

By the Committees on Rules; Budget Subcommittee on General Government Appropriations; and Banking and Insurance; and Senators Richter and Hays

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1                                   A bill to be entitled  
2           An act relating to property and casualty insurance;  
3           amending s. 215.555, F.S.; revising the definition of  
4           "losses," relating to the Florida Hurricane  
5           Catastrophe Fund, to exclude certain losses; providing  
6           applicability; amending s. 215.5595, F.S.; authorizing  
7           an insurer to renegotiate the terms a surplus note  
8           issued before a certain date; providing limitations;  
9           amending s. 624.407, F.S.; revising the amount of  
10          surplus funds required for domestic insurers applying  
11          for a certificate of authority after a certain date;  
12          amending s. 624.408, F.S.; revising the minimum  
13          surplus that must be maintained by certain insurers;  
14          authorizing the Office of Insurance Regulation to  
15          reduce the surplus requirement under specified  
16          circumstances; amending s. 624.4095, F.S.; excluding  
17          certain premiums for federal multiple-peril crop  
18          insurance from calculations for an insurer's gross  
19          writing ratio; requiring insurers to disclose the  
20          gross written premiums for federal multiple-peril crop  
21          insurance in a financial statement; amending s.  
22          624.424, F.S.; revising the frequency that an insurer  
23          may use the same accountant or partner to prepare an  
24          annual audited financial report; amending s. 626.854,  
25          F.S.; providing limitations on the amount of  
26          compensation that may be received by a public adjuster  
27          for a reopened or supplemental claim; providing  
28          statements that may be considered deceptive or  
29          misleading if made in any public adjuster's

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

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59 adjuster; providing an exception; amending s.  
60 626.8651, F.S.; requiring that a public adjuster  
61 apprentice complete a minimum number of hours of  
62 continuing education to qualify for licensure;  
63 amending s. 626.8796, F.S.; providing requirements for  
64 a public adjuster contract; creating s. 626.70132,  
65 F.S.; requiring that notice of a claim, supplemental  
66 claim, or reopened claim be given to the insurer  
67 within a specified period after a windstorm or  
68 hurricane occurs; providing a definition for the terms  
69 "supplemental claim" or "reopened claim"; providing  
70 applicability; repealing s. 627.0613(4), F.S.,  
71 relating to the requirement that the consumer advocate  
72 for the Chief Financial Officer prepare an annual  
73 report card for each personal residential property  
74 insurer; amending s. 627.062, F.S.; requiring that the  
75 office issue an approval rather than a notice of  
76 intent to approve following its approval of a file and  
77 use filing; authorizing the office to disapprove a  
78 rate filing because the coverage is inadequate or the  
79 insurer charges a higher premium due to certain  
80 discriminatory factors; extending the expiration date  
81 for making a "file and use" filing; prohibiting the  
82 Office of Insurance Regulation from, directly or  
83 indirectly, impeding the right of an insurer to  
84 acquire policyholders, advertise or appoint agents, or  
85 regulate agent commissions; revising the information  
86 that must be included in a rate filing relating to  
87 certain reinsurance or financing products; deleting a

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88 provision that prohibited an insurer from making  
89 certain rate filings within a certain period of time  
90 after a rate increase; deleting a provision  
91 prohibiting an insurer from filing for a rate increase  
92 within 6 months after it makes certain rate filings;  
93 deleting obsolete provisions relating to legislation  
94 enacted during the 2003 Special Session D of the  
95 Legislature; providing for the submission of  
96 additional or supplementary information pursuant to a  
97 rate filing; amending s. 627.0629, F.S.; deleting  
98 obsolete provisions; deleting a requirement that the  
99 Office of Insurance Regulation propose a method for  
100 establishing discounts, debits, credits, and other  
101 rate differentials for hurricane mitigation by a  
102 certain date; requiring the Financial Services  
103 Commission to adopt rules relating to such debits by a  
104 certain date; deleting a provision that prohibits an  
105 insurer from including an expense or profit load in  
106 the cost of reinsurance to replace the Temporary  
107 Increase in Coverage Limits; conforming provisions to  
108 changes made by the act; amending s. 627.351, F.S.;  
109 renaming the "Citizens Property Insurance Corporation"  
110 as the "Taxpayer-Funded Property Insurance  
111 Corporation"; requiring policies issued by the  
112 corporation to include a provision that prohibits  
113 policyholders from engaging the services of a public  
114 adjuster until after the corporation has tendered an  
115 offer; limiting an adjuster's fee for a claim against  
116 the corporation; renaming the "high-risk account" as

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117 the "coastal account"; revising the conditions under  
118 which the Citizens policyholder surcharge may be  
119 imposed; providing that members of the Citizens  
120 Property Insurance Corporation Board of Governors are  
121 not prohibited from practicing in a certain profession  
122 if not prohibited by law or ordinance; limiting  
123 coverage for damage from sinkholes after a certain  
124 date and providing that the corporation must require  
125 repair of the property as a condition of any payment;  
126 prohibiting board members from voting on certain  
127 measures; exempting sinkhole coverage from the  
128 corporation's annual rate increase requirements;  
129 deleting a requirement that the board reduce the  
130 boundaries of certain high-risk areas eligible for  
131 wind-only coverages under certain circumstances;  
132 amending s. 627.3511, F.S.; conforming provisions to  
133 changes made by the act; amending s. 627.4133, F.S.;  
134 revising the requirements for providing an insured  
135 with notice of nonrenewal, cancellation, or  
136 termination of personal lines or commercial  
137 residential property insurance; authorizing an insurer  
138 to cancel policies after 45 days' notice if the Office  
139 of Insurance Regulation determines that the  
140 cancellation of policies is necessary to protect the  
141 interests of the public or policyholders; authorizing  
142 the Office of Insurance Regulation to place an insurer  
143 under administrative supervision or appoint a receiver  
144 upon the consent of the insurer under certain  
145 circumstances; creating s. 627.43141, F.S.; providing

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146 definitions; requiring the delivery of a "Notice of  
147 Change in Policy Terms" under certain circumstances;  
148 specifying requirements for such notice; specifying  
149 actions constituting proof of notice; authorizing  
150 policy renewals to contain a change in policy terms;  
151 providing that receipt of payment by an insurer is  
152 deemed acceptance of new policy terms by an insured;  
153 providing that the original policy remains in effect  
154 until the occurrence of specified events if an insurer  
155 fails to provide notice; providing intent; amending s.  
156 627.7011, F.S.; requiring the insurer to pay the  
157 actual cash value of an insured loss for a dwelling,  
158 less any applicable deductible; requiring a  
159 policyholder to enter into a contract for the  
160 performance of building and structural repairs unless  
161 waived by the insurer; restricting insurers and  
162 contractors from requiring advance payments for  
163 repairs and expenses; requiring the insurer to offer  
164 coverage under which the insurer is obligated to pay  
165 replacement costs; authorizing the insurer to offer  
166 coverage that limits the initial payment for personal  
167 property to the actual cash value of the property to  
168 be replaced and to require the insured to provide  
169 receipts for purchases; requiring the insurer to  
170 provide notice of this process in the insurance  
171 contract; prohibiting an insurer from requiring the  
172 insured to advance payment; amending s. 627.70131,  
173 F.S.; specifying application of certain time periods  
174 to initial or supplemental property insurance claim

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175 notices and payments; providing legislative findings  
176 with respect to 2005 statutory changes relating to  
177 sinkhole insurance coverage and statutory changes in  
178 this act; amending s. 627.706, F.S.; authorizing an  
179 insurer to limit coverage for catastrophic ground  
180 cover collapse to the principal building and to have  
181 discretion to provide additional coverage; allowing  
182 the deductible to include costs relating to an  
183 investigation of whether sinkhole activity is present;  
184 revising definitions; defining the term "structural  
185 damage"; providing an insurer with discretion to  
186 provide a policyholder with an opportunity to purchase  
187 an endorsement to sinkhole coverage; placing a 2-year  
188 statute of repose on claims for sinkhole coverage;  
189 amending s. 627.7061, F.S.; conforming provisions to  
190 changes made by the act; repealing s. 627.7065, F.S.,  
191 relating to the establishment of a sinkhole database;  
192 amending s. 627.707, F.S.; revising provisions  
193 relating to the investigation of sinkholes by  
194 insurers; deleting a requirement that the insurer  
195 provide a policyholder with a statement regarding  
196 testing for sinkhole activity; providing a time  
197 limitation for demanding sinkhole testing by a  
198 policyholder and entering into a contract for repairs;  
199 requiring all repairs to be completed within a certain  
200 time; providing exceptions; providing a criminal  
201 penalty on a policyholder for accepting rebates from  
202 persons performing repairs; amending s. 627.7073,  
203 F.S.; revising provisions relating to inspection

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204 reports; providing that the presumption that the  
205 report is correct shifts the burden of proof; revising  
206 the reports that an insurer must file with the clerk  
207 of the court; requiring the policyholder to file  
208 certain reports as a precondition to accepting  
209 payment; requiring the professional engineer  
210 responsible for monitoring sinkhole repairs to issue a  
211 report and certification to the property owner and  
212 file such report with the court; providing that the  
213 act does not create liability for an insurer based on  
214 a representation or certification by the engineer;  
215 amending s. 627.7074, F.S.; revising provisions  
216 relating to neutral evaluation; requiring evaluation  
217 in order to make certain determinations; requiring  
218 that the neutral evaluator be allowed access to  
219 structures being evaluated; providing grounds for  
220 disqualifying an evaluator; allowing the Department of  
221 Financial Services to appoint an evaluator if the  
222 parties cannot come to agreement; revising the  
223 timeframes for scheduling a neutral evaluation  
224 conference; authorizing an evaluator to enlist another  
225 evaluator or other professionals; providing a time  
226 certain for issuing a report; providing that certain  
227 information is confidential; revising provisions  
228 relating to compliance with the evaluator's  
229 recommendations; providing that the evaluator is an  
230 agent of the department for the purposes of immunity  
231 from suit; requiring the department to adopt rules;  
232 amending s. 627.711, F.S.; deleting the requirement



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233 that the insurer pay for verification of a uniform  
234 mitigation verification form that the insurer  
235 requires; amending s. 627.712, F.S.; conforming  
236 provisions to changes made by the act; providing  
237 effective dates.

238

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

240

241 Section 1. Effective June 1, 2011, paragraph (d) of  
242 subsection (2) of section 215.555, Florida Statutes, is amended  
243 to read

244 215.555 Florida Hurricane Catastrophe Fund.—

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

246 (d) "Losses" means all ~~direct~~ incurred losses under covered  
247 policies, including ~~which shall include losses for~~ additional  
248 living expenses not to exceed 40 percent of the insured value of  
249 a residential structure or its contents and amounts paid as fees  
250 on behalf of or inuring to the benefit of a policyholder ~~shall~~  
251 ~~exclude loss adjustment expenses.~~ The term "Losses" does not  
252 include:

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

255 2. Losses under liability coverages;

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

260 4. Amounts paid as the result of a voluntary expansion of  
261 coverage by the insurer, including, but not limited to, a waiver

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262 of an applicable deductible;

263 5. Amounts paid to reimburse a policyholder for condominium  
264 association or homeowners' association loss assessments or under  
265 similar coverages for contractual liabilities;

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

268 7. Amounts in excess of the coverage limits under the  
269 covered policy; or

270 8. Allocated or unallocated loss adjustment expenses.

271 Section 2. The amendment to s. 215.555, Florida Statutes,  
272 made by this act applies first to the Florida Hurricane  
273 Catastrophe Fund reimbursement contract that takes effect June  
274 1, 2011.

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

277 215.5595 Insurance Capital Build-Up Incentive Program.—

278 (12) The insurer may request that the board renegotiate the  
279 terms of any surplus note issued under this section before  
280 January 1, 2011. The request must be submitted to the board by  
281 January 1, 2012. If the insurer agrees to accelerate the payment  
282 period of the note by at least 5 years, the board must agree to  
283 exempt the insurer from the premium-to-surplus ratios required  
284 under paragraph (2) (d). If the insurer agrees to an acceleration  
285 of the payment period for less than 5 years, the board may,  
286 after consultation with the Office of Insurance Regulation,  
287 agree to an appropriate revision of the premium-to-surplus  
288 ratios required under paragraph (2) (d) for the remaining term of  
289 the note if the revised ratios are not lower than a minimum  
290 writing ratio of net premium to surplus of at least 1 to 1 and,

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291 alternatively, a minimum writing ratio of gross premium to  
292 surplus of at least 3 to 1.

293 Section 4. Section 624.407, Florida Statutes, is amended to  
294 read:

295 624.407 Surplus ~~Capital~~ funds required; new insurers.—

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

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

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

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

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

311 or

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

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

317 2. ~~however, a domestic insurer that transacts residential~~  
318 ~~property insurance and is~~ A wholly owned subsidiary of an  
319 insurer domiciled in any other state, ~~shall possess surplus as~~

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320 ~~to policyholders of at least \$50 million.~~

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

325 (3)~~(2)~~ The requirements of this section shall be based upon  
326 all the kinds of insurance actually transacted or to be  
327 transacted by the insurer in any and all areas in which it  
328 operates, whether or not only a portion of such kinds of  
329 insurance are ~~to be~~ transacted in this state.

330 (4)~~(3)~~ As to surplus funds as to policyholders required for  
331 qualification to transact one or more kinds of insurance,  
332 domestic mutual insurers are governed by chapter 628, and  
333 domestic reciprocal insurers are governed by chapter 629.

334 (5)~~(4)~~ For the purposes of this section, liabilities do  
335 ~~shall~~ not include liabilities required under s. 625.041(4). For  
336 purposes of computing minimum surplus funds as to policyholders  
337 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities  
338 required under s. 625.041(4).

339 (6)~~(5)~~ The provisions of this section, as amended by  
340 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to  
341 insurers applying for a certificate of authority on or after  
342 October 1, 1989 ~~the effective date of this act~~.

343 Section 5. Section 624.408, Florida Statutes, is amended to  
344 read:

345 624.408 Surplus funds ~~as to policyholders~~ required; current  
346 ~~new and existing~~ insurers.-

347 (1)~~(a)~~ To maintain a certificate of authority to transact  
348 any one kind or combinations of kinds of insurance, as defined

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349 in part V of this chapter, an insurer in this state must ~~shall~~  
 350 at all times maintain surplus funds as to policyholders at least  
 351 ~~not less than~~ the greater of:

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

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

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

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

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

365 (f)(b) For residential any property insurers not and  
 366 ~~casualty insurer~~ holding a certificate of authority before July  
 367 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

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

377 1. On December 31, 2001, and until December 30, 2002, \$3

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378 million.

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

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

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

384 (2) For purposes of this section, liabilities do ~~shall~~ not  
385 include liabilities required under s. 625.041(4). For purposes  
386 of computing minimum surplus as to policyholders pursuant to s.  
387 625.305(1), liabilities ~~shall~~ include liabilities required under  
388 s. 625.041(4).

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

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

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

396 624.4095 Premiums written; restrictions.—

397 (7) For the purposes of this section and ss. 624.407 and  
398 624.408, with respect to capital and surplus requirements, gross  
399 written premiums for federal multiple-peril crop insurance which  
400 are ceded to the Federal Crop Insurance Corporation or  
401 authorized reinsurers may not be included in the calculation of  
402 an insurer's gross writing ratio. The liabilities for ceded  
403 reinsurance premiums payable for federal multiple-peril crop  
404 insurance ceded to the Federal Crop Insurance Corporation and  
405 authorized reinsurers shall be netted against the asset for  
406 amounts recoverable from reinsurers. Each insurer that writes

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407 other insurance products together with federal multiple-peril  
408 crop insurance must disclose in the notes to its annual and  
409 quarterly financial statements, or in a supplement to those  
410 statements, the gross written premiums for federal multiple-  
411 peril crop insurance.

412 Section 7. Paragraph (d) of subsection (8) of section  
413 624.424, Florida Statutes, is amended to read:

414 624.424 Annual statement and other information.—

415 (8)

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

430 Section 8. Effective June 1, 2011, subsection (11) of  
431 section 626.854, Florida Statutes, is amended to read:

432 626.854 "Public adjuster" defined; prohibitions.—The  
433 Legislature finds that it is necessary for the protection of the  
434 public to regulate public insurance adjusters and to prevent the  
435 unauthorized practice of law.

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

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

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

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

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

468 Section 9. Effective January 1, 2012, section 626.854,  
469 Florida Statutes, as amended by this act, is amended to read:

470 626.854 "Public adjuster" defined; prohibitions.—The  
471 Legislature finds that it is necessary for the protection of the  
472 public to regulate public insurance adjusters and to prevent the  
473 unauthorized practice of law.

474 (1) A "public adjuster" is any person, except a duly  
475 licensed attorney at law as exempted under ~~hereinafter~~ in s.  
476 626.860 ~~provided~~, who, for money, commission, or any other thing  
477 of value, prepares, completes, or files an insurance claim form  
478 for an insured or third-party claimant or who, for money,  
479 commission, or any other thing of value, acts ~~or aids in any~~  
480 ~~manner~~ on behalf of, or aids an insured or third-party claimant  
481 in negotiating for or effecting the settlement of a claim or  
482 claims for loss or damage covered by an insurance contract or  
483 who advertises for employment as an adjuster of such claims. The  
484 term, ~~and~~ also includes any person who, for money, commission,  
485 or any other thing of value, solicits, investigates, or adjusts  
486 such claims on behalf of a ~~any such~~ public adjuster.

487 (2) This definition does not apply to:

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

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

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

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

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

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

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

512 (7) An insured or claimant may cancel a public adjuster's  
513 contract to adjust a claim without penalty or obligation within  
514 3 business days after the date on which the contract is executed  
515 or within 3 business days after the date on which the insured or  
516 claimant has notified the insurer of the claim, by phone or in  
517 writing, whichever is later. The public adjuster's contract must  
518 ~~shall~~ disclose to the insured or claimant his or her right to  
519 cancel the contract and advise the insured or claimant that  
520 notice of cancellation must be submitted in writing and sent by  
521 certified mail, return receipt requested, or other form of  
522 mailing that ~~which~~ provides proof thereof, to the public

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

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

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

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

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

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

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

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

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

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

562

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

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

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

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

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

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

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

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

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

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610 person acting on behalf of a public adjuster or apprentice may  
611 not accept referrals of business from any person with whom the  
612 public adjuster conducts business if there is any form or manner  
613 of agreement to compensate the person, ~~whether~~ directly or  
614 indirectly, for referring business to the public adjuster. A  
615 public adjuster may not compensate any person, except for  
616 another public adjuster, ~~whether~~ directly or indirectly, for the  
617 principal purpose of referring business to the public adjuster.

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

628 (15) A public adjuster must ensure prompt notice of  
629 property loss claims submitted to an insurer by or through a  
630 public adjuster or on which a public adjuster represents the  
631 insured at the time the claim or notice of loss is submitted to  
632 the insurer. The public adjuster must ensure that notice is  
633 given to the insurer, the public adjuster's contract is provided  
634 to the insurer, the property is available for inspection of the  
635 loss or damage by the insurer, and the insurer is given an  
636 opportunity to interview the insured directly about the loss and  
637 claim. The insurer must be allowed to obtain necessary  
638 information to investigate and respond to the claim.

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

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

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

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

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668 for construction or repair of covered property with the  
669 residential property owner who has suffered loss or damage  
670 covered by a property insurance policy, or the insurer of such  
671 property, if the contractor is doing so for the usual and  
672 customary fees applicable to the work to be performed as stated  
673 in the contract between the contractor and the insured.

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

677 Section 10. Effective January 1, 2012, subsection (6) of  
678 section 626.8651, Florida Statutes, is amended to read:

679 626.8651 Public adjuster apprentice license;  
680 qualifications.—

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

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

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

696 Section 11. Effective January 1, 2012, section 626.8796,



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697 Florida Statutes, is amended to read:

698 626.8796 Public adjuster contracts; fraud statement.-

699 (1) All contracts for public adjuster services must be in  
700 writing and ~~must~~ prominently display the following statement on  
701 the contract: "Pursuant to s. 817.234, Florida Statutes, any  
702 person who, with the intent to injure, defraud, or deceive an  
703 ~~any~~ insurer or insured, prepares, presents, or causes to be  
704 presented a proof of loss or estimate of cost or repair of  
705 damaged property in support of a claim under an insurance policy  
706 knowing that the proof of loss or estimate of claim or repairs  
707 contains ~~any~~ false, incomplete, or misleading information  
708 concerning any fact or thing material to the claim commits a  
709 felony of the third degree, punishable as provided in s.  
710 775.082, s. 775.083, or s. 775.084, Florida Statutes."

