By Senator Richter

37-00264B-11 2011408__

A bill to be entitled

An act relating to property and casualty insurance; amending s. 624.407, F.S.; revising the amount of surplus funds required for domestic insurers applying for a certificate of authority after a certain date; amending s. 624.408, F.S.; revising the minimum surplus that must be maintained by certain insurers; authorizing the Office of Insurance Regulation to reduce the surplus requirement under specified circumstances; amending s. 624.4095, F.S.; excluding certain premiums for federal multiple-peril crop insurance from calculations for an insurer's gross writing ratio; requiring insurers to disclose the gross written premiums for federal multiple-peril crop insurance in a financial statement; amending s. 624.424; revising the frequency that an insurer may use the same accountant or partner to prepare an annual audited financial report; amending s. 626.854, F.S.; providing limitations on the amount of compensation that may be received by a public adjuster for a reopened or supplemental claim; providing statements that may be considered deceptive or misleading if made in any public adjuster's advertisement or solicitation; providing a definition for the term "written advertisement"; requiring that a disclaimer be included in any public adjuster's written advertisement; providing requirements for such disclaimer; requiring certain persons who act on behalf of an insurer to provide notice to the insurer,

claimant, public adjuster, or legal representative for an onsite inspection of the insured property; authorizing the insured or claimant to deny access to the property if notice is not provided; requiring the public adjuster to ensure prompt notice of certain property loss claims; providing that an insurer be allowed to interview the insured directly about the loss claim; prohibiting the insurer from obstructing or preventing the public adjuster from communicating with the insured; requiring that the insurer communicate with the public adjuster in an effort to reach an agreement as to the scope of the covered loss under the insurance policy; prohibiting a public adjuster from restricting or preventing persons acting on behalf of the insured from having reasonable access to the insured or the insured's property; prohibiting a public adjuster from restricting or preventing the insured's adjuster from having reasonable access to or inspecting the insured's property; authorizing the insured's adjuster to be present for the inspection; prohibiting a licensed contractor or subcontractor from adjusting a claim on behalf of an insured if such contractor or subcontractor is not a licensed public adjuster; providing an exception; amending s. 626.8651, F.S.; requiring that a public adjuster apprentice complete a minimum number of hours of continuing education to qualify for licensure; amending s. 626.8796, F.S.; providing requirements for a public adjuster contract; creating s. 626.70132,

F.S.; requiring that notice of a claim, supplemental claim, or reopened claim be given to the insurer within a specified period after a windstorm or hurricane occurs; providing a definition for the terms "supplemental claim" or "reopened claim"; providing applicability; amending s. 627.062, F.S.; requiring that the office issue an approval rather than a notice of intent to approve following its approval of a file and use filing; deleting an obsolete provision; prohibiting the Office of Insurance Regulation from, directly or indirectly, impeding the right of an insurer to acquire policyholders, advertise or appoint agents, or regulate agent commissions; revising the information that must be included in a rate filing relating to certain reinsurance or financing products; deleting a provision that prohibited an insurer from making certain rate filings within a certain period of time after a rate increase; deleting a provision prohibiting an insurer from filing for a rate increase within 6 months after it makes certain rate filings; deleting obsolete provisions relating to legislation enacted during the 2003 Special Session D of the Legislature; amending s. 627.0629, F.S.; providing legislative intent that insurers provide consumers with accurate pricing signals for alterations in order to minimize losses, but that mitigation discounts not result in a loss of income for the insurer; requiring rate filings for residential property insurance to include actuarially reasonable debits that provide

proper pricing; providing for an increase in base rates if mitigation discounts exceed the aggregate reduction in expected losses; deleting obsolete provisions; deleting a requirement that the Office of Insurance Regulation propose a method for establishing discounts, debits, credits, and other rate differentials for hurricane mitigation by a certain date; requiring the Financial Services Commission to adopt rules relating to such debits by a certain date; deleting a provision that prohibits an insurer from including an expense or profit load in the cost of reinsurance to replace the Temporary Increase in Coverage Limits; conforming provisions to changes made by the act; amending s. 627.351, F.S.; renaming the "high-risk account" as the "coastal account"; revising the conditions under which the Citizens policyholder surcharge may be imposed; providing that members of the Citizens Property Insurance Corporation Board of Governors are not prohibited from practicing in a certain profession if not prohibited by law or ordinance; prohibiting board members from voting on certain measures; changing the date on which the boundaries of high-risk areas eligible for certain wind-only coverages will be reduced if certain circumstances exist; amending s. 627.3511, F.S.; conforming provisions to changes made by the act; amending s. 627.4133, F.S.; authorizing an insurer to cancel policies after 45 days' notice if the Office of Insurance Regulation determines that the cancellation

