
3621 Citizens Property Insurance Corporation under s. 627.351(6) (a)3.
3622 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation
3623 under s. 627.351(6) (a)3. or 5. is exempt from ~~the requirements~~
3624 ~~of~~ this section only if the risk is located within the
3625 boundaries of the coastal ~~high-risk~~ account of the corporation.

2011408e2

3626 Section 34. The amendments made by this act to ss. 627.706-
3627 627.7074, Florida Statutes, and the accompanying legislative
3628 findings related to those statutes, which affect procedural
3629 rights, do not apply to insurance claims reported to an insurer
3630 before February 1, 2011, but do apply to claims reported to an
3631 insurer on or after that date. Amendments made by this act to
3632 ss. 627.706-627.7074, Florida Statutes, and the accompanying
3633 legislative findings related to those statutes, which affect
3634 substantive rights, apply to claims reported to an insurer on or
3635 after July 1, 2011.

3636 Section 35. Except as otherwise expressly provided in this
3637 act and except for this section, which shall take effect June 1,
3638 2011, this act shall take effect July 1, 2011.