711 (2) A public adjuster contract must contain the full name,  
712 permanent business address, and license number of the public  
713 adjuster; the full name of the public adjusting firm; and the  
714 insured's full name and street address, together with a brief  
715 description of the loss. The contract must state the percentage  
716 of compensation for the public adjuster's services; the type of  
717 claim, including an emergency claim, nonemergency claim, or  
718 supplemental claim; the signatures of the public adjuster and  
719 all named insureds; and the signature date. If all of the named  
720 insureds signatures are not available, the public adjuster must  
721 submit an affidavit signed by the available named insureds  
722 attesting that they have authority to enter into the contract  
723 and settle all claim issues on behalf of the named insureds. An  
724 unaltered copy of the executed contract must be remitted to the  
725 insurer within 30 days after execution.

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726 Section 12. Effective June 1, 2011, section 626.70132,  
727 Florida Statutes, is created to read:

728 626.70132 Notice of windstorm or hurricane claim.—A claim,  
729 supplemental claim, or reopened claim under an insurance policy  
730 that provides property insurance, as defined in s. 624.604, for  
731 loss or damage caused by the peril of windstorm or hurricane is  
732 barred unless notice of the claim, supplemental claim, or  
733 reopened claim was given to the insurer in accordance with the  
734 terms of the policy within 3 years after the hurricane first  
735 made landfall or the windstorm caused the covered damage. For  
736 purposes of this section, the term "supplemental claim" or  
737 "reopened claim" means any additional claim for recovery from  
738 the insurer for losses from the same hurricane or windstorm  
739 which the insurer has previously adjusted pursuant to the  
740 initial claim. This section does not affect any applicable  
741 limitation on civil actions provided in s. 95.11 for claims,  
742 supplemental claims, or reopened claims timely filed under this  
743 section.

744 Section 13. Subsection (4) of section 627.0613, Florida  
745 Statutes, is repealed.

746 Section 14. Section 627.062, Florida Statutes, is amended  
747 to read:

748 627.062 Rate standards.—

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

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

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

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

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

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

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

786 3. For all property insurance filings made or submitted  
787 after January 25, 2007, but before May 1, 2012 ~~December 31,~~  
788 ~~2010~~, an insurer seeking a rate that is greater than the rate  
789 most recently approved by the office shall make a "file and use"  
790 filing. For purposes of this subparagraph, motor vehicle  
791 collision and comprehensive coverages are not considered ~~to be~~  
792 property coverages.

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

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

800 2. Past and prospective expenses.

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

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

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813 insurance rates. Such manner must ~~shall~~ contemplate allowances  
814 for an underwriting profit factor and full consideration of  
815 investment income which produce a reasonable rate of return;  
816 however, investment income from invested surplus may not be  
817 considered.

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

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

823 7. The adequacy of loss reserves.

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

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

831 10. Conflagration and catastrophe hazards, if applicable.

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

836 12. A reasonable margin for underwriting profit and  
837 contingencies.

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

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

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

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842 shall be given to the availability of water supplies and the  
843 experience of the fire insurance business during a period of not  
844 less than the most recent 5-year period for which such  
845 experience is available.

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

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

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

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

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

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871 insufficient, together with the investment income attributable  
872 to them, to sustain projected losses and expenses in the class  
873 of business to which they apply.

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

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

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

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

894 (g) The office may at any time review a rate, rating  
895 schedule, rating manual, or rate change; the pertinent records  
896 of the insurer; and market conditions. If the office finds on a  
897 preliminary basis that a rate may be excessive, inadequate, or  
898 unfairly discriminatory, the office shall initiate proceedings  
899 to disapprove the rate and shall so notify the insurer. However,

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

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



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

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

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

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

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

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

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958 to an adjustment of its rates for reinsurance or financing costs  
959 incurred in the purchase of reinsurance or financing products to  
960 replace or finance the payment of the amount covered by the  
961 Temporary Increase in Coverage Limits (TICL) portion of the  
962 Florida Hurricane Catastrophe Fund including replacement  
963 reinsurance for the TICL reductions made pursuant to s.  
964 215.555(17)(e); the actual cost paid due to the application of  
965 the TICL premium factor pursuant to s. 215.555(17)(f); and the  
966 actual cost paid due to the application of the cash build-up  
967 factor pursuant to s. 215.555(5)(b) if the insurer:

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

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

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

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

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

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987 ~~paragraph within 6 months after making a filing under this~~  
988 ~~paragraph.~~

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

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

998 3. An insurer that elects to implement a rate change under  
999 this paragraph must file its rate filing with the office at  
1000 least 45 days before the effective date of the rate change.  
1001 After an insurer submits a complete filing that meets all of the  
1002 requirements of this paragraph, the office has 45 days after the  
1003 date of the filing to review the rate filing and determine if  
1004 the rate is excessive, inadequate, or unfairly discriminatory.

1005 (1) The office may disapprove a rate for sinkhole coverage  
1006 only if the rate is inadequate or the insurer charges an  
1007 applicant or an insured a higher premium solely because of the  
1008 applicant's or the insured's race, religion, sex, national  
1009 origin, or marital status. Policies subject to this paragraph  
1010 may not be counted in the calculation under s. 627.171(2).

1011  
1012 The provisions of this subsection do ~~shall~~ not apply to workers'  
1013 compensation, ~~and~~ employer's liability insurance, and ~~to~~ motor  
1014 vehicle insurance.

1015 (3) (a) For individual risks that are not rated in

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1016 accordance with the insurer's rates, rating schedules, rating  
1017 manuals, and underwriting rules filed with the office and that  
1018 ~~which~~ have been submitted to the insurer for individual rating,  
1019 the insurer must maintain documentation on each risk subject to  
1020 individual risk rating. The documentation must identify the  
1021 named insured and specify the characteristics and classification  
1022 of the risk supporting the reason for the risk being  
1023 individually risk rated, including any modifications to existing  
1024 approved forms to be used on the risk. The insurer must maintain  
1025 these records for ~~a period of~~ at least 5 years after the  
1026 effective date of the policy.

1027 (b) Individual risk rates and modifications to existing  
1028 approved forms are not subject to this part or part II, except  
1029 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
1030 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,  
1031 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
1032 627.4265, 627.427, and 627.428, but are subject to all other  
1033 applicable provisions of this code and rules adopted thereunder.

1034 (c) This subsection does not apply to private passenger  
1035 motor vehicle insurance.

1036 (d)1. The following categories or kinds of insurance and  
1037 types of commercial lines risks are not subject to paragraph  
1038 (2) (a) or paragraph (2) (f):

1039 a. Excess or umbrella.

1040 b. Surety and fidelity.

1041 c. Boiler and machinery and leakage and fire extinguishing  
1042 equipment.

1043 d. Errors and omissions.

1044 e. Directors and officers, employment practices, and

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1045 management liability.

1046 f. Intellectual property and patent infringement liability.

1047 g. Advertising injury and Internet liability insurance.

1048 h. Property risks rated under a highly protected risks  
1049 rating plan.

1050 i. Any other commercial lines categories or kinds of  
1051 insurance or types of commercial lines risks that the office  
1052 determines should not be subject to paragraph (2)(a) or  
1053 paragraph (2)(f) because of the existence of a competitive  
1054 market for such insurance, similarity of such insurance to other  
1055 categories or kinds of insurance not subject to paragraph (2)(a)  
1056 or paragraph (2)(f), or to improve the general operational  
1057 efficiency of the office.

1058 2. Insurers or rating organizations shall establish and use  
1059 rates, rating schedules, or rating manuals to allow the insurer  
1060 a reasonable rate of return on insurance and risks described in  
1061 subparagraph 1. which are written in this state.

1062 3. An insurer must notify the office of any changes to  
1063 rates for insurance and risks described in subparagraph 1.  
1064 within no later than 30 days after the effective date of the  
1065 change. The notice must include the name of the insurer, the  
1066 type or kind of insurance subject to rate change, total premium  
1067 written during the immediately preceding year by the insurer for  
1068 the type or kind of insurance subject to the rate change, and  
1069 the average statewide percentage change in rates. Underwriting  
1070 files, premiums, losses, and expense statistics with regard to  
1071 such insurance and risks ~~described in subparagraph 1.~~ written by  
1072 an insurer must ~~shall~~ be maintained by the insurer and subject  
1073 to examination by the office. Upon examination, the office

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1074 ~~shall~~, in accordance with generally accepted and reasonable  
1075 actuarial techniques, shall consider the rate factors in  
1076 paragraphs (2)(b), (c), and (d) and the standards in paragraph  
1077 (2)(e) to determine if the rate is excessive, inadequate, or  
1078 unfairly discriminatory.

1079 4. A rating organization must notify the office of any  
1080 changes to loss cost for insurance and risks described in  
1081 subparagraph 1. within ~~no later than~~ 30 days after the effective  
1082 date of the change. The notice must include the name of the  
1083 rating organization, the type or kind of insurance subject to a  
1084 loss cost change, loss costs during the immediately preceding  
1085 year for the type or kind of insurance subject to the loss cost  
1086 change, and the average statewide percentage change in loss  
1087 cost. Loss and exposure statistics with regard to risks  
1088 applicable to loss costs for a rating organization not subject  
1089 to paragraph (2)(a) or paragraph (2)(f) must ~~shall~~ be maintained  
1090 by the rating organization and are subject to examination by the  
1091 office. Upon examination, the office ~~shall~~, in accordance with  
1092 generally accepted and reasonable actuarial techniques, shall  
1093 consider the rate factors in paragraphs (2)(b)-(d) and the  
1094 standards in paragraph (2)(e) to determine if the rate is  
1095 excessive, inadequate, or unfairly discriminatory.

1096 5. In reviewing a rate, the office may require the insurer  
1097 to provide, at the insurer's expense, all information necessary  
1098 to evaluate the condition of the company and the reasonableness  
1099 of the rate according to the applicable criteria described in  
1100 this section.

1101 (4) The establishment of any rate, rating classification,  
1102 rating plan or schedule, or variation thereof in violation of

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1103 part IX of chapter 626 is also in violation of this section. ~~In~~  
1104 ~~order to enhance the ability of consumers to compare premiums~~  
1105 ~~and to increase the accuracy and usefulness of rate-comparison~~  
1106 ~~information provided by the office to the public, the office~~  
1107 ~~shall develop a proposed standard rating territory plan to be~~  
1108 ~~used by all authorized property and casualty insurers for~~  
1109 ~~residential property insurance. In adopting the proposed plan,~~  
1110 ~~the office may consider geographical characteristics relevant to~~  
1111 ~~risk, county lines, major roadways, existing rating territories~~  
1112 ~~used by a significant segment of the market, and other relevant~~  
1113 ~~factors. Such plan shall be submitted to the President of the~~  
1114 ~~Senate and the Speaker of the House of Representatives by~~  
1115 ~~January 15, 2006. The plan may not be implemented unless~~  
1116 ~~authorized by further act of the Legislature.~~

1117 (5) With respect to a rate filing involving coverage of the  
1118 type for which the insurer is required to pay a reimbursement  
1119 premium to the Florida Hurricane Catastrophe Fund, the insurer  
1120 may fully recoup in its property insurance premiums any  
1121 reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~  
1122 ~~fund, together with reasonable costs of other reinsurance;~~  
1123 however, but except as otherwise provided in this section, the  
1124 insurer may not recoup reinsurance costs that duplicate coverage  
1125 provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer  
1126 may not recoup more than 1 year of reimbursement premium at a  
1127 time. Any under-recoupment from the prior year may be added to  
1128 the following year's reimbursement premium, and any over-  
1129 recoupment must ~~shall~~ be subtracted from the following year's  
1130 reimbursement premium.

1131 (6) (a) If an insurer requests an administrative hearing

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1132 pursuant to s. 120.57 related to a rate filing under this  
1133 section, the director of the Division of Administrative Hearings  
1134 shall expedite the hearing and assign an administrative law  
1135 judge who shall commence the hearing within 30 days after the  
1136 receipt of the formal request and ~~shall~~ enter a recommended  
1137 order within 30 days after the hearing or within 30 days after  
1138 receipt of the hearing transcript by the administrative law  
1139 judge, whichever is later. Each party shall have ~~be allowed~~ 10  
1140 days in which to submit written exceptions to the recommended  
1141 order. The office shall enter a final order within 30 days after  
1142 the entry of the recommended order. The provisions of this  
1143 paragraph may be waived upon stipulation of all parties.

1144 (b) Upon entry of a final order, the insurer may request a  
1145 expedited appellate review pursuant to the Florida Rules of  
1146 Appellate Procedure. It is the intent of the Legislature that  
1147 the First District Court of Appeal grant an insurer's request  
1148 for an expedited appellate review.

1149 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~  
1150 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~  
1151 control to the extent of any conflict with other provisions of  
1152 this section.

1153 (a) ~~(b)~~ Any portion of a judgment entered or settlement paid  
1154 as a result of a statutory or common-law bad faith action and  
1155 any portion of a judgment entered which awards punitive damages  
1156 against an insurer may not be included in the insurer's rate  
1157 base, and ~~shall not be~~ used to justify a rate or rate change.  
1158 Any common-law bad faith action identified as such, any portion  
1159 of a settlement entered as a result of a statutory or common-law  
1160 action, or any portion of a settlement wherein an insurer agrees



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1161 to pay specific punitive damages may not be used to justify a  
1162 rate or rate change. The portion of the taxable costs and  
1163 attorney's fees which is identified as being related to the bad  
1164 faith and punitive damages ~~in these judgments and settlements~~  
1165 may not be included in the insurer's rate base and used ~~may not~~  
1166 ~~be utilized~~ to justify a rate or rate change.

1167 (b) ~~(e)~~ Upon reviewing a rate filing and determining whether  
1168 the rate is excessive, inadequate, or unfairly discriminatory,  
1169 the office shall consider, in accordance with generally accepted  
1170 and reasonable actuarial techniques, past and present  
1171 prospective loss experience, ~~either~~ using loss experience solely  
1172 for this state or giving greater credibility to this state's  
1173 loss data after applying actuarially sound methods of assigning  
1174 credibility to such data.

1175 (c) ~~(d)~~ Rates shall be deemed excessive if, among other  
1176 standards established by this section, the rate structure  
1177 provides for replenishment of reserves or surpluses from  
1178 premiums when the replenishment is attributable to investment  
1179 losses.

1180 (d) ~~(e)~~ The insurer must apply a discount or surcharge based  
1181 on the health care provider's loss experience or ~~shall~~ establish  
1182 an alternative method giving due consideration to the provider's  
1183 loss experience. The insurer must include in the filing a copy  
1184 of the surcharge or discount schedule or a description of the  
1185 alternative method used, and ~~must~~ provide a copy ~~of such~~  
1186 ~~schedule or description~~, as approved by the office, to  
1187 policyholders at the time of renewal and to prospective  
1188 policyholders at the time of application for coverage.

1189 (e) ~~(f)~~ Each medical malpractice insurer must make a rate

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1190 filing under this section, sworn to by at least two executive  
1191 officers of the insurer, at least once each calendar year.

1192 ~~(8)(a)1. No later than 60 days after the effective date of~~  
1193 ~~medical malpractice legislation enacted during the 2003 Special~~  
1194 ~~Session D of the Florida Legislature, the office shall calculate~~  
1195 ~~a presumed factor that reflects the impact that the changes~~  
1196 ~~contained in such legislation will have on rates for medical~~  
1197 ~~malpractice insurance and shall issue a notice informing all~~  
1198 ~~insurers writing medical malpractice coverage of such presumed~~  
1199 ~~factor. In determining the presumed factor, the office shall use~~  
1200 ~~generally accepted actuarial techniques and standards provided~~  
1201 ~~in this section in determining the expected impact on losses,~~  
1202 ~~expenses, and investment income of the insurer. To the extent~~  
1203 ~~that the operation of a provision of medical malpractice~~  
1204 ~~legislation enacted during the 2003 Special Session D of the~~  
1205 ~~Florida Legislature is stayed pending a constitutional~~  
1206 ~~challenge, the impact of that provision shall not be included in~~  
1207 ~~the calculation of a presumed factor under this subparagraph.~~

1208 ~~2. No later than 60 days after the office issues its notice~~  
1209 ~~of the presumed rate change factor under subparagraph 1., each~~  
1210 ~~insurer writing medical malpractice coverage in this state shall~~  
1211 ~~submit to the office a rate filing for medical malpractice~~  
1212 ~~insurance, which will take effect no later than January 1, 2004,~~  
1213 ~~and apply retroactively to policies issued or renewed on or~~  
1214 ~~after the effective date of medical malpractice legislation~~  
1215 ~~enacted during the 2003 Special Session D of the Florida~~  
1216 ~~Legislature. Except as authorized under paragraph (b), the~~  
1217 ~~filing shall reflect an overall rate reduction at least as great~~  
1218 ~~as the presumed factor determined under subparagraph 1. With~~

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1219 ~~respect to policies issued on or after the effective date of~~  
1220 ~~such legislation and prior to the effective date of the rate~~  
1221 ~~filing required by this subsection, the office shall order the~~  
1222 ~~insurer to make a refund of the amount that was charged in~~  
1223 ~~excess of the rate that is approved.~~

1224 ~~(b) Any insurer or rating organization that contends that~~  
1225 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~  
1226 ~~or unfairly discriminatory shall separately state in its filing~~  
1227 ~~the rate it contends is appropriate and shall state with~~  
1228 ~~specificity the factors or data that it contends should be~~  
1229 ~~considered in order to produce such appropriate rate. The~~  
1230 ~~insurer or rating organization shall be permitted to use all of~~  
1231 ~~the generally accepted actuarial techniques provided in this~~  
1232 ~~section in making any filing pursuant to this subsection. The~~  
1233 ~~office shall review each such exception and approve or~~  
1234 ~~disapprove it prior to use. It shall be the insurer's burden to~~  
1235 ~~actuarially justify any deviations from the rates required to be~~  
1236 ~~filed under paragraph (a). The insurer making a filing under~~  
1237 ~~this paragraph shall include in the filing the expected impact~~  
1238 ~~of medical malpractice legislation enacted during the 2003~~  
1239 ~~Special Session D of the Florida Legislature on losses,~~  
1240 ~~expenses, and rates.~~

1241 ~~(c) If any provision of medical malpractice legislation~~  
1242 ~~enacted during the 2003 Special Session D of the Florida~~  
1243 ~~Legislature is held invalid by a court of competent~~  
1244 ~~jurisdiction, the office shall permit an adjustment of all~~  
1245 ~~medical malpractice rates filed under this section to reflect~~  
1246 ~~the impact of such holding on such rates so as to ensure that~~  
1247 ~~the rates are not excessive, inadequate, or unfairly~~

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1248 ~~discriminatory.~~

1249 ~~(d) Rates approved on or before July 1, 2003, for medical~~  
1250 ~~malpractice insurance shall remain in effect until the effective~~  
1251 ~~date of a new rate filing approved under this subsection.~~

1252 ~~(e) The calculation and notice by the office of the~~  
1253 ~~presumed factor pursuant to paragraph (a) is not an order or~~  
1254 ~~rule that is subject to chapter 120. If the office enters into a~~  
1255 ~~contract with an independent consultant to assist the office in~~  
1256 ~~calculating the presumed factor, such contract shall not be~~  
1257 ~~subject to the competitive solicitation requirements of s.~~  
1258 ~~287.057.~~

1259 (8)~~(9)~~(a) The chief executive officer or chief financial  
1260 officer of a property insurer and the chief actuary of a  
1261 property insurer must certify under oath and subject to the  
1262 penalty of perjury, on a form approved by the commission, the  
1263 following information, which must accompany a rate filing:

1264 1. The signing officer and actuary have reviewed the rate  
1265 filing;

1266 2. Based on the signing officer's and actuary's knowledge,  
1267 the rate filing does not contain any untrue statement of a  
1268 material fact or omit to state a material fact necessary ~~in~~  
1269 ~~order~~ to make the statements made, in light of the circumstances  
1270 under which such statements were made, not misleading;

1271 3. Based on the signing officer's and actuary's knowledge,  
1272 the information and other factors described in paragraph (2) (b),  
1273 including, but not limited to, investment income, fairly present  
1274 in all material respects the basis of the rate filing for the  
1275 periods presented in the filing; and

1276 4. Based on the signing officer's and actuary's knowledge,

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1277 the rate filing reflects all premium savings that are reasonably  
1278 expected to result from legislative enactments and are in  
1279 accordance with generally accepted and reasonable actuarial  
1280 techniques.