of policies is necessary to protect the interests of the public or policyholders; authorizing the Office of Insurance Regulation to place an insurer under administrative supervision or appoint a receiver upon the consent of the insurer under certain circumstances; creating s. 627.43141, F.S.; providing definitions; requiring the delivery of a "Notice of Change in Policy Terms" under certain circumstances; specifying requirements for such notice; specifying actions constituting proof of notice; authorizing policy renewals to contain a change in policy terms; providing that receipt of payment by an insurer is deemed acceptance of new policy terms by an insured; providing that the original policy remains in effect until the occurrence of specified events if an insurer fails to provide notice; providing intent; amending s. 627.7011, F.S.; requiring that an insurer pay the actual cash value of an insured loss for a dwelling, less any applicable deductible, under certain circumstances; requiring that a policyholder enter into a contract for the performance of building and structural repairs; requiring that an insurer pay certain remaining amounts; restricting insurers and contractors from requiring advance payments for certain repairs and expenses; authorizing an insured to make a claim for replacement costs within a certain period after the insurer pays actual cash value to make a claim for replacement costs; requiring an insurer to pay the replacement costs if a total loss

occurs; allowing an insurer to limit its initial payment for losses to personal property; amending s. 627.70131, F.S.; specifying application of certain time periods to initial or supplemental property insurance claim notices and payments; providing legislative findings with respect to 2005 statutory changes relating to sinkhole insurance coverage and statutory changes in this act; amending s. 627.706, F.S.; authorizing an insurer to limit coverage for catastrophic ground cover collapse to the principal building and to have discretion to provide additional coverage; allowing the deductible to include costs relating to an investigation of whether sinkhole activity is present; revising definitions; defining the term "structural damage"; placing a 2-year statute of repose on claims for sinkhole coverage; amending s. 627.7061, F.S.; conforming provisions to changes made by the act; repealing s. 627.7065, F.S., relating to the establishment of a sinkhole database; amending s. 627.707, F.S.; revising provisions relating to the investigation of sinkholes by insurers; deleting a requirement that the insurer provide a policyholder with a statement regarding testing for sinkhole activity; providing a time limitation for demanding sinkhole testing by a policyholder and entering into a contract for repairs; requiring all repairs to be completed within a certain time; providing exceptions; providing a criminal penalty on a policyholder for accepting rebates from persons performing repairs;

amending s. 627.7073, F.S.; revising provisions relating to inspection reports; providing that the presumption that the report is correct shifts the burden of proof; requiring the policyholder to file certain reports as a precondition to accepting payment; requiring a seller of real property to provide a buyer with a copy of any inspection reports and certifications; amending s. 627.7074, F.S.; revising provisions relating to neutral evaluation; requiring evaluation in order to make certain determinations; requiring that the neutral evaluator be allowed access to structures being evaluated; providing grounds for disqualifying an evaluator; allowing the Department of Financial Services to appoint an evaluator if the parties cannot come to agreement; revising the timeframes for scheduling a neutral evaluation conference; authorizing an evaluator to enlist another evaluator or other professionals; providing a time certain for issuing a report; providing that certain information is confidential; revising provisions relating to compliance with the evaluator's recommendations; providing that the evaluator is an agent of the department for the purposes of immunity from suit; requiring the department to adopt rules; amending s. 627.712, F.S.; conforming provisions to changes made by the act; providing effective dates.

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

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

624.407 Surplus ~~Capital~~ funds required; new insurers.—

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

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

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

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

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

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

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

2. ~~however, a domestic insurer that transacts residential property insurance and is~~ A wholly owned subsidiary of an

insurer domiciled in any other state, ~~shall possess surplus as to policyholders of at least~~ $50 million.