1281 (b) A signing officer or actuary who knowingly makes ~~making~~  
1282 a false certification under this subsection commits a violation  
1283 of s. 626.9541(1)(e) and is subject to the penalties under s.  
1284 626.9521.

1285 (c) Failure to provide such certification by the officer  
1286 and actuary shall result in the rate filing being disapproved  
1287 without prejudice to be refiled.

1288 (d) The certification made pursuant to paragraph (a) is not  
1289 rendered false if, after making the subject rate filing, the  
1290 insurer provides the office with additional or supplementary  
1291 information pursuant to a formal or informal request from the  
1292 office. However, the actuary who is primarily responsible for  
1293 preparing and submitting such information must certify the  
1294 information in accordance with the certification required under  
1295 paragraph (a) and the penalties in paragraph (b), except that  
1296 the chief executive officer, chief financial officer, or chief  
1297 actuary need not certify the additional or supplementary  
1298 information.

1299 (e) ~~(d)~~ The commission may adopt rules and forms ~~pursuant to~~  
1300 ~~ss. 120.536(1) and 120.54~~ to administer this subsection.

1301 (9) ~~(10)~~ The burden is on the office to establish that rates  
1302 are excessive for personal lines residential coverage with a  
1303 dwelling replacement cost of \$1 million or more or for a single  
1304 condominium unit with a combined dwelling and contents  
1305 replacement cost of \$1 million or more. Upon request of the

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1306 office, the insurer shall provide ~~to the office~~ such loss and  
1307 expense information as the office reasonably needs to meet this  
1308 burden.

1309 ~~(10)-(11)~~ Any interest paid pursuant to s. 627.70131(5) may  
1310 not be included in the insurer's rate base and may not be used  
1311 to justify a rate or rate change.

1312 Section 15. Subsections (1) and (5) and paragraph (b) of  
1313 subsection (8) of section 627.0629, Florida Statutes, are  
1314 amended to read:

1315 627.0629 Residential property insurance; rate filings.—

1316 (1)~~(a)~~ It is the intent of the Legislature that insurers  
1317 ~~must~~ provide savings to consumers who install or implement  
1318 windstorm damage mitigation techniques, alterations, or  
1319 solutions to their properties to prevent windstorm losses. A  
1320 rate filing for residential property insurance must include  
1321 actuarially reasonable discounts, credits, or other rate  
1322 differentials, or appropriate reductions in deductibles, for  
1323 properties on which fixtures or construction techniques  
1324 demonstrated to reduce the amount of loss in a windstorm have  
1325 been installed or implemented. The fixtures or construction  
1326 techniques must ~~shall~~ include, but are not ~~be~~ limited to,  
1327 fixtures or construction techniques that ~~which~~ enhance roof  
1328 strength, roof covering performance, roof-to-wall strength,  
1329 wall-to-floor-to-foundation strength, opening protection, and  
1330 window, door, and skylight strength. Credits, discounts, or  
1331 other rate differentials, or appropriate reductions in  
1332 deductibles, for fixtures and construction techniques that ~~which~~  
1333 meet the minimum requirements of the Florida Building Code must  
1334 be included in the rate filing. All insurance companies must

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1335 make a rate filing that ~~which~~ includes the credits, discounts,  
1336 or other rate differentials or reductions in deductibles by  
1337 February 28, 2003. By July 1, 2007, the office shall reevaluate  
1338 the discounts, credits, other rate differentials, and  
1339 appropriate reductions in deductibles for fixtures and  
1340 construction techniques that meet the minimum requirements of  
1341 the Florida Building Code, based upon actual experience or any  
1342 other loss relativity studies available to the office. The  
1343 office shall determine the discounts, credits, other rate  
1344 differentials, and appropriate reductions in deductibles that  
1345 reflect the full actuarial value of such revaluation, which may  
1346 be used by insurers in rate filings.

1347 ~~(b) By February 1, 2011, the Office of Insurance~~  
1348 ~~Regulation, in consultation with the Department of Financial~~  
1349 ~~Services and the Department of Community Affairs, shall develop~~  
1350 ~~and make publicly available a proposed method for insurers to~~  
1351 ~~establish discounts, credits, or other rate differentials for~~  
1352 ~~hurricane mitigation measures which directly correlate to the~~  
1353 ~~numerical rating assigned to a structure pursuant to the uniform~~  
1354 ~~home grading scale adopted by the Financial Services Commission~~  
1355 ~~pursuant to s. 215.55865, including any proposed changes to the~~  
1356 ~~uniform home grading scale. By October 1, 2011, the commission~~  
1357 ~~shall adopt rules requiring insurers to make rate filings for~~  
1358 ~~residential property insurance which revise insurers' discounts,~~  
1359 ~~credits, or other rate differentials for hurricane mitigation~~  
1360 ~~measures so that such rate differentials correlate directly to~~  
1361 ~~the uniform home grading scale. The rules may include such~~  
1362 ~~changes to the uniform home grading scale as the commission~~  
1363 ~~determines are necessary, and may specify the minimum required~~

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1364 ~~discounts, credits, or other rate differentials. Such rate~~  
1365 ~~differentials must be consistent with generally accepted~~  
1366 ~~actuarial principles and wind-loss mitigation studies. The rules~~  
1367 ~~shall allow a period of at least 2 years after the effective~~  
1368 ~~date of the revised mitigation discounts, credits, or other rate~~  
1369 ~~differentials for a property owner to obtain an inspection or~~  
1370 ~~otherwise qualify for the revised credit, during which time the~~  
1371 ~~insurer shall continue to apply the mitigation credit that was~~  
1372 ~~applied immediately prior to the effective date of the revised~~  
1373 ~~credit. Discounts, credits, and other rate differentials~~  
1374 ~~established for rate filings under this paragraph shall~~  
1375 ~~supersede, after adoption, the discounts, credits, and other~~  
1376 ~~rate differentials included in rate filings under paragraph (a).~~

1377 (5) In order to provide an appropriate transition period,  
1378 an insurer may, ~~in its sole discretion,~~ implement an approved  
1379 rate filing for residential property insurance over a period of  
1380 years. Such ~~An~~ insurer electing to phase in its rate filing must  
1381 provide an informational notice to the office setting out its  
1382 schedule for implementation of the phased-in rate filing. The ~~An~~  
1383 insurer may include in its rate the actual cost of private  
1384 market reinsurance that corresponds to available coverage of the  
1385 Temporary Increase in Coverage Limits, TICL, from the Florida  
1386 Hurricane Catastrophe Fund. The insurer may also include the  
1387 cost of reinsurance to replace the TICL reduction implemented  
1388 pursuant to s. 215.555(17)(d)9. However, this cost ~~for~~  
1389 ~~reinsurance~~ may not include any expense or profit load or result  
1390 in a total annual base rate increase in excess of 10 percent.

1391 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL  
1392 SOUNDNESS.—



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1393 (b) To the extent ~~that~~ funds are provided for this purpose  
1394 in the General Appropriations Act, ~~the Legislature hereby~~  
1395 ~~authorizes~~ the establishment of a program to be administered by  
1396 the Citizens Property Insurance Corporation for homeowners  
1397 insured in the coastal ~~high-risk~~ account is authorized.

1398 Section 16. Paragraphs (a), (b), (c), (d), (n), (v), and  
1399 (y) of subsection (6) of section 627.351, Florida Statutes, are  
1400 amended to read:

1401 627.351 Insurance risk apportionment plans.—

1402 (6) TAXPAYER-FUNDED ~~CITIZENS~~ PROPERTY INSURANCE  
1403 CORPORATION.—

1404 (a) ~~It is~~ The public purpose of this subsection is to  
1405 ensure that there is ~~the existence of~~ an orderly market for  
1406 property insurance for residents ~~Floridians~~ and ~~Florida~~  
1407 businesses of this state.

1408 1. The Legislature finds that private insurers are  
1409 unwilling or unable to provide affordable property insurance  
1410 coverage in this state to the extent sought and needed. The  
1411 absence of affordable property insurance threatens the public  
1412 health, safety, and welfare and likewise threatens the economic  
1413 health of the state. The state therefore has a compelling public  
1414 interest and a public purpose to assist in assuring that  
1415 property in the state is insured and that it is insured at  
1416 affordable rates so as to facilitate the remediation,  
1417 reconstruction, and replacement of damaged or destroyed property  
1418 in order to reduce or avoid the negative effects otherwise  
1419 resulting to the public health, safety, and welfare, to the  
1420 economy of the state, and to the revenues of the state and local  
1421 governments which are needed to provide for the public welfare.

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1422 It is necessary, therefore, to provide affordable property  
1423 insurance to applicants who are in good faith entitled to  
1424 procure insurance through the voluntary market but are unable to  
1425 do so. The Legislature intends, therefore, ~~by this subsection~~  
1426 that affordable property insurance be provided and that it  
1427 continue to be provided, as long as necessary, through the  
1428 Taxpayer-Funded Citizens Property Insurance Corporation, a  
1429 government entity that is an integral part of the state, and  
1430 that is not a private insurance company. To that end, the  
1431 ~~Citizens Property Insurance~~ corporation shall strive to increase  
1432 the availability of affordable property insurance in this state,  
1433 while achieving efficiencies and economies, and while providing  
1434 service to policyholders, applicants, and agents which is no  
1435 less than the quality generally provided in the voluntary  
1436 market, for the achievement of the foregoing public purposes.  
1437 Because it is essential for this government entity to have the  
1438 maximum financial resources to pay claims following a  
1439 catastrophic hurricane, it is the intent of the Legislature that  
1440 the ~~Citizens Property Insurance~~ corporation continue to be an  
1441 integral part of the state and that the income of the  
1442 corporation be exempt from federal income taxation and that  
1443 interest on the debt obligations issued by the corporation be  
1444 exempt from federal income taxation.

1445 2. The Residential Property and Casualty Joint Underwriting  
1446 Association originally created by this statute shall be known~~r~~  
1447 ~~as of July 1, 2002,~~ as the Taxpayer-Funded Citizens Property  
1448 Insurance Corporation. The corporation shall provide insurance  
1449 for residential and commercial property, for applicants who are  
1450 ~~in good faith~~ entitled, but, in good faith, are unable~~r~~ to

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1451 procure insurance through the voluntary market. The corporation  
1452 shall operate pursuant to a plan of operation approved by order  
1453 of the Financial Services Commission. The plan is subject to  
1454 continuous review by the commission. The commission may, by  
1455 order, withdraw approval of all or part of a plan if the  
1456 commission determines that conditions have changed since  
1457 approval was granted and that the purposes of the plan require  
1458 changes in the plan. ~~The corporation shall continue to operate~~  
1459 ~~pursuant to the plan of operation approved by the Office of~~  
1460 ~~Insurance Regulation until October 1, 2006.~~ For the purposes of  
1461 this subsection, residential coverage includes both personal  
1462 lines residential coverage, which consists of the type of  
1463 coverage provided by homeowner's, mobile home owner's, dwelling,  
1464 tenant's, condominium unit owner's, and similar policies;7 and  
1465 commercial lines residential coverage, which consists of the  
1466 type of coverage provided by condominium association, apartment  
1467 building, and similar policies.

1468 3. Effective January 1, 2009, a personal lines residential  
1469 structure that has a dwelling replacement cost of \$2 million or  
1470 more, or a single condominium unit that has a combined dwelling  
1471 and contents ~~content~~ replacement cost of \$2 million or more is  
1472 not eligible for coverage by the corporation. Such dwellings  
1473 insured by the corporation on December 31, 2008, may continue to  
1474 be covered by the corporation until the end of the policy term.  
1475 However, such dwellings ~~that are insured by the corporation and~~  
1476 ~~become ineligible for coverage due to the provisions of this~~  
1477 ~~subparagraph~~ may reapply and obtain coverage if the property  
1478 owner provides the corporation with a sworn affidavit from one  
1479 or more insurance agents, on a form provided by the corporation,

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1480 stating that the agents have made their best efforts to obtain  
1481 coverage and that the property has been rejected for coverage by  
1482 at least one authorized insurer and at least three surplus lines  
1483 insurers. If such conditions are met, the dwelling may be  
1484 insured by the corporation for up to 3 years, after which time  
1485 the dwelling is ineligible for coverage. The office shall  
1486 approve the method used by the corporation for valuing the  
1487 dwelling replacement cost for the purposes of this subparagraph.  
1488 If a policyholder is insured by the corporation prior to being  
1489 determined to be ineligible pursuant to this subparagraph and  
1490 such policyholder files a lawsuit challenging the determination,  
1491 the policyholder may remain insured by the corporation until the  
1492 conclusion of the litigation.

1493 4. It is the intent of the Legislature that policyholders,  
1494 applicants, and agents of the corporation receive service and  
1495 treatment of the highest possible level but never less than that  
1496 generally provided in the voluntary market. It is also ~~is~~  
1497 intended that the corporation be held to service standards no  
1498 less than those applied to insurers in the voluntary market by  
1499 the office with respect to responsiveness, timeliness, customer  
1500 courtesy, and overall dealings with policyholders, applicants,  
1501 or agents of the corporation.

1502 5. Effective January 1, 2009, a personal lines residential  
1503 structure that is located in the "wind-borne debris region," as  
1504 defined in s. 1609.2, International Building Code (2006), and  
1505 that has an insured value on the structure of \$750,000 or more  
1506 is not eligible for coverage by the corporation unless the  
1507 structure has opening protections as required under the Florida  
1508 Building Code for a newly constructed residential structure in

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1509 that area. A residential structure shall be deemed to comply  
1510 with ~~the requirements of~~ this subparagraph if it has shutters or  
1511 opening protections on all openings and if such opening  
1512 protections complied with the Florida Building Code at the time  
1513 they were installed.

1514 6. In recognition of the corporation's status as a  
1515 governmental entity, policies issued by the corporation must  
1516 include a provision stating that as a condition of coverage with  
1517 the corporation, policyholders may not engage the services of a  
1518 public adjuster to represent the policyholder with respect to  
1519 any claim filed under a policy issued by the corporation until  
1520 after the corporation has tendered an offer with respect to such  
1521 claim. For any claim filed under any policy of the corporation,  
1522 a public adjuster may not request payment or be paid, on a  
1523 contingency basis or based in any way, directly or indirectly,  
1524 on a percentage of the claim amount, and may be paid only a  
1525 reasonable hourly fee based on the actual hours of work  
1526 performed, subject to a maximum of 5 percent of the additional  
1527 amount actually paid over the amount that was originally offered  
1528 by the corporation for any one claim.

1529 (b)1. All insurers authorized to write one or more subject  
1530 lines of business in this state are subject to assessment by the  
1531 corporation and, for the purposes of this subsection, are  
1532 referred to collectively as "assessable insurers." Insurers  
1533 writing one or more subject lines of business in this state  
1534 pursuant to part VIII of chapter 626 are not assessable  
1535 insurers, but insureds who procure one or more subject lines of  
1536 business in this state pursuant to part VIII of chapter 626 are  
1537 subject to assessment by the corporation and are referred to

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1538 collectively as "assessable insureds." An ~~authorized~~ insurer's  
1539 assessment liability begins ~~shall begin~~ on the first day of the  
1540 calendar year following the year in which the insurer was issued  
1541 a certificate of authority to transact insurance for subject  
1542 lines of business in this state and terminates ~~shall terminate~~ 1  
1543 year after the end of the first calendar year during which the  
1544 insurer no longer holds a certificate of authority to transact  
1545 insurance for subject lines of business in this state.

1546 2.a. All revenues, assets, liabilities, losses, and  
1547 expenses of the corporation shall be divided into three separate  
1548 accounts as follows:

1549 (I) A personal lines account for personal residential  
1550 policies issued by the corporation, or issued by the Residential  
1551 Property and Casualty Joint Underwriting Association and renewed  
1552 by the corporation, which provides ~~that provide~~ comprehensive,  
1553 multiperil coverage on risks that are not located in areas  
1554 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting  
1555 Association as those areas were defined on January 1, 2002, and  
1556 for ~~such~~ policies that do not provide coverage for the peril of  
1557 wind on risks that are located in such areas;

1558 (II) A commercial lines account for commercial residential  
1559 and commercial nonresidential policies issued by the  
1560 corporation, or issued by the Residential Property and Casualty  
1561 Joint Underwriting Association and renewed by the corporation,  
1562 which provides ~~that provide~~ coverage for basic property perils  
1563 on risks that are not located in areas eligible for coverage by  
1564 ~~in~~ the Florida Windstorm Underwriting Association as those areas  
1565 were defined on January 1, 2002, and for ~~such~~ policies that do  
1566 not provide coverage for the peril of wind on risks that are

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1567 located in such areas; and

1568 (III) A coastal ~~high-risk~~ account for personal residential  
1569 policies and commercial residential and commercial  
1570 nonresidential property policies issued by the corporation, or  
1571 transferred to the corporation, which provides ~~that provide~~  
1572 coverage for the peril of wind on risks that are located in  
1573 areas eligible for coverage by ~~in~~ the Florida Windstorm  
1574 Underwriting Association as those areas were defined on January  
1575 1, 2002. The corporation may offer policies that provide  
1576 multiperil coverage and the corporation shall continue to offer  
1577 policies that provide coverage only for the peril of wind for  
1578 risks located in areas eligible for coverage in the coastal  
1579 ~~high-risk~~ account. In issuing multiperil coverage, the  
1580 corporation may use its approved policy forms and rates for the  
1581 personal lines account. An applicant or insured who is eligible  
1582 to purchase a multiperil policy from the corporation may  
1583 purchase a multiperil policy from an authorized insurer without  
1584 prejudice to the applicant's or insured's eligibility to  
1585 prospectively purchase a policy that provides coverage only for  
1586 the peril of wind from the corporation. An applicant or insured  
1587 who is eligible for a corporation policy that provides coverage  
1588 only for the peril of wind may elect to purchase or retain such  
1589 policy and also purchase or retain coverage excluding wind from  
1590 an authorized insurer without prejudice to the applicant's or  
1591 insured's eligibility to prospectively purchase a policy that  
1592 provides multiperil coverage from the corporation. It is the  
1593 goal of the Legislature that there ~~would~~ be an overall average  
1594 savings of 10 percent or more for a policyholder who currently  
1595 has a wind-only policy with the corporation, and an ex-wind

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1596 policy with a voluntary insurer or the corporation, and who ~~then~~  
1597 obtains a multiperil policy from the corporation. It is the  
1598 intent of the Legislature that the offer of multiperil coverage  
1599 in the coastal ~~high-risk~~ account be made and implemented in a  
1600 manner that does not adversely affect the tax-exempt status of  
1601 the corporation or creditworthiness of or security for currently  
1602 outstanding financing obligations or credit facilities of the  
1603 coastal ~~high-risk~~ account, the personal lines account, or the  
1604 commercial lines account. The coastal ~~high-risk~~ account must  
1605 also include quota share primary insurance under subparagraph  
1606 (c)2. The area eligible for coverage under the coastal ~~high-risk~~  
1607 account also includes the area within Port Canaveral, which is  
1608 bordered on the south by the City of Cape Canaveral, bordered on  
1609 the west by the Banana River, and bordered on the north by  
1610 Federal Government property.

1611       b. The three separate accounts must be maintained as long  
1612 as financing obligations entered into by the Florida Windstorm  
1613 Underwriting Association or Residential Property and Casualty  
1614 Joint Underwriting Association are outstanding, in accordance  
1615 with the terms of the corresponding financing documents. If ~~When~~  
1616 the financing obligations are no longer outstanding, ~~in~~  
1617 ~~accordance with the terms of the corresponding financing~~  
1618 ~~documents,~~ the corporation may use a single account for all  
1619 revenues, assets, liabilities, losses, and expenses of the  
1620 corporation. Consistent with ~~the requirement of~~ this  
1621 subparagraph and prudent investment policies that minimize the  
1622 cost of carrying debt, the board shall exercise its best efforts  
1623 to retire existing debt or ~~to~~ obtain the approval of necessary  
1624 parties to amend the terms of existing debt, so as to structure



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1625 the most efficient plan to consolidate the three separate  
1626 accounts into a single account.

1627 c. Creditors of the Residential Property and Casualty Joint  
1628 Underwriting Association and ~~of~~ the accounts specified in sub-  
1629 sub-subparagraphs a.(I) and (II) may have a claim against, and  
1630 recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~  
1631 ~~subparagraphs a.(I) and (II)~~ and shall have no claim against, or  
1632 recourse to, the account referred to in sub-sub-subparagraph  
1633 a.(III). Creditors of the Florida Windstorm Underwriting  
1634 Association ~~shall~~ have a claim against, and recourse to, the  
1635 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~  
1636 ~~have~~ no claim against, or recourse to, the accounts referred to  
1637 in sub-sub-subparagraphs a.(I) and (II).

1638 d. Revenues, assets, liabilities, losses, and expenses not  
1639 attributable to particular accounts shall be prorated among the  
1640 accounts.

1641 e. The Legislature finds that the revenues of the  
1642 corporation are revenues that are necessary to meet the  
1643 requirements set forth in documents authorizing the issuance of  
1644 bonds under this subsection.

1645 f. No part of the income of the corporation may inure to  
1646 the benefit of any private person.

1647 3. With respect to a deficit in an account:

1648 a. After accounting for the ~~Citizens~~ policyholder surcharge  
1649 imposed under sub-subparagraph h. i., ~~if when~~ the remaining  
1650 projected deficit incurred in a particular calendar year:

1651 (I) Is not greater than 6 percent of the aggregate  
1652 statewide direct written premium for the subject lines of  
1653 business for the prior calendar year, the entire deficit shall

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1654 be recovered through regular assessments of assessable insurers  
1655 under paragraph (q) and assessable insureds.

1656 (II)~~b.~~ ~~After accounting for the Citizens policyholder~~  
1657 ~~surcharge imposed under sub-subparagraph i., when the remaining~~  
1658 ~~projected deficit incurred in a particular calendar year Exceeds~~  
1659 6 percent of the aggregate statewide direct written premium for  
1660 the subject lines of business for the prior calendar year, the  
1661 corporation shall levy regular assessments on assessable  
1662 insurers under paragraph (q) and on assessable insureds in an  
1663 amount equal to the greater of 6 percent of the deficit or 6  
1664 percent of the aggregate statewide direct written premium for  
1665 the subject lines of business for the prior calendar year. Any  
1666 remaining deficit shall be recovered through emergency  
1667 assessments under sub-subparagraph c. ~~d.~~

1668 ~~b.e.~~ Each assessable insurer's share of the amount being  
1669 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~  
1670 ~~shall~~ be in the proportion that the assessable insurer's direct  
1671 written premium for the subject lines of business for the year  
1672 preceding the assessment bears to the aggregate statewide direct  
1673 written premium for the subject lines of business for that year.  
1674 The applicable assessment percentage ~~applicable to each~~  
1675 ~~assessable insured~~ is the ratio of the amount being assessed  
1676 under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the  
1677 aggregate statewide direct written premium for the subject lines  
1678 of business for the prior year. Assessments levied by the  
1679 corporation on assessable insurers under sub-subparagraph a.  
1680 must ~~sub-subparagraphs a. and b. shall~~ be paid as required by  
1681 the corporation's plan of operation and paragraph (q).  
1682 Assessments levied by the corporation on assessable insureds

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1683 under sub-subparagraph a. ~~sub-subparagraphs a. and b.~~ shall be  
1684 collected by the surplus lines agent at the time the surplus  
1685 lines agent collects the surplus lines tax required by s.  
1686 626.932, and ~~shall be~~ paid to the Florida Surplus Lines Service  
1687 Office at the time the surplus lines agent pays the surplus  
1688 lines tax to that ~~the Florida Surplus Lines Service~~ office. Upon  
1689 receipt of regular assessments from surplus lines agents, the  
1690 Florida Surplus Lines Service Office shall transfer the  
1691 assessments directly to the corporation as determined by the  
1692 corporation.

1693 ~~c.d.~~ Upon a determination by the board of governors that a  
1694 deficit in an account exceeds the amount that will be recovered  
1695 through regular assessments under sub-subparagraph a. ~~or sub-~~  
1696 ~~subparagraph b.~~, plus the amount that is expected to be  
1697 recovered through surcharges under sub-subparagraph h. i., ~~as to~~  
1698 ~~the remaining projected deficit~~ the board ~~shall levy~~, after  
1699 verification by the office, shall levy emergency assessments,  
1700 for as many years as necessary to cover the deficits, to be  
1701 collected by assessable insurers and the corporation and  
1702 collected from assessable insureds upon issuance or renewal of  
1703 policies for subject lines of business, excluding National Flood  
1704 Insurance policies. The amount ~~of the emergency assessment~~  
1705 collected in a particular year must ~~shall~~ be a uniform  
1706 percentage of that year's direct written premium for subject  
1707 lines of business and all accounts of the corporation, excluding  
1708 National Flood Insurance Program policy premiums, as annually  
1709 determined by the board and verified by the office. The office  
1710 shall verify the arithmetic calculations involved in the board's  
1711 determination within 30 days after receipt of the information on

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1712 which the determination was based. Notwithstanding any other  
1713 provision of law, the corporation and each assessable insurer  
1714 that writes subject lines of business shall collect emergency  
1715 assessments from its policyholders without such obligation being  
1716 affected by any credit, limitation, exemption, or deferment.  
1717 Emergency assessments levied by the corporation on assessable  
1718 insureds shall be collected by the surplus lines agent at the  
1719 time the surplus lines agent collects the surplus lines tax  
1720 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus  
1721 Lines Service Office at the time the surplus lines agent pays  
1722 the surplus lines tax to that ~~the Florida Surplus Lines Service~~  
1723 office. The emergency assessments ~~so~~ collected shall be  
1724 transferred directly to the corporation on a periodic basis as  
1725 determined by the corporation and ~~shall be~~ held by the  
1726 corporation solely in the applicable account. The aggregate  
1727 amount of emergency assessments levied for an account under this  
1728 sub-subparagraph in any calendar year may, ~~at the discretion of~~  
1729 ~~the board of governors,~~ be less than but may not exceed the  
1730 greater of 10 percent of the amount needed to cover the deficit,  
1731 plus interest, fees, commissions, required reserves, and other  
1732 costs associated with financing ~~of~~ the original deficit, or 10  
1733 percent of the aggregate statewide direct written premium for  
1734 subject lines of business and ~~for~~ all accounts of the  
1735 corporation for the prior year, plus interest, fees,  
1736 commissions, required reserves, and other costs associated with  
1737 financing the deficit.

1738 d.e. The corporation may pledge the proceeds of  
1739 assessments, projected recoveries from the Florida Hurricane  
1740 Catastrophe Fund, other insurance and reinsurance recoverables,

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1741 policyholder surcharges and other surcharges, and other funds  
1742 available to the corporation as the source of revenue for and to  
1743 secure bonds issued under paragraph (q), bonds or other  
1744 indebtedness issued under subparagraph (c)3., or lines of credit  
1745 or other financing mechanisms issued or created under this  
1746 subsection, or to retire any other debt incurred as a result of  
1747 deficits or events giving rise to deficits, or in any other way  
1748 that the board determines will efficiently recover such  
1749 deficits. The purpose of the lines of credit or other financing  
1750 mechanisms is to provide additional resources to assist the  
1751 corporation in covering claims and expenses attributable to a  
1752 catastrophe. As used in this subsection, the term "assessments"  
1753 includes regular assessments under sub-subparagraph a., ~~sub-~~  
1754 ~~subparagraph b.~~, or subparagraph (q)1. and emergency assessments  
1755 under sub-subparagraph d. Emergency assessments collected under  
1756 sub-subparagraph d. are not part of an insurer's rates, are not  
1757 premium, and are not subject to premium tax, fees, or  
1758 commissions; however, failure to pay the emergency assessment  
1759 shall be treated as failure to pay premium. The emergency  
1760 assessments under sub-subparagraph c. ~~d.~~ shall continue as long  
1761 as any bonds issued or other indebtedness incurred with respect  
1762 to a deficit for which the assessment was imposed remain  
1763 outstanding, unless adequate provision has been made for the  
1764 payment of such bonds or other indebtedness pursuant to the  
1765 documents governing such bonds or ~~other~~ indebtedness.

1766 e.f. As used in this subsection for purposes of any deficit  
1767 incurred on or after January 25, 2007, the term "subject lines  
1768 of business" means insurance written by assessable insurers or  
1769 procured by assessable insureds for all property and casualty

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1770 lines of business in this state, but not including workers'  
1771 compensation or medical malpractice. As used in this ~~the~~ sub-  
1772 subparagraph, the term "property and casualty lines of business"  
1773 includes all lines of business identified on Form 2, Exhibit of  
1774 Premiums and Losses, in the annual statement required of  
1775 authorized insurers under ~~by~~ s. 624.424 and any rule adopted  
1776 under this section, except for those lines identified as  
1777 accident and health insurance and except for policies written  
1778 under the National Flood Insurance Program or the Federal Crop  
1779 Insurance Program. For purposes of this sub-subparagraph, the  
1780 term "workers' compensation" includes both workers' compensation  
1781 insurance and excess workers' compensation insurance.

1782 ~~f.g.~~ The Florida Surplus Lines Service Office shall  
1783 determine annually the aggregate statewide written premium in  
1784 subject lines of business procured by assessable insureds and  
1785 ~~shall~~ report that information to the corporation in a form and  
1786 at a time the corporation specifies to ensure that the  
1787 corporation can meet the requirements of this subsection and the  
1788 corporation's financing obligations.

1789 ~~g.h.~~ The Florida Surplus Lines Service Office shall verify  
1790 the proper application by surplus lines agents of assessment  
1791 percentages for regular assessments and emergency assessments  
1792 levied under this subparagraph on assessable insureds and ~~shall~~  
1793 assist the corporation in ensuring the accurate, timely  
1794 collection and payment of assessments by surplus lines agents as  
1795 required by the corporation.

1796 ~~h.i.~~ If a deficit is incurred in any account in 2008 or  
1797 thereafter, the board of governors shall levy a ~~Citizens~~  
1798 policyholder surcharge against all policyholders of the

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1799 corporation. ~~for a 12-month period, which~~

1800 (I) The surcharge shall be levied ~~collected at the time of~~  
1801 ~~issuance or renewal of a policy,~~ as a uniform percentage of the  
1802 premium for the policy of up to 15 percent of such premium,  
1803 which funds shall be used to offset the deficit.

1804 (II) The surcharge is payable upon cancellation or  
1805 termination of the policy, upon renewal of the policy, or upon  
1806 issuance of a new policy by the corporation within the first 12  
1807 months after the date of the levy or the period of time  
1808 necessary to fully collect the surcharge amount.

1809 (III) The corporation may not levy any regular assessments  
1810 under paragraph (q) pursuant to sub-subparagraph a. or sub-  
1811 subparagraph b. with respect to a particular year's deficit  
1812 until the corporation has first levied the full amount of the  
1813 surcharge authorized by this sub-subparagraph.

1814 (IV) The surcharge is ~~Citizens policyholder surcharges~~  
1815 ~~under this sub-subparagraph are not considered premium and is~~  
1816 ~~are not subject to commissions, fees, or premium taxes. However,~~  
1817 ~~failure to pay the surcharge such surcharges shall be treated as~~  
1818 ~~failure to pay premium.~~

1819 ~~i.j.~~ If the amount of any assessments or surcharges  
1820 collected from corporation policyholders, assessable insurers or  
1821 their policyholders, or assessable insureds exceeds the amount  
1822 of the deficits, such excess amounts shall be remitted to and  
1823 retained by the corporation in a reserve to be used by the  
1824 corporation, as determined by the board of governors and  
1825 approved by the office, to pay claims or reduce any past,  
1826 present, or future plan-year deficits or to reduce outstanding  
1827 debt.

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1828 (c) The corporation's plan of operation ~~of the corporation~~:

1829 1. Must provide for adoption of residential property and  
1830 casualty insurance policy forms and commercial residential and  
1831 nonresidential property insurance forms, which ~~forms~~ must be  
1832 approved by the office before ~~prior to~~ use. The corporation  
1833 shall adopt the following policy forms:

1834 a. Standard personal lines policy forms that are  
1835 comprehensive multiperil policies providing full coverage of a  
1836 residential property equivalent to the coverage provided in the  
1837 private insurance market under an HO-3, HO-4, or HO-6 policy.

1838 b. Basic personal lines policy forms that are policies  
1839 similar to an HO-8 policy or a dwelling fire policy that provide  
1840 coverage meeting the requirements of the secondary mortgage  
1841 market, but which ~~coverage~~ is more limited than the coverage  
1842 under a standard policy.

1843 c. Commercial lines residential and nonresidential policy  
1844 forms that are generally similar to the basic perils of full  
1845 coverage obtainable for commercial residential structures and  
1846 commercial nonresidential structures in the admitted voluntary  
1847 market.

1848 d. Personal lines and commercial lines residential property  
1849 insurance forms that cover the peril of wind only. The forms are  
1850 applicable only to residential properties located in areas  
1851 eligible for coverage under the coastal ~~high-risk~~ account  
1852 referred to in sub-subparagraph (b)2.a.

1853 e. Commercial lines nonresidential property insurance forms  
1854 that cover the peril of wind only. The forms are applicable only  
1855 to nonresidential properties located in areas eligible for  
1856 coverage under the coastal ~~high-risk~~ account referred to in sub-



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1857 subparagraph (b)2.a.

1858 f. The corporation may adopt variations of the policy forms  
1859 listed in sub-subparagraphs a.-e. which ~~that~~ contain more  
1860 restrictive coverage.

1861 ~~2.a.~~ Must provide that the corporation adopt a program in  
1862 which the corporation and authorized insurers enter into quota  
1863 share primary insurance agreements for hurricane coverage, as  
1864 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
1865 property insurance forms for eligible risks which cover the  
1866 peril of wind only.

1867 a. As used in this subsection, the term:

1868 (I) "Quota share primary insurance" means an arrangement in  
1869 which the primary hurricane coverage of an eligible risk is  
1870 provided in specified percentages by the corporation and an  
1871 authorized insurer. The corporation and authorized insurer are  
1872 each solely responsible for a specified percentage of hurricane  
1873 coverage of an eligible risk as set forth in a quota share  
1874 primary insurance agreement between the corporation and an  
1875 authorized insurer and the insurance contract. The  
1876 responsibility of the corporation or authorized insurer to pay  
1877 its specified percentage of hurricane losses of an eligible  
1878 risk, as set forth in the ~~quota share primary insurance~~  
1879 agreement, may not be altered by the inability of the other  
1880 party ~~to the agreement~~ to pay its specified percentage of  
1881 ~~hurricane~~ losses. Eligible risks that are provided hurricane  
1882 coverage through a quota share primary insurance arrangement  
1883 must be provided policy forms that set forth the obligations of  
1884 the corporation and authorized insurer under the arrangement,  
1885 clearly specify the percentages of quota share primary insurance

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1886 provided by the corporation and authorized insurer, and  
1887 conspicuously and clearly state that ~~neither~~ the authorized  
1888 insurer and ~~nor~~ the corporation may not be held responsible  
1889 beyond their ~~its~~ specified percentage of coverage of hurricane  
1890 losses.

1891 (II) "Eligible risks" means personal lines residential and  
1892 commercial lines residential risks that meet the underwriting  
1893 criteria of the corporation and are located in areas that were  
1894 eligible for coverage by the Florida Windstorm Underwriting  
1895 Association on January 1, 2002.

1896 b. The corporation may enter into quota share primary  
1897 insurance agreements with authorized insurers at corporation  
1898 coverage levels of 90 percent and 50 percent.

1899 c. If the corporation determines that additional coverage  
1900 levels are necessary to maximize participation in quota share  
1901 primary insurance agreements by authorized insurers, the  
1902 corporation may establish additional coverage levels. However,  
1903 the corporation's quota share primary insurance coverage level  
1904 may not exceed 90 percent.

1905 d. Any quota share primary insurance agreement entered into  
1906 between an authorized insurer and the corporation must provide  
1907 for a uniform specified percentage of coverage of hurricane  
1908 losses, by county or territory as set forth by the corporation  
1909 board, for all eligible risks of the authorized insurer covered  
1910 under the ~~quota share primary insurance~~ agreement.

1911 e. Any quota share primary insurance agreement entered into  
1912 between an authorized insurer and the corporation is subject to  
1913 review and approval by the office. However, such agreement shall  
1914 be authorized only as to insurance contracts entered into

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1915 between an authorized insurer and an insured who is already  
1916 insured by the corporation for wind coverage.

1917 f. For all eligible risks covered under quota share primary  
1918 insurance agreements, the exposure and coverage levels for both  
1919 the corporation and authorized insurers shall be reported by the  
1920 corporation to the Florida Hurricane Catastrophe Fund. For all  
1921 policies of eligible risks covered under such ~~quota share~~  
1922 ~~primary insurance~~ agreements, the corporation and the authorized  
1923 insurer must ~~shall~~ maintain complete and accurate records for  
1924 the purpose of exposure and loss reimbursement audits as  
1925 required by ~~Florida Hurricane Catastrophe~~ fund rules. The  
1926 corporation and the authorized insurer shall each maintain  
1927 duplicate copies of policy declaration pages and supporting  
1928 claims documents.

1929 g. The corporation board shall establish in its plan of  
1930 operation standards for quota share agreements which ensure that  
1931 there is no discriminatory application among insurers as to the  
1932 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~  
1933 agreements, incentive provisions if any, and consideration paid  
1934 for servicing policies or adjusting claims.

1935 h. The quota share primary insurance agreement between the  
1936 corporation and an authorized insurer must set forth the  
1937 specific terms under which coverage is provided, including, but  
1938 not limited to, the sale and servicing of policies issued under  
1939 the agreement by the insurance agent of the authorized insurer  
1940 producing the business, the reporting of information concerning  
1941 eligible risks, the payment of premium to the corporation, and  
1942 arrangements for the adjustment and payment of hurricane claims  
1943 incurred on eligible risks by the claims adjuster and personnel

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1944 of the authorized insurer. Entering into a quota sharing  
1945 insurance agreement between the corporation and an authorized  
1946 insurer is ~~shall be~~ voluntary and at the discretion of the  
1947 authorized insurer.

1948 3. May provide that the corporation may employ or otherwise  
1949 contract with individuals or other entities to provide  
1950 administrative or professional services that may be appropriate  
1951 to effectuate the plan. The corporation may ~~shall have the power~~  
1952 ~~to~~ borrow funds, by issuing bonds or by incurring other  
1953 indebtedness, and shall have other powers reasonably necessary  
1954 to effectuate the requirements of this subsection, including,  
1955 without limitation, the power to issue bonds and incur other  
1956 indebtedness in order to refinance outstanding bonds or other  
1957 indebtedness. The corporation ~~may, but is not required to,~~ seek  
1958 judicial validation of its bonds or other indebtedness under  
1959 chapter 75. The corporation may issue bonds or incur other  
1960 indebtedness, or have bonds issued on its behalf by a unit of  
1961 local government pursuant to subparagraph (q)2.7 in the absence  
1962 of a hurricane or other weather-related event, upon a  
1963 determination by the corporation, subject to approval by the  
1964 office, that such action would enable it to efficiently meet the  
1965 financial obligations of the corporation and that such  
1966 financings are reasonably necessary to effectuate the  
1967 requirements of this subsection. The corporation may ~~is~~  
1968 ~~authorized to~~ take all actions needed to facilitate tax-free  
1969 status for ~~any~~ such bonds or indebtedness, including formation  
1970 of trusts or other affiliated entities. The corporation may  
1971 ~~shall have the authority to~~ pledge assessments, projected  
1972 recoveries from the Florida Hurricane Catastrophe Fund, other

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1973 reinsurance recoverables, market equalization and other  
1974 surcharges, and other funds available to the corporation as  
1975 security for bonds or other indebtedness. In recognition of s.  
1976 10, Art. I of the State Constitution, prohibiting the impairment  
1977 of obligations of contracts, it is the intent of the Legislature  
1978 that no action be taken whose purpose is to impair any bond  
1979 indenture or financing agreement or any revenue source committed  
1980 by contract to such bond or other indebtedness.