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

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

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

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

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

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

624.408 Surplus funds ~~as to policyholders~~ required; current ~~new and existing~~ insurers.—

(1)~~(a)~~ To maintain a certificate of authority to transact

any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state must ~~shall~~ at all times maintain surplus funds as to policyholders at least ~~not less than~~ the greater of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

624.4095 Premiums written; restrictions.—

(7) For the purposes of this section and ss. 624.407 and 624.408, with respect to capital and surplus requirements, gross written premiums for federal multiple-peril crop insurance which are ceded to the Federal Crop Insurance Corporation or authorized reinsurers may not be included in the calculation of an insurer’s gross writing ratio. The liabilities for ceded reinsurance premiums payable for federal multiple-peril crop insurance ceded to the Federal Crop Insurance Corporation and authorized reinsurers shall be netted against the asset for

amounts recoverable from reinsurers. Each insurer that writes other insurance products together with federal multiple-peril crop insurance must disclose in the notes to its annual and quarterly financial statements, or in a supplement to those statements, the gross written premiums for federal multiple-peril crop insurance.

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

624.424 Annual statement and other information.—

(8)

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

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

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the

unauthorized practice of law.

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

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

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

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

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

Section 6. Effective January 1, 2012, section 626.854, Florida Statutes, as amended by this act, is amended to read:

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

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

(2) This definition does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

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

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

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

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

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

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

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

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

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

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

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

(15) A public adjuster must ensure prompt notice of property loss claims submitted to an insurer by or through a public adjuster or on which a public adjuster represents the insured at the time the claim or notice of loss is submitted to the insurer. The public adjuster must ensure that notice is given to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary

information to investigate and respond to the claim.

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

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

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

(16) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this

chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

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

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

626.8651 Public adjuster apprentice license; qualifications.—

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

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

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

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

626.8796 Public adjuster contracts; fraud statement.—

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

(2) A public adjuster contract must contain the full name, permanent business address, and license number of the public adjuster; the full name of the public adjusting firm; and the insured's full name and street address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster's services; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the

insurer within 30 days after execution.

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

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

Section 10. Section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

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

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that ~~to~~ allow the insurer a reasonable rate of return on the ~~such~~ classes of

insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must ~~shall~~ be filed with the office under one of the following procedures ~~except as provided in subparagraph 3.~~:

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

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

paragraph (h).

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

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

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

2. Past and prospective expenses.

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

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

for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

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

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

7. The adequacy of loss reserves.

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

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

10. Conflagration and catastrophe hazards, if applicable.

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

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

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

(c) In the case of fire insurance rates, consideration must ~~shall~~ be given to the availability of water supplies and the

experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

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

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

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

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

3. Rates shall be deemed inadequate if they are clearly insufficient, together with the investment income attributable

to them, to sustain projected losses and expenses in the class of business to which they apply.

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

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

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

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

(g) The office may at any time review a rate, rating schedule, rating manual, or rate change; the pertinent records of the insurer; and market conditions. If the office finds on a preliminary basis that a rate may be excessive, inadequate, or unfairly discriminatory, the office shall initiate proceedings to disapprove the rate and shall so notify the insurer. However, the office may not disapprove as excessive any rate for which it

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

(h) If ~~In the event~~ the office finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the office shall issue an order of disapproval specifying that a new

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

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

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

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

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

(k)1. An insurer may make a separate filing limited solely to an adjustment of its rates for reinsurance or financing costs

incurred in the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Temporary Increase in Coverage Limits (TICL) portion of the Florida Hurricane Catastrophe Fund including replacement reinsurance for the TICL reductions made pursuant to s. 215.555(17)(e); the actual cost paid due to the application of the TICL premium factor pursuant to s. 215.555(17)(f); and the actual cost paid due to the application of the cash build-up factor pursuant to s. 215.555(5)(b) if the insurer:

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

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

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

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

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

~~paragraph.~~

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

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

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

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

(3)(a) For individual risks that are not rated in accordance with the insurer's rates, rating schedules, rating manuals, and underwriting rules filed with the office and that ~~which~~ have been submitted to the insurer for individual rating, the insurer must maintain documentation on each risk subject to individual risk rating. The documentation must identify the named insured and specify the characteristics and classification of the risk supporting the reason for the risk being

individually risk rated, including any modifications to existing approved forms to be used on the risk. The insurer must maintain these records for ~~a period of~~ at least 5 years after the effective date of the policy.