1981 4.~~a~~. Must require that the corporation operate subject to  
1982 the supervision and approval of a board of governors consisting  
1983 of eight individuals who are residents of this state, from  
1984 different geographical areas of this state.

1985 a. The Governor, the Chief Financial Officer, the President  
1986 of the Senate, and the Speaker of the House of Representatives  
1987 shall each appoint two members of the board. At least one of the  
1988 two members appointed by each appointing officer must have  
1989 demonstrated expertise in insurance, and is deemed to be within  
1990 the scope of the exemption provided in s. 112.313(7)(b). The  
1991 Chief Financial Officer shall designate one of the appointees as  
1992 chair. All board members serve at the pleasure of the appointing  
1993 officer. All members of the board ~~of governors~~ are subject to  
1994 removal at will by the officers who appointed them. All board  
1995 members, including the chair, must be appointed to serve for 3-  
1996 year terms beginning annually on a date designated by the plan.  
1997 However, for the first term beginning on or after July 1, 2009,  
1998 each appointing officer shall appoint one member of the board  
1999 for a 2-year term and one member for a 3-year term. A ~~Any~~ board  
2000 vacancy shall be filled for the unexpired term by the appointing  
2001 officer. The Chief Financial Officer shall appoint a technical

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2002 advisory group to provide information and advice to the board ~~of~~  
2003 ~~governors~~ in connection with the board's duties under this  
2004 subsection. The executive director and senior managers of the  
2005 corporation shall be engaged by the board and serve at the  
2006 pleasure of the board. Any executive director appointed on or  
2007 after July 1, 2006, is subject to confirmation by the Senate.  
2008 The executive director is responsible for employing other staff  
2009 as the corporation may require, subject to review and  
2010 concurrence by the board.

2011 b. The board shall create a Market Accountability Advisory  
2012 Committee to assist the corporation in developing awareness of  
2013 its rates and its customer and agent service levels in  
2014 relationship to the voluntary market insurers writing similar  
2015 coverage.

2016 (I) The members of the advisory committee ~~shall~~ consist of  
2017 the following 11 persons, one of whom must be elected chair by  
2018 the members of the committee: four representatives, one  
2019 appointed by the Florida Association of Insurance Agents, one by  
2020 the Florida Association of Insurance and Financial Advisors, one  
2021 by the Professional Insurance Agents of Florida, and one by the  
2022 Latin American Association of Insurance Agencies; three  
2023 representatives appointed by the insurers with the three highest  
2024 voluntary market share of residential property insurance  
2025 business in the state; one representative from the Office of  
2026 Insurance Regulation; one consumer appointed by the board who is  
2027 insured by the corporation at the time of appointment to the  
2028 committee; one representative appointed by the Florida  
2029 Association of Realtors; and one representative appointed by the  
2030 Florida Bankers Association. All members shall be appointed to

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2031 ~~must serve for~~ 3-year terms and may serve for consecutive terms.

2032       (II) The committee shall report to the corporation at each  
2033 board meeting on insurance market issues which may include rates  
2034 and rate competition with the voluntary market; service,  
2035 including policy issuance, claims processing, and general  
2036 responsiveness to policyholders, applicants, and agents; and  
2037 matters relating to depopulation.

2038       5. Must provide a procedure for determining the eligibility  
2039 of a risk for coverage, as follows:

2040       a. Subject to ~~the provisions of~~ s. 627.3517, with respect  
2041 to personal lines residential risks, if the risk is offered  
2042 coverage from an authorized insurer at the insurer's approved  
2043 rate under ~~either~~ a standard policy including wind coverage or,  
2044 if consistent with the insurer's underwriting rules as filed  
2045 with the office, a basic policy including wind coverage, for a  
2046 new application to the corporation for coverage, the risk is not  
2047 eligible for any policy issued by the corporation unless the  
2048 premium for coverage from the authorized insurer is more than 15  
2049 percent greater than the premium for comparable coverage from  
2050 the corporation. If the risk is not able to obtain ~~any~~ such  
2051 offer, the risk is eligible for ~~either~~ a standard policy  
2052 including wind coverage or a basic policy including wind  
2053 coverage issued by the corporation; however, if the risk could  
2054 not be insured under a standard policy including wind coverage  
2055 regardless of market conditions, the risk is ~~shall be~~ eligible  
2056 for a basic policy including wind coverage unless rejected under  
2057 subparagraph 8. However, ~~with regard to~~ a policyholder of the  
2058 corporation or a policyholder removed from the corporation  
2059 through an assumption agreement until the end of the assumption

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2060 period, ~~the policyholder~~ remains eligible for coverage from the  
2061 corporation regardless of any offer of coverage from an  
2062 authorized insurer or surplus lines insurer. The corporation  
2063 shall determine the type of policy to be provided on the basis  
2064 of objective standards specified in the underwriting manual and  
2065 based on generally accepted underwriting practices.

2066 (I) If the risk accepts an offer of coverage through the  
2067 market assistance plan or ~~an offer of coverage~~ through a  
2068 mechanism established by the corporation before a policy is  
2069 issued to the risk by the corporation or during the first 30  
2070 days of coverage by the corporation, and the producing agent who  
2071 submitted the application to the plan or to the corporation is  
2072 not currently appointed by the insurer, the insurer shall:

2073 (A) Pay to the producing agent of record of the policy<sup>7</sup> for  
2074 the first year, an amount that is the greater of the insurer's  
2075 usual and customary commission for the type of policy written or  
2076 a fee equal to the usual and customary commission of the  
2077 corporation; or

2078 (B) Offer to allow the producing agent of record of the  
2079 policy to continue servicing the policy for at least a period of  
2080 ~~not less than~~ 1 year and offer to pay the agent the greater of  
2081 the insurer's or the corporation's usual and customary  
2082 commission for the type of policy written.

2083  
2084 If the producing agent is unwilling or unable to accept  
2085 appointment, the new insurer shall pay the agent in accordance  
2086 with sub-sub-sub-subparagraph (A).

2087 (II) If ~~When~~ the corporation enters into a contractual  
2088 agreement for a take-out plan, the producing agent of record of



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2089 the corporation policy is entitled to retain any unearned  
2090 commission on the policy, and the insurer shall:

2091 (A) Pay to the producing agent of record ~~of the corporation~~  
2092 ~~policy~~, for the first year, an amount that is the greater of the  
2093 insurer's usual and customary commission for the type of policy  
2094 written or a fee equal to the usual and customary commission of  
2095 the corporation; or

2096 (B) Offer to allow the producing agent of record ~~of the~~  
2097 ~~corporation policy~~ to continue servicing the policy for at least  
2098 ~~a period of not less than~~ 1 year and offer to pay the agent the  
2099 greater of the insurer's or the corporation's usual and  
2100 customary commission for the type of policy written.

2101  
2102 If the producing agent is unwilling or unable to accept  
2103 appointment, the new insurer shall pay the agent in accordance  
2104 with sub-sub-sub-subparagraph (A).

2105 b. With respect to commercial lines residential risks, for  
2106 a new application to the corporation for coverage, if the risk  
2107 is offered coverage under a policy including wind coverage from  
2108 an authorized insurer at its approved rate, the risk is not  
2109 eligible for a ~~any~~ policy issued by the corporation unless the  
2110 premium for coverage from the authorized insurer is more than 15  
2111 percent greater than the premium for comparable coverage from  
2112 the corporation. If the risk is not able to obtain any such  
2113 offer, the risk is eligible for a policy including wind coverage  
2114 issued by the corporation. However, ~~with regard to~~ a  
2115 policyholder of the corporation or a policyholder removed from  
2116 the corporation through an assumption agreement until the end of  
2117 the assumption period, ~~the policyholder~~ remains eligible for

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2118 coverage from the corporation regardless of an ~~any~~ offer of  
2119 coverage from an authorized insurer or surplus lines insurer.

2120 (I) If the risk accepts an offer of coverage through the  
2121 market assistance plan or ~~an offer of coverage~~ through a  
2122 mechanism established by the corporation before a policy is  
2123 issued to the risk by the corporation or during the first 30  
2124 days of coverage by the corporation, and the producing agent who  
2125 submitted the application to the plan or the corporation is not  
2126 currently appointed by the insurer, the insurer shall:

2127 (A) Pay to the producing agent of record of the policy, for  
2128 the first year, an amount that is the greater of the insurer's  
2129 usual and customary commission for the type of policy written or  
2130 a fee equal to the usual and customary commission of the  
2131 corporation; or

2132 (B) Offer to allow the producing agent of record of the  
2133 policy to continue servicing the policy for at least ~~a period of~~  
2134 ~~not less than~~ 1 year and offer to pay the agent the greater of  
2135 the insurer's or the corporation's usual and customary  
2136 commission for the type of policy written.

2137  
2138 If the producing agent is unwilling or unable to accept  
2139 appointment, the new insurer shall pay the agent in accordance  
2140 with sub-sub-sub-subparagraph (A).

2141 (II) If ~~When~~ the corporation enters into a contractual  
2142 agreement for a take-out plan, the producing agent of record of  
2143 the corporation policy is entitled to retain any unearned  
2144 commission on the policy, and the insurer shall:

2145 (A) Pay to the producing agent of record ~~of the corporation~~  
2146 policy, for the first year, an amount that is the greater of the

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2147 insurer's usual and customary commission for the type of policy  
2148 written or a fee equal to the usual and customary commission of  
2149 the corporation; or

2150 (B) Offer to allow the producing agent of record ~~of the~~  
2151 ~~corporation policy~~ to continue servicing the policy for at least  
2152 ~~a period of not less than~~ 1 year and offer to pay the agent the  
2153 greater of the insurer's or the corporation's usual and  
2154 customary commission for the type of policy written.

2155

2156 If the producing agent is unwilling or unable to accept  
2157 appointment, the new insurer shall pay the agent in accordance  
2158 with sub-sub-sub-subparagraph (A).

2159 c. For purposes of determining comparable coverage under  
2160 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based  
2161 on those forms and coverages that are reasonably comparable. The  
2162 corporation may rely on a determination of comparable coverage  
2163 and premium made by the producing agent who submits the  
2164 application to the corporation, made in the agent's capacity as  
2165 the corporation's agent. A comparison may be made solely of the  
2166 premium with respect to the main building or structure only on  
2167 the following basis: the same coverage A or other building  
2168 limits; the same percentage hurricane deductible that applies on  
2169 an annual basis or that applies to each hurricane for commercial  
2170 residential property; the same percentage of ordinance and law  
2171 coverage, if the same limit is offered by both the corporation  
2172 and the authorized insurer; the same mitigation credits, to the  
2173 extent the same types of credits are offered both by the  
2174 corporation and the authorized insurer; the same method for loss  
2175 payment, such as replacement cost or actual cash value, if the

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2176 same method is offered both by the corporation and the  
2177 authorized insurer in accordance with underwriting rules; and  
2178 any other form or coverage that is reasonably comparable as  
2179 determined by the board. If an application is submitted to the  
2180 corporation for wind-only coverage in the coastal ~~high-risk~~  
2181 account, the premium for the corporation's wind-only policy plus  
2182 the premium for the ex-wind policy that is offered by an  
2183 authorized insurer to the applicant must ~~shall~~ be compared to  
2184 the premium for multiperil coverage offered by an authorized  
2185 insurer, subject to the standards for comparison specified in  
2186 this subparagraph. If the corporation or the applicant requests  
2187 from the authorized insurer a breakdown of the premium of the  
2188 offer by types of coverage so that a comparison may be made by  
2189 the corporation or its agent and the authorized insurer refuses  
2190 or is unable to provide such information, the corporation may  
2191 treat the offer as not being an offer of coverage from an  
2192 authorized insurer at the insurer's approved rate.

2193 6. Must include rules for classifications of risks and  
2194 rates ~~therefor~~.

2195 7. Must provide that if premium and investment income for  
2196 an account attributable to a particular calendar year are in  
2197 excess of projected losses and expenses for the account  
2198 attributable to that year, such excess shall be held in surplus  
2199 in the account. Such surplus must ~~shall~~ be available to defray  
2200 deficits in that account as to future years and ~~shall be~~ used  
2201 for that purpose before ~~prior to~~ assessing assessable insurers  
2202 and assessable insureds as to any calendar year.

2203 8. Must provide objective criteria and procedures to be  
2204 uniformly applied to ~~for~~ all applicants in determining whether

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2205 an individual risk is so hazardous as to be uninsurable. In  
2206 making this determination and in establishing the criteria and  
2207 procedures, the following must ~~shall~~ be considered:

2208 a. Whether the likelihood of a loss for the individual risk  
2209 is substantially higher than for other risks of the same class;  
2210 and

2211 b. Whether the uncertainty associated with the individual  
2212 risk is such that an appropriate premium cannot be determined.

2213  
2214 The acceptance or rejection of a risk by the corporation shall  
2215 be construed as the private placement of insurance, and the  
2216 provisions of chapter 120 do ~~shall~~ not apply.

2217 9. Must provide that the corporation ~~shall~~ make its best  
2218 efforts to procure catastrophe reinsurance at reasonable rates,  
2219 to cover its projected 100-year probable maximum loss as  
2220 determined by the board of governors.

2221 10. The policies issued by the corporation must provide  
2222 that, if the corporation or the market assistance plan obtains  
2223 an offer from an authorized insurer to cover the risk at its  
2224 approved rates, the risk is no longer eligible for renewal  
2225 through the corporation, except as otherwise provided in this  
2226 subsection.

2227 11. Corporation policies and applications must include a  
2228 notice that the corporation policy could, under this section, be  
2229 replaced with a policy issued by an authorized insurer which  
2230 ~~that~~ does not provide coverage identical to the coverage  
2231 provided by the corporation. The notice must ~~shall~~ also specify  
2232 that acceptance of corporation coverage creates a conclusive  
2233 presumption that the applicant or policyholder is aware of this

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2234 potential.

2235 12. May establish, subject to approval by the office,  
2236 different eligibility requirements and operational procedures  
2237 for any line or type of coverage for any specified county or  
2238 area if the board determines that such changes ~~to the~~  
2239 ~~eligibility requirements and operational procedures~~ are  
2240 justified due to the voluntary market being sufficiently stable  
2241 and competitive in such area or for such line or type of  
2242 coverage and that consumers who, in good faith, are unable to  
2243 obtain insurance through the voluntary market through ordinary  
2244 methods ~~would~~ continue to have access to coverage from the  
2245 corporation. If ~~When~~ coverage is sought in connection with a  
2246 real property transfer, the ~~such~~ requirements and procedures may  
2247 ~~shall~~ not provide ~~for~~ an effective date of coverage later than  
2248 the date of the closing of the transfer as established by the  
2249 transferor, the transferee, and, if applicable, the lender.

2250 13. Must provide that, with respect to the coastal high-  
2251 ~~risk~~ account, any assessable insurer with a surplus as to  
2252 policyholders of \$25 million or less writing 25 percent or more  
2253 of its total countrywide property insurance premiums in this  
2254 state may petition the office, within the first 90 days of each  
2255 calendar year, to qualify as a limited apportionment company. A  
2256 regular assessment levied by the corporation on a limited  
2257 apportionment company for a deficit incurred by the corporation  
2258 for the coastal high-risk account ~~in 2006 or thereafter~~ may be  
2259 paid to the corporation on a monthly basis as the assessments  
2260 are collected by the limited apportionment company from its  
2261 insureds pursuant to s. 627.3512, but the regular assessment  
2262 must be paid in full within 12 months after being levied by the

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2263 corporation. A limited apportionment company shall collect from  
2264 its policyholders any emergency assessment imposed under sub-  
2265 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the  
2266 office determines that any regular assessment will result in an  
2267 impairment of the surplus of a limited apportionment company,  
2268 the office may direct that all or part of such assessment be  
2269 deferred as provided in subparagraph (q)4. However, ~~there shall~~  
2270 ~~be no limitation or deferment of~~ an emergency assessment to be  
2271 collected from policyholders under sub-subparagraph (b)3.d. may  
2272 not be limited or deferred.

2273 14. Must provide that the corporation appoint as its  
2274 licensed agents only those agents who also hold an appointment  
2275 as defined in s. 626.015(3) with an insurer who at the time of  
2276 the agent's initial appointment by the corporation is authorized  
2277 to write and is actually writing personal lines residential  
2278 property coverage, commercial residential property coverage, or  
2279 commercial nonresidential property coverage within the state.

2280 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan  
2281 option to its policyholders which, ~~allows~~ at a minimum, allows  
2282 for quarterly and semiannual payment of premiums. A monthly  
2283 payment plan may, but is not required to, be offered.

2284 16. Must limit coverage on mobile homes or manufactured  
2285 homes built before ~~prior to~~ 1994 to actual cash value of the  
2286 dwelling rather than replacement costs of the dwelling.

2287 17. May provide such limits of coverage as the board  
2288 determines, consistent with the requirements of this subsection.

2289 18. May require commercial property to meet specified  
2290 hurricane mitigation construction features as a condition of  
2291 eligibility for coverage.

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2292       19. Must offer sinkhole coverage. However, effective  
2293 February 1, 2012, coverage is not included for losses to  
2294 appurtenant structures, driveways, sidewalks, decks, or patios  
2295 that are directly or indirectly caused by sinkhole activity. The  
2296 corporation shall exclude such coverage using a notice of  
2297 coverage change, which may be included with the policy renewal,  
2298 and not by issuance of a notice of nonrenewal of the excluded  
2299 coverage upon renewal of the current policy.

2300       20. As a condition for making payment for damage caused by  
2301 the peril of sinkhole, regardless of whether such payment is  
2302 made pursuant to the contract, mediation, neutral evaluation,  
2303 appraisal, arbitration, settlement, or litigation, the payment  
2304 must be dedicated entirely to the costs of repairing the  
2305 structure or remediation of the land. Unless this condition is  
2306 met, the corporation is prohibited from making payment.

2307       (d)1. All prospective employees for senior management  
2308 positions, as defined by the plan of operation, are subject to  
2309 background checks as a prerequisite for employment. The office  
2310 shall conduct the background checks ~~on such prospective~~  
2311 ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2312       2. On or before July 1 of each year, employees of the  
2313 corporation must ~~are required to~~ sign and submit a statement  
2314 attesting that they do not have a conflict of interest, as  
2315 defined in part III of chapter 112. As a condition of  
2316 employment, all prospective employees must ~~are required to~~ sign  
2317 and submit to the corporation a conflict-of-interest statement.

2318       3. Senior managers and members of the board of governors  
2319 are subject to ~~the provisions of~~ part III of chapter 112,  
2320 including, but not limited to, the code of ethics and public



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2321 disclosure and reporting of financial interests, pursuant to s.  
2322 112.3145. Notwithstanding s. 112.3143(2), a board member may not  
2323 vote on any measure that would inure to his or her special  
2324 private gain or loss; that he or she knows would inure to the  
2325 special private gain or loss of any principal by whom he or she  
2326 is retained or to the parent organization or subsidiary of a  
2327 corporate principal by which he or she is retained, other than  
2328 an agency as defined in s. 112.312; or that he or she knows  
2329 would inure to the special private gain or loss of a relative or  
2330 business associate of the public officer. Before the vote is  
2331 taken, such member shall publicly state to the assembly the  
2332 nature of his or her interest in the matter from which he or she  
2333 is abstaining from voting and, within 15 days after the vote  
2334 occurs, disclose the nature of his or her interest as a public  
2335 record in a memorandum filed with the person responsible for  
2336 recording the minutes of the meeting, who shall incorporate the  
2337 memorandum in the minutes. Senior managers and board members are  
2338 also required to file such disclosures with the Commission on  
2339 Ethics and the Office of Insurance Regulation. The executive  
2340 director of the corporation or his or her designee shall notify  
2341 each existing and newly appointed ~~and existing appointed~~ member  
2342 of the board of governors and senior managers of their duty to  
2343 comply with the reporting requirements of part III of chapter  
2344 112. At least quarterly, the executive director or his or her  
2345 designee shall submit to the Commission on Ethics a list of  
2346 names of the senior managers and members of the board of  
2347 governors who are subject to the public disclosure requirements  
2348 under s. 112.3145.

2349 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other

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2350 provision of law, an employee or board member may not knowingly  
2351 accept, directly or indirectly, any gift or expenditure from a  
2352 person or entity, or an employee or representative of such  
2353 person or entity, which ~~that~~ has a contractual relationship with  
2354 the corporation or who is under consideration for a contract. An  
2355 employee or board member who fails to comply with subparagraph  
2356 3. or this subparagraph is subject to penalties provided under  
2357 ss. 112.317 and 112.3173.

2358 5. Any senior manager of the corporation who is employed on  
2359 or after January 1, 2007, regardless of the date of hire, who  
2360 subsequently retires or terminates employment is prohibited from  
2361 representing another person or entity before the corporation for  
2362 2 years after retirement or termination of employment from the  
2363 corporation.

2364 6. Any senior manager of the corporation who is employed on  
2365 or after January 1, 2007, regardless of the date of hire, who  
2366 subsequently retires or terminates employment is prohibited from  
2367 having any employment or contractual relationship for 2 years  
2368 with an insurer that has entered into a take-out bonus agreement  
2369 with the corporation.

2370 (n)1. Rates for coverage provided by the corporation must  
2371 ~~shall~~ be actuarially sound and subject to ~~the requirements of s.~~  
2372 627.062, except as otherwise provided in this paragraph. The  
2373 corporation shall file its recommended rates with the office at  
2374 least annually. The corporation shall provide any additional  
2375 information regarding the rates which the office requires. The  
2376 office shall consider the recommendations of the board and issue  
2377 a final order establishing the rates for the corporation within  
2378 45 days after the recommended rates are filed. The corporation

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2379 may not pursue an administrative challenge or judicial review of  
2380 the final order of the office.

2381 2. In addition to the rates otherwise determined pursuant  
2382 to this paragraph, the corporation shall impose and collect an  
2383 amount equal to the premium tax provided ~~for~~ in s. 624.509 to  
2384 augment the financial resources of the corporation.

2385 3. After the public hurricane loss-projection model under  
2386 s. 627.06281 has been found to be accurate and reliable by the  
2387 Florida Commission on Hurricane Loss Projection Methodology, the  
2388 ~~that~~ model shall serve as the minimum benchmark for determining  
2389 the windstorm portion of the corporation's rates. This  
2390 subparagraph does not require or allow the corporation to adopt  
2391 rates lower than the rates otherwise required or allowed by this  
2392 paragraph.

2393 4. The rate filings for the corporation which were approved  
2394 by the office and ~~which~~ took effect January 1, 2007, are  
2395 rescinded, except for those rates that were lowered. As soon as  
2396 possible, the corporation shall begin using the lower rates that  
2397 were in effect on December 31, 2006, and ~~shall~~ provide refunds  
2398 to policyholders who ~~have~~ paid higher rates as a result of that  
2399 rate filing. The rates in effect on December 31, 2006, ~~shall~~  
2400 remain in effect for the 2007 and 2008 calendar years except for  
2401 any rate change that results in a lower rate. The next rate  
2402 change that may increase rates shall take effect pursuant to a  
2403 new rate filing recommended by the corporation and established  
2404 by the office, subject to ~~the requirements of~~ this paragraph.

2405 5. Beginning on July 15, 2009, and annually ~~each year~~  
2406 thereafter, the corporation must make a recommended actuarially  
2407 sound rate filing for each personal and commercial line of

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2408 business it writes, to be effective no earlier than January 1,  
2409 2010.

2410 6. Beginning on or after January 1, 2010, and  
2411 notwithstanding the board's recommended rates and the office's  
2412 final order regarding the corporation's filed rates under  
2413 subparagraph 1., the corporation shall annually implement a rate  
2414 increase ~~each year~~ which, except for sinkhole coverage, does not  
2415 exceed 10 percent for any single policy issued by the  
2416 corporation, excluding coverage changes and surcharges.

2417 7. The corporation may also implement an increase to  
2418 reflect the effect on the corporation of the cash buildup factor  
2419 pursuant to s. 215.555(5) (b).

2420 8. The corporation's implementation of rates as prescribed  
2421 in subparagraph 6. shall cease for any line of business written  
2422 by the corporation upon the corporation's implementation of  
2423 actuarially sound rates. Thereafter, the corporation shall  
2424 annually make a recommended actuarially sound rate filing for  
2425 each commercial and personal line of business the corporation  
2426 writes.

2427 (v)1. Effective July 1, 2002, policies of the Residential  
2428 Property and Casualty Joint Underwriting Association ~~shall~~  
2429 become policies of the corporation. All obligations, rights,  
2430 assets and liabilities of the ~~Residential Property and Casualty~~  
2431 ~~Joint Underwriting~~ association, including bonds, note and debt  
2432 obligations, and the financing documents pertaining to them  
2433 become those of the corporation as of July 1, 2002. The  
2434 corporation is not required to issue endorsements or  
2435 certificates of assumption to insureds during the remaining term  
2436 of in-force transferred policies.

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2437           2. Effective July 1, 2002, policies of the Florida  
2438 Windstorm Underwriting Association are transferred to the  
2439 corporation and ~~shall~~ become policies of the corporation. All  
2440 obligations, rights, assets, and liabilities of the ~~Florida~~  
2441 ~~Windstorm Underwriting~~ association, including bonds, note and  
2442 debt obligations, and the financing documents pertaining to them  
2443 are transferred to and assumed by the corporation on July 1,  
2444 2002. The corporation is not required to issue endorsements or  
2445 certificates of assumption to insureds during the remaining term  
2446 of in-force transferred policies.

2447           3. The Florida Windstorm Underwriting Association and the  
2448 Residential Property and Casualty Joint Underwriting Association  
2449 shall take all actions necessary ~~as may be proper~~ to further  
2450 evidence the transfers and ~~shall~~ provide the documents and  
2451 instruments of further assurance as may reasonably be requested  
2452 by the corporation for that purpose. The corporation shall  
2453 execute assumptions and instruments as the trustees or other  
2454 parties to the financing documents of the Florida Windstorm  
2455 Underwriting Association or the Residential Property and  
2456 Casualty Joint Underwriting Association may reasonably request  
2457 to further evidence the transfers and assumptions, which  
2458 transfers and assumptions, however, are effective on the date  
2459 provided under this paragraph whether or not, and regardless of  
2460 the date on which, the assumptions or instruments are executed  
2461 by the corporation. Subject to the relevant financing documents  
2462 pertaining to their outstanding bonds, notes, indebtedness, or  
2463 other financing obligations, the moneys, investments,  
2464 receivables, choses in action, and other intangibles of the  
2465 Florida Windstorm Underwriting Association shall be credited to

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2466 the coastal ~~high-risk~~ account of the corporation, and those of  
2467 the personal lines residential coverage account and the  
2468 commercial lines residential coverage account of the Residential  
2469 Property and Casualty Joint Underwriting Association shall be  
2470 credited to the personal lines account and the commercial lines  
2471 account, respectively, of the corporation.

2472 4. Effective July 1, 2002, a new applicant for property  
2473 insurance coverage who would otherwise have been eligible for  
2474 coverage in the Florida Windstorm Underwriting Association is  
2475 eligible for coverage from the corporation as provided in this  
2476 subsection.

2477 5. The transfer of all policies, obligations, rights,  
2478 assets, and liabilities from the Florida Windstorm Underwriting  
2479 Association to the corporation and the renaming of the  
2480 Residential Property and Casualty Joint Underwriting Association  
2481 as the corporation does not ~~shall in no way~~ affect the coverage  
2482 with respect to covered policies as defined in s. 215.555(2)(c)  
2483 provided to these entities by the Florida Hurricane Catastrophe  
2484 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~  
2485 fund to the Florida Windstorm Underwriting Association based on  
2486 its exposures as of June 30, 2002, and each June 30 thereafter  
2487 shall be redesignated as coverage for the coastal ~~high-risk~~  
2488 account of the corporation. Notwithstanding any other provision  
2489 of law, the coverage provided by the ~~Florida Hurricane~~  
2490 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint  
2491 Underwriting Association based on its exposures as of June 30,  
2492 2002, and each June 30 thereafter shall be transferred to the  
2493 personal lines account and the commercial lines account of the  
2494 corporation. Notwithstanding any other provision of law, the

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2495 coastal ~~high-risk~~ account shall be treated, for all Florida  
2496 Hurricane Catastrophe Fund purposes, as if it were a separate  
2497 participating insurer with its own exposures, reimbursement  
2498 premium, and loss reimbursement. Likewise, the personal lines  
2499 and commercial lines accounts shall be viewed together, for all  
2500 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two  
2501 accounts were one and represent a single, separate participating  
2502 insurer with its own exposures, reimbursement premium, and loss  
2503 reimbursement. The coverage provided by the ~~Florida Hurricane~~  
2504 ~~Catastrophe~~ fund to the corporation shall constitute and operate  
2505 as a full transfer of coverage from the Florida Windstorm  
2506 Underwriting Association and Residential Property and Casualty  
2507 Joint Underwriting to the corporation.

2508 (y) It is the intent of the Legislature that the amendments  
2509 to this subsection enacted in 2002 should, over time, reduce the  
2510 probable maximum windstorm losses in the residual markets and  
2511 ~~should reduce~~ the potential assessments to be levied on property  
2512 insurers and policyholders statewide. In furtherance of this  
2513 intent, ~~+~~

2514 ~~1.~~ the board shall, on or before February 1 of each year,  
2515 provide a report to the President of the Senate and the Speaker  
2516 of the House of Representatives showing the reduction or  
2517 increase in the 100-year probable maximum loss attributable to  
2518 wind-only coverages and the quota share program under this  
2519 subsection combined, as compared to the benchmark 100-year  
2520 probable maximum loss of the Florida Windstorm Underwriting  
2521 Association. For purposes of this paragraph, the benchmark 100-  
2522 year probable maximum loss of the Florida Windstorm Underwriting  
2523 Association is ~~shall be~~ the calculation dated February 2001 and

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2524 based on November 30, 2000, exposures. In order to ensure  
2525 comparability of data, the board shall use the same methods for  
2526 calculating its probable maximum loss as were used to calculate  
2527 the benchmark probable maximum loss.

2528 ~~2. Beginning December 1, 2010, if the report under~~  
2529 ~~subparagraph 1. for any year indicates that the 100-year~~  
2530 ~~probable maximum loss attributable to wind-only coverages and~~  
2531 ~~the quota share program combined does not reflect a reduction of~~  
2532 ~~at least 25 percent from the benchmark, the board shall reduce~~  
2533 ~~the boundaries of the high-risk area eligible for wind-only~~  
2534 ~~coverages under this subsection in a manner calculated to reduce~~  
2535 ~~such probable maximum loss to an amount at least 25 percent~~  
2536 ~~below the benchmark.~~

2537 ~~3. Beginning February 1, 2015, if the report under~~  
2538 ~~subparagraph 1. for any year indicates that the 100-year~~  
2539 ~~probable maximum loss attributable to wind-only coverages and~~  
2540 ~~the quota share program combined does not reflect a reduction of~~  
2541 ~~at least 50 percent from the benchmark, the boundaries of the~~  
2542 ~~high-risk area eligible for wind-only coverages under this~~  
2543 ~~subsection shall be reduced by the elimination of any area that~~  
2544 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~  
2545 ~~Waterway.~~

2546 Section 17. Paragraph (a) of subsection (5) of section  
2547 627.3511, Florida Statutes, is amended to read:

2548 627.3511 Depopulation of Citizens Property Insurance  
2549 Corporation.—

2550 (5) APPLICABILITY.—

2551 (a) The take-out bonus provided by subsection (2) and the  
2552 exemption from assessment provided by paragraph (3) (a) apply



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2553 only if the corporation policy is replaced by ~~either~~ a standard  
2554 policy including wind coverage or, if consistent with the  
2555 insurer's underwriting rules ~~as~~ filed with the office, a basic  
2556 policy including wind coverage; however, for ~~with respect to~~  
2557 risks located in areas where coverage through the coastal high-  
2558 ~~risk~~ account of the corporation is available, the replacement  
2559 policy need not provide wind coverage. The insurer must renew  
2560 the replacement policy at approved rates on substantially  
2561 similar terms for four additional 1-year terms, unless canceled  
2562 or not renewed by the policyholder. If an insurer assumes the  
2563 corporation's obligations for a policy, it must issue a  
2564 replacement policy for a 1-year term upon expiration of the  
2565 corporation policy and must renew the replacement policy at  
2566 approved rates on substantially similar terms for four  
2567 additional 1-year terms, unless canceled or not renewed by the  
2568 policyholder. For each replacement policy canceled or nonrenewed  
2569 by the insurer for any reason during the 5-year coverage period  
2570 ~~required by this paragraph~~, the insurer must remove from the  
2571 corporation one additional policy covering a risk similar to the  
2572 risk covered by the canceled or nonrenewed policy. In addition  
2573 ~~to these requirements~~, the corporation must place the bonus  
2574 moneys in escrow for ~~a period of~~ 5 years; such moneys may be  
2575 released from escrow only to pay claims. If the policy is  
2576 canceled or nonrenewed before the end of the 5-year period, the  
2577 amount of the take-out bonus must be prorated for the time  
2578 period the policy was insured. A take-out bonus provided by  
2579 subsection (2) or subsection (6) is ~~shall not be considered~~  
2580 premium income for purposes of taxes and assessments under the  
2581 Florida Insurance Code and ~~shall~~ remain the property of the

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2582 corporation, subject to the prior security interest of the  
2583 insurer under the escrow agreement until it is released from  
2584 escrow; ~~and~~ after it is released from escrow it is ~~shall be~~  
2585 considered an asset of the insurer and credited to the insurer's  
2586 capital and surplus.

2587 Section 18. Paragraph (b) of subsection (2) of section  
2588 627.4133, Florida Statutes, is amended to read:

2589 627.4133 Notice of cancellation, nonrenewal, or renewal  
2590 premium.—

2591 (2) With respect to any personal lines or commercial  
2592 residential property insurance policy, including, but not  
2593 limited to, any homeowner's, mobile home owner's, farmowner's,  
2594 condominium association, condominium unit owner's, apartment  
2595 building, or other policy covering a residential structure or  
2596 its contents:

2597 (b) The insurer shall give the named insured written notice  
2598 of nonrenewal, cancellation, or termination at least 90 ~~100~~ days  
2599 before ~~prior to~~ the effective date of the nonrenewal,  
2600 cancellation, or termination. ~~However, the insurer shall give at~~  
2601 ~~least 100 days' written notice, or written notice by June 1,~~  
2602 ~~whichever is earlier, for any nonrenewal, cancellation, or~~  
2603 ~~termination that would be effective between June 1 and November~~  
2604 ~~30. The notice must include the reason or reasons for the~~  
2605 ~~nonrenewal, cancellation, or termination, except that:~~

2606 1. ~~The insurer shall give the named insured written notice~~  
2607 ~~of nonrenewal, cancellation, or termination at least 180 days~~  
2608 ~~prior to the effective date of the nonrenewal, cancellation, or~~  
2609 ~~termination for a named insured whose residential structure has~~  
2610 ~~been insured by that insurer or an affiliated insurer for at~~

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2611 ~~least a 5-year period immediately prior to the date of the~~  
2612 ~~written notice.~~

2613 1.2. ~~If~~ When cancellation is for nonpayment of premium, at  
2614 least 10 days' written notice of cancellation accompanied by the  
2615 reason therefor must ~~shall~~ be given. As used in this  
2616 subparagraph, the term "nonpayment of premium" means failure of  
2617 the named insured to discharge when due ~~any of~~ her or his  
2618 obligations in connection with the payment of premiums on a  
2619 policy or any installment of such premium, whether the premium  
2620 is payable directly to the insurer or its agent or indirectly  
2621 under any premium finance plan or extension of credit, or  
2622 failure to maintain membership in an organization if such  
2623 membership is a condition precedent to insurance coverage. The  
2624 term ~~"Nonpayment of premium"~~ also means the failure of a  
2625 financial institution to honor an insurance applicant's check  
2626 after delivery to a licensed agent for payment of a premium,  
2627 even if the agent has previously delivered or transferred the  
2628 premium to the insurer. If a dishonored check represents the  
2629 initial premium payment, the contract and all contractual  
2630 obligations are ~~shall be~~ void ab initio unless the nonpayment is  
2631 cured within the earlier of 5 days after actual notice by  
2632 certified mail is received by the applicant or 15 days after  
2633 notice is sent to the applicant by certified mail or registered  
2634 mail, and if the contract is void, any premium received by the  
2635 insurer from a third party must ~~shall~~ be refunded to that party  
2636 in full.

2637 2.3. ~~If~~ When such cancellation or termination occurs during  
2638 the first 90 days ~~during which~~ the insurance is in force and the  
2639 insurance is canceled or terminated for reasons other than

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2640 nonpayment of premium, at least 20 days' written notice of  
2641 cancellation or termination accompanied by the reason therefor  
2642 must ~~shall~~ be given unless ~~except where~~ there has been a  
2643 material misstatement or misrepresentation or failure to comply  
2644 with the underwriting requirements established by the insurer.

2645 3.4. The requirement for providing written notice ~~of~~  
2646 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective  
2647 between June 1 and November 30 does not apply to the following  
2648 situations, but the insurer remains subject to the requirement  
2649 to provide such notice at least 100 days before ~~prior to~~ the  
2650 effective date of nonrenewal:

2651 a. A policy that is nonrenewed due to a revision in the  
2652 coverage for sinkhole losses and catastrophic ground cover  
2653 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~  
2654 ~~2007-1, Laws of Florida.~~

2655 b. A policy that is nonrenewed by Citizens Property  
2656 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
2657 that has been assumed by an authorized insurer offering  
2658 replacement ~~or renewal~~ coverage to the policyholder is exempt  
2659 from the notice requirements of paragraph (a) and this  
2660 paragraph. In such cases, the corporation must give the named  
2661 insured written notice of nonrenewal at least 45 days before the  
2662 effective date of the nonrenewal.

2663  
2664 After the policy has been in effect for 90 days, the policy may  
2665 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there  
2666 has been a material misstatement, a nonpayment of premium, a  
2667 failure to comply with underwriting requirements established by  
2668 the insurer within 90 days after ~~of~~ the date of effectuation of

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2669 coverage, or a substantial change in the risk covered by the  
2670 policy or ~~if when~~ the cancellation is for all insureds under  
2671 such policies for a given class of insureds. This paragraph does  
2672 not apply to individually rated risks having a policy term of  
2673 less than 90 days.

2674 4. Notwithstanding any other provision of law, an insurer  
2675 may cancel or nonrenew a property insurance policy after at  
2676 least 45 days' notice if the office finds that the early  
2677 cancellation of some or all of the insurer's policies is  
2678 necessary to protect the best interests of the public or  
2679 policyholders and the office approves the insurer's plan for  
2680 early cancellation or nonrenewal of some or all of its policies.  
2681 The office may base such finding upon the financial condition of  
2682 the insurer, lack of adequate reinsurance coverage for hurricane  
2683 risk, or other relevant factors. The office may condition its  
2684 finding on the consent of the insurer to be placed under  
2685 administrative supervision pursuant to s. 624.81 or to the  
2686 appointment of a receiver under chapter 631.

2687 Section 19. Section 627.43141, Florida Statutes, is created  
2688 to read:

2689 627.43141 Notice of change in policy terms.-

2690 (1) As used in this section, the term:

2691 (a) "Change in policy terms" means the modification,  
2692 addition, or deletion of any term, coverage, duty, or condition  
2693 from the previous policy. The correction of typographical or  
2694 scrivener's errors or the application of mandated legislative  
2695 changes is not a change in policy terms.

2696 (b) "Policy" means a written contract or written agreement  
2697 for personal lines property and casualty insurance, or the

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2698 certificate of such insurance, by whatever name called, and  
2699 includes all clauses, riders, endorsements, and papers that are  
2700 a part of such policy. The term does not include a binder as  
2701 defined in s. 627.420 unless the duration of the binder period  
2702 exceeds 60 days.