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

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

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

a. Excess or umbrella.

b. Surety and fidelity.

c. Boiler and machinery and leakage and fire extinguishing equipment.

d. Errors and omissions.

e. Directors and officers, employment practices, and management liability.

f. Intellectual property and patent infringement liability.

g. Advertising injury and Internet liability insurance.

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

i. Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office

determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

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

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

4. A rating organization must notify the office of any changes to loss cost for insurance and risks described in

subparagraph 1. within ~~no later than~~ 30 days after the effective date of the change. The notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Loss and exposure statistics with regard to risks applicable to loss costs for a rating organization not subject to paragraph (2)(a) or paragraph (2)(f) must ~~shall~~ be maintained by the rating organization and are subject to examination by the office. Upon examination, the office ~~shall~~, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in paragraphs (2)(b)-(d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

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

(4) The establishment of any rate, rating classification, rating plan or schedule, or variation thereof in violation of part IX of chapter 626 is also in violation of this section. ~~In order to enhance the ability of consumers to compare premiums and to increase the accuracy and usefulness of rate-comparison information provided by the office to the public, the office shall develop a proposed standard rating territory plan to be used by all authorized property and casualty insurers for residential property insurance. In adopting the proposed plan,~~

~~the office may consider geographical characteristics relevant to risk, county lines, major roadways, existing rating territories used by a significant segment of the market, and other relevant factors. Such plan shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2006. The plan may not be implemented unless authorized by further act of the Legislature.~~

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

(6)(a) If an insurer requests an administrative hearing pursuant to s. 120.57 related to a rate filing under this section, the director of the Division of Administrative Hearings shall expedite the hearing and assign an administrative law judge who shall commence the hearing within 30 days after the receipt of the formal request and ~~shall~~ enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law

judge, whichever is later. Each party shall have ~~be allowed~~ 10 days in which to submit written exceptions to the recommended order. The office shall enter a final order within 30 days after the entry of the recommended order. The provisions of this paragraph may be waived upon stipulation of all parties.

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

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

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

(b) ~~(c)~~ Upon reviewing a rate filing and determining whether

the rate is excessive, inadequate, or unfairly discriminatory, the office shall consider, in accordance with generally accepted and reasonable actuarial techniques, past and present prospective loss experience, ~~either~~ using loss experience solely for this state or giving greater credibility to this state's loss data after applying actuarially sound methods of assigning credibility to such data.

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

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

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

~~(8)(a)1. No later than 60 days after the effective date of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature, the office shall calculate a presumed factor that reflects the impact that the changes contained in such legislation will have on rates for medical~~

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

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

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

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

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

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

~~(e) The calculation and notice by the office of the presumed factor pursuant to paragraph (a) is not an order or rule that is subject to chapter 120. If the office enters into a~~

~~contract with an independent consultant to assist the office in calculating the presumed factor, such contract shall not be subject to the competitive solicitation requirements of s. 287.057.~~

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

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

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

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

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

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

626.9521.

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

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

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

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

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

Section 11. Subsections (1) and (5) and paragraph (b) of subsection (8) of section 627.0629, Florida Statutes, are amended to read:

627.0629 Residential property insurance; rate filings.—

(1) ~~(a)~~ It is the intent of the Legislature that insurers ~~must~~ provide the most accurate pricing signals available in order ~~savings~~ to encourage consumers to ~~who~~ install or implement

windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. It is also the intent of the Legislature that implementation of mitigation discounts not result in a loss of income to the insurers granting the discounts, so that the aggregate of such discounts not exceed the aggregate of the expected reduction in loss attributable to the mitigation efforts for which discounts are granted. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, debits, or other rate differentials, or appropriate reductions in deductibles, which provide the proper pricing for all properties. The rate filing must take into account the presence or absence of ~~on which~~ fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm which have been installed or implemented. The fixtures or construction techniques must ~~shall~~ include, but not be limited to, fixtures or construction techniques that ~~which~~ enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, debits, discounts, or other rate differentials, or appropriate reductions or increases in deductibles, which recognize the presence or absence of ~~for~~ fixtures and construction techniques that ~~which~~ meet the minimum requirements of the Florida Building Code must be included in the rate filing. If an insurer demonstrates that the aggregate of its mitigation discounts results in a reduction to revenue which exceeds the reduction of the aggregate loss that is expected to result from the mitigation, the insurer may recover the lost revenue through an increase in its base rates. ~~All~~