2703 (c) "Renewal" means the issuance and delivery by an insurer  
2704 of a policy superseding at the end of the policy period a policy  
2705 previously issued and delivered by the same insurer or the  
2706 issuance and delivery of a certificate or notice extending the  
2707 term of a policy beyond its policy period or term. Any policy  
2708 that has a policy period or term of less than 6 months or that  
2709 does not have a fixed expiration date shall, for purposes of  
2710 this section, be considered as written for successive policy  
2711 periods or terms of 6 months.

2712 (2) A renewal policy may contain a change in policy terms.  
2713 If a renewal policy does contains such change, the insurer must  
2714 give the named insured written notice of the change, which must  
2715 be enclosed along with the written notice of renewal premium  
2716 required by ss. 627.4133 and 627.728. Such notice shall be  
2717 entitled "Notice of Change in Policy Terms."

2718 (3) Although not required, proof of mailing or registered  
2719 mailing through the United States Postal Service of the Notice  
2720 of Change in Policy Terms to the named insured at the address  
2721 shown in the policy is sufficient proof of notice.

2722 (4) Receipt of the premium payment for the renewal policy  
2723 by the insurer is deemed to be acceptance of the new policy  
2724 terms by the named insured.

2725 (5) If an insurer fails to provide the notice required in  
2726 subsection (2), the original policy terms remain in effect until

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2727 the next renewal and the proper service of the notice, or until  
2728 the effective date of replacement coverage obtained by the named  
2729 insured, whichever occurs first.

2730 (6) The intent of this section is to:

2731 (a) Allow an insurer to make a change in policy terms  
2732 without nonrenewing those policyholders that the insurer wishes  
2733 to continue insuring.

2734 (b) Alleviate concern and confusion to the policyholder  
2735 caused by the required policy nonrenewal for the limited issue  
2736 if an insurer intends to renew the insurance policy, but the new  
2737 policy contains a change in policy terms.

2738 (c) Encourage policyholders to discuss their coverages with  
2739 their insurance agents.

2740 Section 20. Section 627.7011, Florida Statutes, is amended  
2741 to read:

2742 627.7011 Homeowners' policies; offer of replacement cost  
2743 coverage and law and ordinance coverage.—

2744 (1) Before ~~Prior to~~ issuing or renewing a homeowner's  
2745 insurance policy ~~on or after October 1, 2005, or prior to the~~  
2746 ~~first renewal of a homeowner's insurance policy on or after~~  
2747 ~~October 1, 2005,~~ the insurer must offer each of the following:

2748 (a) A policy or endorsement providing that any loss that  
2749 ~~which~~ is repaired or replaced will be adjusted on the basis of  
2750 replacement costs to the dwelling not exceeding policy limits ~~as~~  
2751 ~~to the dwelling,~~ rather than actual cash value, but not  
2752 including costs necessary to meet applicable laws and ordinances  
2753 regulating the construction, use, or repair of any property or  
2754 requiring the tearing down of any property, including the costs  
2755 of removing debris.

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2756 (b) A policy or endorsement providing that, subject to  
2757 other policy provisions, any loss that ~~which~~ is repaired or  
2758 replaced at any location will be adjusted on the basis of  
2759 replacement costs to the dwelling not exceeding policy limits ~~as~~  
2760 ~~to the dwelling~~, rather than actual cash value, and also  
2761 including costs necessary to meet applicable laws and ordinances  
2762 regulating the construction, use, or repair of any property or  
2763 requiring the tearing down of any property, including the costs  
2764 of removing debris. + However, ~~such~~ additional costs necessary to  
2765 meet applicable laws and ordinances may be limited to ~~either~~ 25  
2766 percent or 50 percent of the dwelling limit, as selected by the  
2767 policyholder, and such coverage applies ~~shall apply~~ only to  
2768 repairs of the damaged portion of the structure unless the total  
2769 damage to the structure exceeds 50 percent of the replacement  
2770 cost of the structure.

2771  
2772 An insurer is not required to make the offers required by this  
2773 subsection with respect to the issuance or renewal of a  
2774 homeowner's policy that contains the provisions specified in  
2775 paragraph (b) for law and ordinance coverage limited to 25  
2776 percent of the dwelling limit, except that the insurer must  
2777 offer the law and ordinance coverage limited to 50 percent of  
2778 the dwelling limit. This subsection does not prohibit the offer  
2779 of a guaranteed replacement cost policy.

2780 (2) Unless the insurer obtains the policyholder's written  
2781 refusal of the policies or endorsements specified in subsection  
2782 (1), any policy covering the dwelling is deemed to include the  
2783 law and ordinance coverage limited to 25 percent of the dwelling  
2784 limit. The rejection or selection of alternative coverage shall



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2785 be made on a form approved by the office. The form must ~~shall~~  
2786 fully advise the applicant of the nature of the coverage being  
2787 rejected. If this form is signed by a named insured, it is ~~will~~  
2788 ~~be~~ conclusively presumed that there was an informed, knowing  
2789 rejection of the coverage or election of the alternative  
2790 coverage on behalf of all insureds. Unless the policyholder  
2791 requests in writing the coverage specified in this section, it  
2792 need not be provided in or supplemental to any other policy that  
2793 renews, insures, extends, changes, supersedes, or replaces an  
2794 existing policy if ~~when~~ the policyholder has rejected the  
2795 coverage specified in this section or has selected alternative  
2796 coverage. The insurer must provide the ~~such~~ policyholder with  
2797 notice of the availability of such coverage in a form approved  
2798 by the office at least once every 3 years. The failure to  
2799 provide such notice constitutes a violation of this code, but  
2800 does not affect the coverage provided under the policy.

2801 (3) In the event of a loss for which a dwelling or personal  
2802 property is insured on the basis of replacement costs:

2803 (a) For a dwelling, the insurer must initially pay at least  
2804 the actual cash value of the insured loss, less any applicable  
2805 deductible. To receive payment from an insurer for replacement  
2806 costs, the policyholder must enter into a contract for the  
2807 performance of building and structural repairs, unless the  
2808 requirement for a contract is waived by the insurer. The insurer  
2809 shall pay any remaining amounts necessary to perform such  
2810 repairs as work is performed and expenses are incurred. The  
2811 insurer or any contractor or subcontractor may not require the  
2812 policyholder to advance payment for such repairs or expenses,  
2813 with the exception of incidental expenses to mitigate further

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2814 damage. If a total loss of a dwelling occurs, the insurer shall  
2815 pay the replacement cost coverage without reservation or  
2816 holdback of any depreciation in value, pursuant to s. 627.702.

2817 (b) For personal property:

2818 1. The insurer must offer coverage under which the insurer  
2819 is obligated to pay the replacement cost without reservation or  
2820 holdback for any depreciation in value, whether or not the  
2821 insured replaces the property.

2822 2. The insurer may also offer coverage under which the  
2823 insurer may limit the initial payment to the actual cash value  
2824 of the personal property to be replaced, require the insured to  
2825 provide receipts for the purchase of the property financed by  
2826 the initial payment, use such receipts to make the next payment  
2827 requested by the insured for the replacement of insured  
2828 property, and continue this process until the insured remits all  
2829 receipts up to the policy limits for replacement costs. The  
2830 insurer must provide clear notice of this process in the  
2831 insurance contract. The insurer may not require the policyholder  
2832 to advance payment for the replaced property, ~~the insurer shall~~  
2833 ~~pay the replacement cost without reservation or holdback of any~~  
2834 ~~depreciation in value, whether or not the insured replaces or~~  
2835 ~~repairs the dwelling or property.~~

2836 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on~~  
2837 ~~or after October 1, 2005,~~ must include in bold type no smaller  
2838 than 18 points the following statement:

2839  
2840 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE  
2841 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO  
2842 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE

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2843 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS  
2844 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE  
2845 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.”  
2846

2847 The intent of this subsection is to encourage policyholders to  
2848 purchase sufficient coverage to protect them in case events  
2849 excluded from the standard homeowners policy, such as law and  
2850 ordinance enforcement and flood, combine with covered events to  
2851 produce damage or loss to the insured property. The intent is  
2852 also to encourage policyholders to discuss these issues with  
2853 their insurance agent.

2854 (5) ~~Nothing in This section does not: shall be construed to~~

2855 (a) Apply to policies not considered to be “homeowners’  
2856 policies,” as that term is commonly understood in the insurance  
2857 industry. ~~This section specifically does not~~

2858 (b) Apply to mobile home policies. ~~Nothing in this section~~

2859 (c) ~~Limit shall be construed as limiting~~ the ability of an  
2860 ~~any~~ insurer to reject or nonrenew any insured or applicant on  
2861 the grounds that the structure does not meet underwriting  
2862 criteria applicable to replacement cost or law and ordinance  
2863 policies or for other lawful reasons.

2864 (d) ~~(6) This section does not~~ Prohibit an insurer from  
2865 limiting its liability under a policy or endorsement providing  
2866 that loss will be adjusted on the basis of replacement costs to  
2867 the lesser of:

2868 1. ~~(a)~~ The limit of liability shown on the policy  
2869 declarations page;

2870 2. ~~(b)~~ The reasonable and necessary cost to repair the  
2871 damaged, destroyed, or stolen covered property; or

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2872        3.~~(e)~~ The reasonable and necessary cost to replace the  
2873 damaged, destroyed, or stolen covered property.

2874        (e)~~(7)~~ ~~This section does not~~ Prohibit an insurer from  
2875 exercising its right to repair damaged property in compliance  
2876 with its policy and s. 627.702(7).

2877        Section 21. Paragraph (a) of subsection (5) of section  
2878 627.70131, Florida Statutes, is amended to read:

2879        627.70131 Insurer's duty to acknowledge communications  
2880 regarding claims; investigation.-

2881        (5) (a) Within 90 days after an insurer receives notice of  
2882 an initial, reopened, or supplemental ~~a~~ property insurance claim  
2883 from a policyholder, the insurer shall pay or deny such claim or  
2884 a portion of the claim unless the failure to pay ~~such claim or a~~  
2885 ~~portion of the claim~~ is caused by factors beyond the control of  
2886 the insurer which reasonably prevent such payment. Any payment  
2887 of an initial or supplemental ~~a~~ claim or portion of such ~~a~~ claim  
2888 made paid 90 days after the insurer receives notice of the  
2889 claim, or made paid more than 15 days after there are no longer  
2890 factors beyond the control of the insurer which reasonably  
2891 prevented such payment, whichever is later, bears ~~shall bear~~  
2892 interest at the rate set forth in s. 55.03. Interest begins to  
2893 accrue from the date the insurer receives notice of the claim.  
2894 The provisions of this subsection may not be waived, voided, or  
2895 nullified by the terms of the insurance policy. If there is a  
2896 right to prejudgment interest, the insured shall select whether  
2897 to receive prejudgment interest or interest under this  
2898 subsection. Interest is payable when the claim or portion of the  
2899 claim is paid. Failure to comply with this subsection  
2900 constitutes a violation of this code. However, failure to comply

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2901 with this subsection does ~~shall~~ not form the sole basis for a  
2902 private cause of action.

2903 Section 22. The Legislature finds and declares:

2904 (1) There is a compelling state interest in maintaining a  
2905 viable and orderly private-sector market for property insurance  
2906 in this state. The lack of a viable and orderly property market  
2907 reduces the availability of property insurance coverage to state  
2908 residents, increases the cost of property insurance, and  
2909 increases the state's reliance on a residual property insurance  
2910 market and its potential for imposing assessments on  
2911 policyholders throughout the state.

2912 (2) In 2005, the Legislature revised ss. 627.706-627.7074,  
2913 Florida Statutes, to adopt certain geological or technical  
2914 terms; to increase reliance on objective, scientific testing  
2915 requirements; and generally to reduce the number of sinkhole  
2916 claims and related disputes arising under prior law. The  
2917 Legislature determined that since the enactment of these  
2918 statutory revisions, both private-sector insurers and Citizens  
2919 Property Insurance Corporation have, nevertheless, continued to  
2920 experience high claims frequency and severity for sinkhole  
2921 insurance claims. In addition, many properties remain unrepaired  
2922 even after loss payments, which reduces the local property tax  
2923 base and adversely affects the real estate market. Therefore,  
2924 the Legislature finds that losses associated with sinkhole  
2925 claims adversely affect the public health, safety, and welfare  
2926 of this state and its citizens.

2927 (3) Pursuant to sections 19 through 24 of this act,  
2928 technical or scientific definitions adopted in the 2005  
2929 legislation are clarified to implement and advance the

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2930 Legislature's intended reduction of sinkhole claims and  
2931 disputes. The legal presumption intended by the Legislature is  
2932 clarified to reduce disputes and litigation associated with the  
2933 technical reviews associated with sinkhole claims. Certain other  
2934 revisions to ss. 627.706-627.7074, Florida Statutes, are enacted  
2935 to advance legislative intent to rely on scientific or technical  
2936 determinations relating to sinkholes and sinkhole claims, reduce  
2937 the number and cost of disputes relating to sinkhole claims, and  
2938 ensure that repairs are made commensurate with the scientific  
2939 and technical determinations and insurance claims payments.

2940 Section 23. Section 627.706, Florida Statutes, is reordered  
2941 and amended to read:

2942 627.706 Sinkhole insurance; catastrophic ground cover  
2943 collapse; definitions.-

2944 (1) Every insurer authorized to transact property insurance  
2945 in this state must ~~shall~~ provide coverage for a catastrophic  
2946 ground cover collapse. However, the insurer may restrict such  
2947 coverage to the principal building, as defined in the applicable  
2948 policy. The insurer may ~~and shall~~ make available, for an  
2949 appropriate additional premium, coverage for sinkhole losses on  
2950 any structure, including the contents of personal property  
2951 contained therein, to the extent provided in the form to which  
2952 the coverage attaches. A policy for residential property  
2953 insurance may include a deductible amount applicable to sinkhole  
2954 losses, including any expenses incurred by an insurer  
2955 investigating whether sinkhole activity is present. The  
2956 deductible may be equal to 1 percent, 2 percent, 5 percent, or  
2957 10 percent of the policy dwelling limits, with appropriate  
2958 premium discounts offered with each deductible amount.

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2959 (2) As used in ss. 627.706-627.7074, and as used in  
2960 connection with any policy providing coverage for a catastrophic  
2961 ground cover collapse or for sinkhole losses, the term:

2962 (a) "Catastrophic ground cover collapse" means geological  
2963 activity that results in all the following:

- 2964 1. The abrupt collapse of the ground cover;
- 2965 2. A depression in the ground cover clearly visible to the  
2966 naked eye;
- 2967 3. Structural damage to the covered building, including the  
2968 foundation; and
- 2969 4. The insured structure being condemned and ordered to be  
2970 vacated by the governmental agency authorized by law to issue  
2971 such an order for that structure.

2972  
2973 Contents coverage applies if there is a loss resulting from a  
2974 catastrophic ground cover collapse. ~~Structural~~ Damage consisting  
2975 merely of the settling or cracking of a foundation, structure,  
2976 or building does not constitute a loss resulting from a  
2977 catastrophic ground cover collapse.

2978 (b) "Neutral evaluation" means the alternative dispute  
2979 resolution provided in s. 627.7074.

2980 (c) "Neutral evaluator" means a professional engineer or a  
2981 professional geologist who has completed a course of study in  
2982 alternative dispute resolution designed or approved by the  
2983 department for use in the neutral evaluation process and who is  
2984 determined to be fair and impartial.

2985 (f) ~~(b)~~ "Sinkhole" means a landform created by subsidence of  
2986 soil, sediment, or rock as underlying strata are dissolved by  
2987 groundwater. A sinkhole forms ~~may form~~ by collapse into

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2988 subterranean voids created by dissolution of limestone or  
2989 dolostone or by subsidence as these strata are dissolved.

2990 (h)~~(e)~~ "Sinkhole loss" means structural damage to the  
2991 covered building, including the foundation, caused by sinkhole  
2992 activity. Contents coverage and additional living expenses ~~shall~~  
2993 apply only if there is structural damage to the covered building  
2994 caused by sinkhole activity.

2995 (g)~~(d)~~ "Sinkhole activity" means settlement or systematic  
2996 weakening of the earth supporting ~~such~~ property only if the ~~when~~  
2997 ~~such~~ settlement or systematic weakening results from  
2998 contemporary movement or raveling of soils, sediments, or rock  
2999 materials into subterranean voids created by the effect of water  
3000 on a limestone or similar rock formation.

3001 (d)~~(e)~~ "Professional engineer" means a person, as defined  
3002 in s. 471.005, who has a bachelor's degree or higher in  
3003 engineering and has successfully completed at least five courses  
3004 in any combination of the following: geotechnical engineering,  
3005 structural engineering, soil mechanics, foundations, or geology  
3006 ~~with a specialty in the geotechnical engineering field. A~~  
3007 professional engineer must also have ~~geotechnical~~ experience and  
3008 expertise in the identification of sinkhole activity as well as  
3009 other potential causes of structural damage ~~to the structure.~~

3010 (e)~~(f)~~ "Professional geologist" means a person, as defined  
3011 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in  
3012 geology or related earth science and ~~with expertise in the~~  
3013 ~~geology of Florida. A professional geologist must have~~  
3014 ~~geological~~ experience and expertise in the identification of  
3015 sinkhole activity as well as other potential geologic causes of  
3016 structural damage ~~to the structure.~~



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3017 (i) "Structural damage" means:

3018 1. A covered building that suffers foundation movement  
3019 outside an acceptable variance under the applicable building  
3020 code;

3021 2. Damage to a covered building, including the foundation,  
3022 which prevents the primary structural members or primary  
3023 structural systems from supporting the loads and forces they  
3024 were designed to support; and

3025 3. As may be further defined by the applicable policy.

3026 ~~(3) On or before June 1, 2007, Every insurer authorized to~~  
3027 ~~transact property insurance in this state shall make a proper~~  
3028 ~~filing with the office for the purpose of extending the~~  
3029 ~~appropriate forms of property insurance to include coverage for~~  
3030 ~~eatastrophic ground cover collapse or for sinkhole losses.~~  
3031 ~~coverage for catastrophic ground cover collapse may not go into~~  
3032 ~~effect until the effective date provided for in the filing~~  
3033 ~~approved by the office.~~

3034 ~~(3)(4)~~ Insurers offering policies that exclude coverage for  
3035 sinkhole losses must ~~shall~~ inform policyholders in bold type of  
3036 not less than 14 points as follows: "YOUR POLICY PROVIDES  
3037 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS  
3038 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,  
3039 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. ~~YOU~~  
3040 ~~MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN~~  
3041 ~~ADDITIONAL PREMIUM."~~

3042 ~~(4)(5)~~ An insurer offering sinkhole coverage to  
3043 policyholders before or after the adoption of s. 30, chapter  
3044 2007-1, Laws of Florida, may nonrenew the policies of  
3045 policyholders maintaining sinkhole coverage ~~in Pasco County or~~

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3046 ~~Hernando County,~~ at the option of the insurer, and provide an  
3047 offer of coverage that ~~to such policyholders which~~ includes  
3048 catastrophic ground cover collapse and excludes sinkhole  
3049 coverage. Insurers acting in accordance with this subsection are  
3050 subject to the following requirements:

3051 (a) Policyholders must be notified that a nonrenewal is for  
3052 purposes of removing sinkhole coverage, and that the  
3053 policyholder is ~~still~~ being offered a policy that provides  
3054 coverage for catastrophic ground cover collapse.

3055 (b) Policyholders must be provided an actuarially  
3056 reasonable premium credit or discount for the removal of  
3057 sinkhole coverage and provision of only catastrophic ground  
3058 cover collapse.

3059 (c) Subject to the provisions of this subsection and the  
3060 insurer's approved underwriting or insurability guidelines, the  
3061 insurer may ~~shall~~ provide each policyholder with the opportunity  
3062 to purchase an endorsement to his or her policy providing  
3063 sinkhole coverage and may require an inspection of the property  
3064 before issuance of a sinkhole coverage endorsement.

3065 (d) Section 624.4305 does not apply to nonrenewal notices  
3066 issued pursuant to this subsection.