~~insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office.~~ The office shall determine the discounts, credits, debits, other rate differentials, and appropriate reductions or increases in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

~~(b) By February 1, 2011, the Office of Insurance Regulation, in consultation with the Department of Financial Services and the Department of Community Affairs, shall develop and make publicly available a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure pursuant to the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865, including any proposed changes to the uniform home grading scale. By October 1, 2011, the commission shall adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' discounts, credits, or other rate differentials for hurricane mitigation measures so that such rate differentials correlate directly to the uniform home grading scale. The rules may include such changes to the uniform home grading scale as the commission~~

~~determines are necessary, and may specify the minimum required discounts, credits, or other rate differentials. Such rate differentials must be consistent with generally accepted actuarial principles and wind-loss mitigation studies. The rules shall allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or other rate differentials for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer shall continue to apply the mitigation credit that was applied immediately prior to the effective date of the revised credit. Discounts, credits, and other rate differentials established for rate filings under this paragraph shall supersede, after adoption, the discounts, credits, and other rate differentials included in rate filings under paragraph (a).~~

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

(8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL

SOUNDNESS.—

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

Section 12. Paragraphs (b), (c), (d), (v), and (y) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

2.a. All revenues, assets, liabilities, losses, and

expenses of the corporation shall be divided into three separate accounts as follows:

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

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

(III) A coastal ~~high-risk~~ account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation, or transferred to the corporation, which provides ~~that provide~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by ~~in~~ the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide

multiperil coverage and the corporation shall continue to offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal ~~high-risk~~ account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there ~~would~~ be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who ~~then~~ obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal ~~high-risk~~ account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal ~~high-risk~~ account, the personal lines account, or the commercial lines account. The coastal ~~high-risk~~ account must

also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal ~~high-risk~~ account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

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

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and ~~of~~ the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those ~~the~~ accounts ~~referred to in sub-sub-subparagraphs a.(I) and (II)~~ and ~~shall have~~ no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting

Association ~~shall~~ have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and ~~shall have~~ no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

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

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

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

3. With respect to a deficit in an account:

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

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

(II)~~b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., when the remaining projected deficit incurred in a particular calendar year~~ Exceeds 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an

amount equal to the greater of 6 percent of the deficit or 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph c. ~~d.~~

b.~~c.~~ Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must ~~or sub-subparagraph b. shall~~ be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The applicable assessment percentage ~~applicable to each assessable insured~~ is the ratio of the amount being assessed under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. must ~~shall~~ be paid as required by the corporation's plan of operation and paragraph (q)~~.~~, ~~. Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be~~ collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and ~~shall be~~ paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that ~~the Florida Surplus Lines Service~~ office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c.~~d.~~ Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. ~~or sub-subparagraph b.~~, plus the amount that is expected to be recovered through surcharges under sub-subparagraph h. ~~i.~~, ~~as to the remaining projected deficit~~ the board ~~shall levy~~, after verification by the office, shall levy emergency assessments~~,~~ for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount ~~of the emergency assessment~~ collected in a particular year must ~~shall~~ be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays

the surplus lines tax to that ~~the Florida Surplus Lines Service~~ office. The emergency assessments ~~so~~ collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and ~~shall be~~ held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may~~, at the discretion of the board of governors,~~ be less than but ~~may~~ not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing ~~of~~ the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and ~~for~~ all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

d.~~e.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the

corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a.~~, sub-subparagraph b.,~~ or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph c. ~~d.~~ shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or ~~other~~ indebtedness.

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

term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the ~~quota share primary insurance~~ agreement, may not be altered by the inability of the other party ~~to the agreement~~ to pay its specified percentage of ~~hurricane~~ losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that ~~neither~~ the authorized insurer and ~~nor~~ the corporation may not be held responsible beyond their ~~its~~ specified percentage of coverage of hurricane losses.

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

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

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

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

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

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under <u>such</u> ~~quota share primary insurance~~ agreements, the corporation and the authorized insurer <u>must</u> ~~shall~~ maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as

required by ~~Florida Hurricane Catastrophe~~ fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

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

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

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may ~~shall have the power to~~ borrow funds~~,~~ by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary

to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may~~, but is not required to,~~ seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2.~~.~~ in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may ~~is authorized to~~ take all actions needed to facilitate tax-free status for ~~any~~ such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may ~~shall have the authority to~~ pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.~~a.~~ Must require that the corporation operate subject to the supervision and approval of a board of governors consisting

of eight individuals who are residents of this state, from different geographical areas of this state.

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

b. The board shall create a Market Accountability Advisory

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

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

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

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

a. Subject to ~~the provisions of~~ s. 627.3517, with respect

to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under ~~either~~ a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain ~~any~~ such offer, the risk is eligible for ~~either~~ a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is ~~shall be~~ eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, ~~with regard to~~ a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period, ~~the policyholder~~ remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or ~~an offer of coverage~~ through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30

days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the producing agent is unwilling or unable to accept

appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must ~~shall~~ be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal ~~high-risk~~ account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must ~~shall~~ be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in

this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

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

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

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

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

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

The acceptance or rejection of a risk by the corporation shall

be construed as the private placement of insurance, and the provisions of chapter 120 do ~~shall~~ not apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

and submit to the corporation a conflict-of-interest statement.

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

names of the senior managers and members of the board of governors who are subject to the public disclosure requirements under s. 112.3145.

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

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

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

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association ~~shall~~ become policies of the corporation. All obligations, rights, assets and liabilities of the ~~Residential Property and Casualty Joint Underwriting~~ association, including bonds, note and debt

obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

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

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions necessary ~~as may be proper~~ to further evidence the transfers and ~~shall~~ provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed

by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the coastal ~~high-risk~~ account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

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

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation does not ~~shall in no way~~ affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~ fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the coastal ~~high-risk~~ account of the corporation. Notwithstanding any other provision of law, the coverage provided by the ~~Florida Hurricane~~

~~Catastrophe~~ fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the coastal ~~high-risk~~ account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the ~~Florida Hurricane Catastrophe~~ fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

(y) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and ~~should reduce~~ the potential assessments to be levied on property insurers and policyholders statewide. In furtherance of this intent:

1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this

subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association is ~~shall be~~ the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss.

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

3. Beginning February 1, 2015, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages ~~under this subsection~~ shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

Section 13. Paragraph (a) of subsection (5) of section 627.3511, Florida Statutes, is amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(5) APPLICABILITY.—

(a) The take-out bonus provided by subsection (2) and the exemption from assessment provided by paragraph (3)(a) apply only if the corporation policy is replaced by ~~either~~ a standard policy including wind coverage or, if consistent with the insurer's underwriting rules ~~as~~ filed with the office, a basic policy including wind coverage; however, for ~~with respect to~~ risks located in areas where coverage through the coastal ~~high-risk~~ account of the corporation is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. If an insurer assumes the corporation's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 5-year coverage period ~~required by this paragraph~~, the insurer must remove from the corporation one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition ~~to these requirements~~, the corporation must place the bonus moneys in escrow for ~~a period of~~ 5 years; such moneys may be released from escrow only to pay claims. If the policy is canceled or nonrenewed before the end of the 5-year period, the

amount of the take-out bonus must be prorated for the time period the policy was insured. A take-out bonus provided by subsection (2) or subsection (6) is ~~shall~~ not ~~be considered~~ premium income for purposes of taxes and assessments under the Florida Insurance Code and ~~shall~~ remain the property of the corporation, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow;~~, and~~ after it is released from escrow it is ~~shall be~~ considered an asset of the insurer and credited to the insurer's capital and surplus.

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

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

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

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

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

2. If ~~When~~ cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must ~~shall~~ be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due ~~any of~~ her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term ~~"Nonpayment of premium"~~ also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the

insurer from a third party must ~~shall~~ be refunded to that party in full.

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

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

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

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

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

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

Section 15. Section 627.43141, Florida Statutes, is created to read:

627.43141 Notice of change in policy terms.—

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

(a) "Change in policy terms" means the modification, addition, or deletion of any term, coverage, duty, or condition

from the previous policy. The correction of typographical or scrivener's errors or the application of mandated legislative changes is not a change in policy terms.

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

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

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

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

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

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

(6) The intent of this section is to:

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

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

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

Section 16. Section 627.7011, Florida Statutes, is amended to read:

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

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

(a) A policy or endorsement providing that any loss that ~~which~~ is repaired or replaced will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits ~~as~~

~~to the dwelling~~, rather than actual cash value, but not including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.

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

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

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

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

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. An insured shall subsequently enter into a contract for the performance of building and structural repairs. The insurer shall pay any remaining amounts incurred to perform such repairs as the work is performed. With the exception of

incidental expenses to mitigate further damage, the insurer or any contractor or subcontractor may not require the policyholder to advance payment for such repairs or expenses. The insurer may waive the requirement for a contract as provided in this paragraph. An insured shall have 1 year after the date the insurer pays actual cash value to make a claim for replacement cost. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

(b) For personal property, the insurer may limit its initial payment to the actual cash value or 50 percent of the replacement cost value, whichever is greater, and must pay the reservation or holdback amount upon the insured's providing a receipt for the replaced property. The insurer must provide clear notice of this process in the insurance contract ~~shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property~~.

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

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

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

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

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

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

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

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

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

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

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

(e) ~~(7)~~ ~~This section does not~~ Prohibit an insurer from exercising its right to repair damaged property in compliance

with its policy and s. 627.702(7).

Section 17. Paragraph (a) of subsection (5) of section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

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

Section 18. The Legislature finds and declares:

(1) There is a compelling state interest in maintaining a

viable and orderly private-sector market for property insurance in this state. The lack of a viable and orderly property market reduces the availability of property insurance coverage to state residents, increases the cost of property insurance, and increases the state's reliance on a residual property insurance market and its potential for imposing assessments on policyholders throughout the state.

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

(3) Pursuant to sections 19 through 24 of this act, technical or scientific definitions adopted in the 2005 legislation are clarified to implement and advance the Legislature's intended reduction of sinkhole claims and disputes. The legal presumption intended by the Legislature is clarified to reduce disputes and litigation associated with the technical reviews associated with sinkhole claims. Certain other

revisions to ss. 627.706-627.7074, Florida Statutes, are enacted to advance legislative intent to rely on scientific or technical determinations relating to sinkholes and sinkhole claims, reduce the number and cost of disputes relating to sinkhole claims, and ensure that repairs are made commensurate with the scientific and technical determinations and insurance claims payments.

Section 19. Section 627.706, Florida Statutes, is reordered and amended to read:

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

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

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

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

1. The abrupt collapse of the ground cover;

2. A depression in the ground cover clearly visible to the naked eye;

3. Structural damage to the covered building, including the foundation; and

4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

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

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

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

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

(h) ~~(c)~~ "Sinkhole loss" means structural damage to the

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

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

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

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

(i) "Structural damage" means:

1. A covered building that suffers foundation movement outside an acceptable variance under the applicable building

code;

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

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

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

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

(4)~~(5)~~ An insurer offering sinkhole coverage to policyholders before or after the adoption of s. 30, chapter 2007-1, Laws of Florida, may nonrenew the policies of policyholders maintaining sinkhole coverage ~~in Pasco County or Hernando County,~~ at the option of the insurer, and provide an offer of coverage that ~~to such policyholders which~~ includes catastrophic ground cover collapse and excludes sinkhole

coverage. Insurers acting in accordance with this subsection are subject to the following requirements:

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

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

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

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

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

Section 20. Section 627.7061, Florida Statutes, is amended to read:

627.7061 Coverage inquiries.—Inquiries about coverage on a property insurance contract are not claim activity, unless an actual claim is filed by the policyholder which ~~insured that~~

results in a company investigation of the claim.

Section 21. Section 627.7065, Florida Statutes, is repealed.

Section 22. Section 627.707, Florida Statutes, is amended to read:

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

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

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

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

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

~~this section or s. 627.7072.~~

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

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

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

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

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

(5)~~(a) Subject to paragraph (b),~~ If a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the professional engineer retained pursuant to subsection (2), ~~as provided under s. 627.7073, and in consultation~~ with notice to the policyholder, subject to the

coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy.

(a) ~~(b)~~ The insurer may limit its total claims payment to the actual cash value of the sinkhole loss, which does not include ~~including~~ underpinning or grouting or any other repair technique performed below the existing foundation of the building, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs in accordance with the recommendations set forth in s. 627.7073.

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

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

expenses incurred.

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

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

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

3. The claim is in litigation; or

4. The claim is under appraisal.

(e) ~~(c)~~ Upon the insurer's obtaining the written approval of ~~the policyholder and~~ any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed. The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder does receive a rebate, coverage is void ab initio and the policyholder must refund any payments made under such coverage. Any person making the repairs specified in this section who offers a rebate, or any policyholder who accepts a rebate for such repairs, commits insurance fraud punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

Section 23. Section 627.7073, Florida Statutes, is amended to read:

627.7073 Sinkhole reports.—

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

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

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

2.~~1.~~ That the cause of the ~~actual physical and~~ structural damage is sinkhole activity within a reasonable professional probability.

3.~~2.~~ That the analyses conducted were of sufficient scope to identify sinkhole activity as the cause of damage within a reasonable professional probability.

4.~~3.~~ A description of the tests performed.

5.~~4.~~ A recommendation by the professional engineer of methods for stabilizing the land and building and for making repairs to the foundation.

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

1. That there is no structural damage or the cause of such

~~the~~ damage is not sinkhole activity within a reasonable professional probability.

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

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

4. A description of the tests performed.

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

(2)~~(a)~~ Any insurer that has paid a claim for a sinkhole loss shall file a copy of the report and certification, prepared pursuant to subsection (1), including the legal description of the real property and the name of the property owner, with the county clerk of court, who shall record the report and certification. The insurer shall bear the cost of filing and recording one or more reports and certifications ~~the report and certification~~. There shall be no cause of action or liability against an insurer for compliance with this section.

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

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

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

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

(b) As a precondition to accepting payment for a sinkhole loss, the policyholder shall file a copy of any report prepared regarding the insured property, including the neutral evaluator's report that indicates that sinkhole activity caused the damage claimed.

(c) ~~(b)~~ The seller of real property upon which a sinkhole claim has been made ~~by the seller~~ and paid by the insurer must ~~shall~~ disclose to the buyer of such property, before the closing, that a claim has been paid, the amount of the payment, and whether or not the full amount of the proceeds were used to repair the sinkhole damage. Before the closing, the seller must also provide to the buyer a copy of the report prepared pursuant to subsection (1) and any other report regarding the subject property, including the neutral evaluator's report, as well as a copy of the certification indicating that stabilization has been completed, if applicable.

Section 24. Section 627.7074, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

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

(a) Causation;

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

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

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

(3) Following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015, but does not invalidate

the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail ~~paragraph (2)(b)~~.

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

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

(6) The insurer shall pay reasonable ~~the~~ costs associated

with the neutral evaluation. However, if a party chooses to hire a court reporter or stenographer to contemporaneously record and document the neutral evaluation, that party must bear such costs.

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

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

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

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

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person’s interests are materially adverse to the interests of the parties. The term “substantially related matter” means participation by the neutral evaluator on the same claim, property, or adjacent property.

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

case.

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

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

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

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

(9) ~~(10)~~ Evidence of an offer to settle a claim during the neutral evaluation process, as well as any relevant conduct or

statements made in negotiations concerning the offer to settle a claim, is inadmissible to prove liability or absence of liability for the claim or its value, except as provided in subsection (14) ~~(13)~~.

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

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

evaluator.

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

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

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

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

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

(b) The actions of the insurer are not a confession of judgment or admission of liability, and the insurer is not

liable for attorney's fees under s. 627.428 or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator.

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

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

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

Section 25. Subsection (1) of section 627.712, Florida Statutes, is amended to read:

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

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

Section 26. Except as otherwise expressly provided in this act and except for this section, which shall take effect June 1,

2011, this act shall take effect July 1, 2011.