3067 (5) Any claim, including, but not limited to, initial,  
3068 supplemental, and reopened claims under an insurance policy that  
3069 provides sinkhole coverage is barred unless notice of the claim  
3070 was given to the insurer in accordance with the terms of the  
3071 policy within 2 years after the policyholder knew or reasonably  
3072 should have known about the sinkhole loss.

3073 Section 24. Section 627.7061, Florida Statutes, is amended  
3074 to read:

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3075           627.7061 Coverage inquiries.—Inquiries about coverage on a  
3076 property insurance contract are not claim activity, unless an  
3077 actual claim is filed by the policyholder which insured that  
3078 results in a company investigation of the claim.

3079           Section 25. Section 627.7065, Florida Statutes, is  
3080 repealed.

3081           Section 26. Section 627.707, Florida Statutes, is amended  
3082 to read:

3083           627.707 ~~Standards for~~ Investigation of sinkhole claims by  
3084 policyholders insurers; insurer payment; nonrenewals.—Upon  
3085 receipt of a claim for a sinkhole loss to a covered building, an  
3086 insurer must meet the following standards in investigating a  
3087 claim:

3088           (1) The insurer must inspect ~~make an inspection of~~ the  
3089 policyholder's insured's premises to determine if there is  
3090 structural ~~has been physical~~ damage that ~~to the structure which~~  
3091 may be the result of sinkhole activity.

3092           (2) If the insurer confirms that structural damage exists  
3093 but is unable to identify a valid cause of such damage or  
3094 discovers that such damage is consistent with sinkhole loss  
3095 ~~Following the insurer's initial inspection~~, the insurer shall  
3096 engage a professional engineer or a professional geologist to  
3097 conduct testing as provided in s. 627.7072 to determine the  
3098 cause of the loss within a reasonable professional probability  
3099 and issue a report as provided in s. 627.7073, only if sinkhole  
3100 loss is covered under the policy. Except as provided in  
3101 subsection (6), the fees and costs of the professional engineer  
3102 or professional geologist shall be paid by the insurer.÷

3103           ~~(a) The insurer is unable to identify a valid cause of the~~

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3104 ~~damage or discovers damage to the structure which is consistent~~  
3105 ~~with sinkhole loss; or~~

3106 ~~(b) The policyholder demands testing in accordance with~~  
3107 ~~this section or s. 627.7072.~~

3108 (3) Following the initial inspection of the policyholder's  
3109 ~~insured~~ premises, the insurer shall provide written notice to  
3110 the policyholder disclosing the following information:

3111 (a) What the insurer has determined to be the cause of  
3112 damage, if the insurer has made such a determination.

3113 (b) A statement of the circumstances under which the  
3114 insurer is required to engage a professional engineer or a  
3115 professional geologist to verify or eliminate sinkhole loss and  
3116 to engage a professional engineer to make recommendations  
3117 regarding land and building stabilization and foundation repair.

3118 ~~(c) A statement regarding the right of the policyholder to~~  
3119 ~~request testing by a professional engineer or a professional~~  
3120 ~~geologist and the circumstances under which the policyholder may~~  
3121 ~~demand certain testing.~~

3122 (4) If the insurer determines that there is no sinkhole  
3123 loss, the insurer may deny the claim. If coverage for sinkhole  
3124 loss is available and ~~If the insurer denies the claim on such~~  
3125 basis, without performing testing under s. 627.7072, the  
3126 policyholder may demand testing by the insurer ~~under s.~~  
3127 ~~627.7072.~~ The policyholder's demand for testing must be  
3128 communicated to the insurer in writing within 60 days after the  
3129 policyholder's receipt of the insurer's denial of the claim.

3130 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is  
3131 verified, the insurer shall pay to stabilize the land and  
3132 building and repair the foundation in accordance with the

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3133 recommendations of the professional engineer retained pursuant  
3134 to subsection (2), as provided under s. 627.7073, and in  
3135 ~~consultation~~ with notice to the policyholder, subject to the  
3136 coverage and terms of the policy. The insurer shall pay for  
3137 other repairs to the structure and contents in accordance with  
3138 the terms of the policy.

3139 (a) ~~(b)~~ The insurer may limit its total claims payment to  
3140 the actual cash value of the sinkhole loss, which does not  
3141 include ~~including~~ underpinning or grouting or any other repair  
3142 technique performed below the existing foundation of the  
3143 building, until the policyholder enters into a contract for the  
3144 performance of building stabilization or foundation repairs in  
3145 accordance with the recommendations set forth in the insurer's  
3146 report issued pursuant to s. 627.7073.

3147 (b) In order to prevent additional damage to the building  
3148 or structure, the policyholder must enter into a contract for  
3149 the performance of building stabilization or foundation repairs  
3150 within 90 days after the insurance company confirms coverage for  
3151 the sinkhole loss and notifies the policyholder of such  
3152 confirmation. This time period is tolled if either party invokes  
3153 the neutral evaluation process.

3154 (c) After the policyholder enters into the contract for the  
3155 performance of building stabilization or foundation repairs, the  
3156 insurer shall pay the amounts necessary to begin and perform  
3157 such repairs as the work is performed and the expenses are  
3158 incurred. The insurer may not require the policyholder to  
3159 advance payment for such repairs. If repair covered by a  
3160 personal lines residential property insurance policy has begun  
3161 and the professional engineer selected or approved by the

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3162 insurer determines that the repair cannot be completed within  
3163 the policy limits, the insurer must ~~either~~ complete the  
3164 professional engineer's recommended repair or tender the policy  
3165 limits to the policyholder without a reduction for the repair  
3166 expenses incurred.

3167 (d) The stabilization and all other repairs to the  
3168 structure and contents must be completed within 12 months after  
3169 entering into the contract for repairs described in paragraph  
3170 (b) unless:

3171 1. There is a mutual agreement between the insurer and the  
3172 policyholder;

3173 2. The claim is involved with the neutral evaluation  
3174 process;

3175 3. The claim is in litigation; or

3176 4. The claim is under appraisal.

3177 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of  
3178 the policyholder and any lienholder, the insurer may make  
3179 payment directly to the persons selected by the policyholder to  
3180 perform the land and building stabilization and foundation  
3181 repairs. The decision by the insurer to make payment to such  
3182 persons does not hold the insurer liable for the work performed.  
3183 The policyholder may not accept a rebate from any person  
3184 performing the repairs specified in this section. If a  
3185 policyholder does receive a rebate, coverage is void and the  
3186 policyholder must refund the amount of the rebate to the  
3187 insurer. Any person making the repairs specified in this section  
3188 who offers a rebate, or any policyholder who accepts a rebate  
3189 for such repairs, commits insurance fraud punishable as a third  
3190 degree felony as provided in s. 775.082, s. 775.083, or s.

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3191 775.084.

3192 ~~(6) Except as provided in subsection (7), the fees and~~  
3193 ~~costs of the professional engineer or the professional geologist~~  
3194 ~~shall be paid by the insurer.~~

3195 (6)~~(7)~~ If the insurer obtains, pursuant to s. 627.7073,  
3196 written certification that there is no sinkhole loss ~~or that the~~  
3197 ~~cause of the damage was not sinkhole activity, and if the~~  
3198 ~~policyholder has submitted the sinkhole claim without good faith~~  
3199 ~~grounds for submitting such claim,~~ the policyholder shall  
3200 reimburse the insurer for 50 percent of the actual costs of the  
3201 analyses and services provided under ss. 627.7072 and 627.7073;  
3202 however, a policyholder is not required to reimburse an insurer  
3203 more than the deductible or \$2,500, whichever is greater, with  
3204 respect to any claim. A policyholder is required to pay  
3205 reimbursement under this subsection only if the policyholder  
3206 requested the testing and report provided pursuant to ss.  
3207 627.7072 and 627.7073 and the insurer, before ~~prior to~~ ordering  
3208 the analysis under s. 627.7072, informs the policyholder in  
3209 writing of the policyholder's potential liability for  
3210 reimbursement and gives the policyholder the opportunity to  
3211 withdraw the claim.

3212 ~~(7)~~~~(8)~~ An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of  
3213 property insurance on the basis of filing of claims for partial  
3214 loss caused by sinkhole damage or clay shrinkage if ~~as long as~~  
3215 the total of such payments does not equal or exceed the current  
3216 policy limits of coverage for the policy in effect on the date  
3217 of loss, for property damage to the covered building, as set  
3218 forth on the declarations page, or if ~~and provided the~~  
3219 policyholder insured ~~has~~ repaired the structure in accordance

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3220 with the engineering recommendations made pursuant to subsection  
3221 (2) upon which any payment or policy proceeds were based. If the  
3222 insurer pays such limits, it may nonrenew the policy.

3223 ~~(8)-(9)~~ The insurer may engage a professional structural  
3224 engineer to make recommendations as to the repair of the  
3225 structure.

3226 Section 27. Section 627.7073, Florida Statutes, is amended  
3227 to read:

3228 627.7073 Sinkhole reports.—

3229 (1) Upon completion of testing as provided in s. 627.7072,  
3230 the professional engineer or professional geologist shall issue  
3231 a report and certification to the insurer and the policyholder  
3232 as provided in this section.

3233 (a) Sinkhole loss is verified if, based upon tests  
3234 performed in accordance with s. 627.7072, a professional  
3235 engineer or a professional geologist issues a written report and  
3236 certification stating:

3237 1. That structural damage to the covered building has been  
3238 identified within a reasonable professional probability.

3239 ~~2.1-~~ That the cause of the ~~actual-physical-and~~ structural  
3240 damage is sinkhole activity within a reasonable professional  
3241 probability.

3242 ~~3.2-~~ That the analyses conducted were of sufficient scope  
3243 to identify sinkhole activity as the cause of damage within a  
3244 reasonable professional probability.

3245 ~~4.3-~~ A description of the tests performed.

3246 ~~5.4-~~ A recommendation by the professional engineer of  
3247 methods for stabilizing the land and building and for making  
3248 repairs to the foundation.



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3249 (b) If there is no structural damage or if sinkhole  
3250 activity is eliminated as the cause of such damage to the  
3251 covered building structure, the professional engineer or  
3252 professional geologist shall issue a written report and  
3253 certification to the policyholder and the insurer stating:

3254 1. That there is no structural damage or the cause of such  
3255 ~~the~~ damage is not sinkhole activity within a reasonable  
3256 professional probability.

3257 2. That the analyses and tests conducted were of sufficient  
3258 scope to eliminate sinkhole activity as the cause of the  
3259 structural damage within a reasonable professional probability.

3260 3. A statement of the cause of the structural damage within  
3261 a reasonable professional probability.

3262 4. A description of the tests performed.

3263 (c) The respective findings, opinions, and recommendations  
3264 of the professional engineer or professional geologist as to the  
3265 cause of distress to the property and the findings, opinions,  
3266 and recommendations of the insurer's professional engineer as to  
3267 land and building stabilization and foundation repair set forth  
3268 by s. 627.7072 shall be presumed correct, which presumption  
3269 shifts the burden of proof in accordance with s. 90.302(2). The  
3270 presumption of correctness is based upon public policy concerns  
3271 regarding the affordability of sinkhole coverage, consistency in  
3272 claims handling, and a reduction in the number of disputed  
3273 sinkhole claims.

3274 (2) ~~(a)~~ An ~~Any~~ insurer that has paid a claim for a sinkhole  
3275 loss shall file a copy of the report and certification, prepared  
3276 pursuant to subsection (1), including the legal description of  
3277 the real property and the name of the property owner, the

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3278 neutral evaluator's report, if any, which indicates that  
3279 sinkhole activity caused the damage claimed, a copy of the  
3280 certification indicating that stabilization has been completed,  
3281 if applicable, and the amount of the payment, with the county  
3282 clerk of court, who shall record the report and certification.  
3283 The insurer shall bear the cost of filing and recording one or  
3284 more reports and certifications ~~the report and certification.~~  
3285 There shall be no cause of action or liability against an  
3286 insurer for compliance with this section.

3287 (a) The recording of the report and certification does not:

3288 1. Constitute a lien, encumbrance, or restriction on the  
3289 title to the real property or constitute a defect in the title  
3290 to the real property;

3291 2. Create any cause of action or liability against any  
3292 grantor of the real property for breach of any warranty of good  
3293 title or warranty against encumbrances; or

3294 3. Create any cause of action or liability against any  
3295 title insurer that insures the title to the real property.

3296 (b) As a precondition to accepting payment for a sinkhole  
3297 loss, the policyholder must file a copy of any sinkhole report  
3298 regarding the insured property which was prepared on behalf or  
3299 at the request of the policyholder. The policyholder shall bear  
3300 the cost of filing and recording the sinkhole report. The  
3301 recording of the report does not:

3302 1. Constitute a lien, encumbrance, or restriction on the  
3303 title to the real property or constitute a defect in the title  
3304 to the real property;

3305 2. Create any cause of action or liability against any  
3306 grantor of the real property for breach of any warranty of good

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3307 title or warranty against encumbrances; or

3308 3. Create any cause of action or liability against a title  
3309 insurer that insures the title to the real property.

3310 (c) ~~(b)~~ The seller of real property upon which a sinkhole  
3311 claim has been made by the seller and paid by the insurer must  
3312 ~~shall~~ disclose to the buyer of such property, before the  
3313 closing, that a claim has been paid and whether or not the full  
3314 amount of the proceeds were used to repair the sinkhole damage.

3315 (3) Upon completion of any building stabilization or  
3316 foundation repairs for a verified sinkhole loss, the  
3317 professional engineer responsible for monitoring the repairs  
3318 shall issue a report to the property owner which specifies what  
3319 repairs have been performed and certifies within a reasonable  
3320 degree of professional probability that such repairs have been  
3321 properly performed. The professional engineer issuing the report  
3322 shall file a copy of the report and certification, which  
3323 includes a legal description of the real property and the name  
3324 of the property owner, with the county clerk of the court, who  
3325 shall record the report and certification. This subsection does  
3326 not create liability for an insurer based on any representation  
3327 or certification by a professional engineer related to the  
3328 stabilization or foundation repairs for the verified sinkhole  
3329 loss.

3330 Section 28. Section 627.7074, Florida Statutes, is amended  
3331 to read:

3332 627.7074 Alternative procedure for resolution of disputed  
3333 sinkhole insurance claims.-

3334 ~~(1) As used in this section, the term:~~

3335 ~~(a) "Neutral evaluation" means the alternative dispute~~

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3336 ~~resolution provided for in this section.~~

3337 ~~(b) "Neutral evaluator" means a professional engineer or a~~  
3338 ~~professional geologist who has completed a course of study in~~  
3339 ~~alternative dispute resolution designed or approved by the~~  
3340 ~~department for use in the neutral evaluation process, who is~~  
3341 ~~determined to be fair and impartial.~~

3342 (1)(2)(a) The department shall:

3343 (a) Certify and maintain a list of persons who are neutral  
3344 evaluators.

3345 ~~(b) The department shall~~ Prepare a consumer information  
3346 pamphlet for distribution by insurers to policyholders which  
3347 clearly describes the neutral evaluation process and includes  
3348 information ~~and forms~~ necessary for the policyholder to request  
3349 a neutral evaluation.

3350 (2) Neutral evaluation is available to either party if a  
3351 sinkhole report has been issued pursuant to s. 627.7073. At a  
3352 minimum, neutral evaluation must determine:

3353 (a) Causation;

3354 (b) All methods of stabilization and repair both above and  
3355 below ground;

3356 (c) The costs for stabilization and all repairs; and

3357 (d) Information necessary to carry out subsection (12).

3358 (3) Following the receipt of the report provided under s.  
3359 627.7073 or the denial of a claim for a sinkhole loss, the  
3360 insurer shall notify the policyholder of his or her right to  
3361 participate in the neutral evaluation program under this  
3362 section. Neutral evaluation supersedes the alternative dispute  
3363 resolution process under s. 627.7015, but does not invalidate  
3364 the appraisal clause of the insurance policy. The insurer shall

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3365 provide to the policyholder the consumer information pamphlet  
3366 prepared by the department pursuant to subsection (1)  
3367 electronically or by United States mail ~~paragraph (2) (b)~~.

3368 (4) Neutral evaluation is nonbinding, but mandatory if  
3369 requested by either party. A request for neutral evaluation may  
3370 be filed with the department by the policyholder or the insurer  
3371 on a form approved by the department. The request for neutral  
3372 evaluation must state the reason for the request and must  
3373 include an explanation of all the issues in dispute at the time  
3374 of the request. Filing a request for neutral evaluation tolls  
3375 the applicable time requirements for filing suit for ~~a period of~~  
3376 60 days following the conclusion of the neutral evaluation  
3377 process or the time prescribed in s. 95.11, whichever is later.

3378 (5) Neutral evaluation shall be conducted as an informal  
3379 process in which formal rules of evidence and procedure need not  
3380 be observed. A party to neutral evaluation is not required to  
3381 attend neutral evaluation if a representative of the party  
3382 attends and has the authority to make a binding decision on  
3383 behalf of the party. All parties shall participate in the  
3384 evaluation in good faith. The neutral evaluator must be allowed  
3385 reasonable access to the interior and exterior of insured  
3386 structures to be evaluated or for which a claim has been made.  
3387 Any reports initiated by the policyholder, or an agent of the  
3388 policyholder, confirming a sinkhole loss or disputing another  
3389 sinkhole report regarding insured structures must be provided to  
3390 the neutral evaluator before the evaluator's physical inspection  
3391 of the insured property.

3392 (6) The insurer shall pay reasonable ~~the~~ costs associated  
3393 with the neutral evaluation. However, if a party chooses to hire

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3394 a court reporter or stenographer to contemporaneously record and  
3395 document the neutral evaluation, that party must bear such  
3396 costs.

3397 (7) Upon receipt of a request for neutral evaluation, the  
3398 department shall provide the parties a list of certified neutral  
3399 evaluators. ~~The parties shall mutually select a neutral~~  
3400 ~~evaluator from the list and promptly inform the department. If~~  
3401 ~~the parties cannot agree to a neutral evaluator within 10~~  
3402 ~~business days,~~ The department shall allow the parties to submit  
3403 requests to disqualify evaluators on the list for cause.

3404 (a) The department shall disqualify neutral evaluators for  
3405 cause based only on any of the following grounds:

3406 1. A familial relationship exists between the neutral  
3407 evaluator and either party or a representative of either party  
3408 within the third degree.

3409 2. The proposed neutral evaluator has, in a professional  
3410 capacity, previously represented either party or a  
3411 representative of either party, in the same or a substantially  
3412 related matter.

3413 3. The proposed neutral evaluator has, in a professional  
3414 capacity, represented another person in the same or a  
3415 substantially related matter and that person's interests are  
3416 materially adverse to the interests of the parties. The term  
3417 "substantially related matter" means participation by the  
3418 neutral evaluator on the same claim, property, or adjacent  
3419 property.

3420 4. The proposed neutral evaluator has, within the preceding  
3421 5 years, worked as an employer or employee of any party to the  
3422 case.

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3423        (b) The parties shall appoint a neutral evaluator from the  
3424 department list and promptly inform the department. If the  
3425 parties cannot agree to a neutral evaluator within 14 days, the  
3426 department shall appoint a neutral evaluator from the list of  
3427 certified neutral evaluators. The department shall allow each  
3428 party to disqualify two neutral evaluators without cause. Upon  
3429 selection or appointment, the department shall promptly refer  
3430 the request to the neutral evaluator.

3431        (c) Within 14 ~~5~~ business days after the referral, the  
3432 neutral evaluator shall notify the policyholder and the insurer  
3433 of the date, time, and place of the neutral evaluation  
3434 conference. The conference may be held by telephone, if feasible  
3435 and desirable. The neutral evaluator shall make reasonable  
3436 efforts to hold the neutral evaluation conference shall be held  
3437 within 90 ~~45~~ days after the receipt of the request by the  
3438 department. Failure of the neutral evaluator to hold the  
3439 conference within 90 days does not invalidate either party's  
3440 right to neutral evaluation or to a neutral evaluation  
3441 conference held outside this timeframe.

3442        ~~(8) The department shall adopt rules of procedure for the~~  
3443 ~~neutral evaluation process.~~

3444        ~~(8)-(9)~~ For policyholders not represented by an attorney, a  
3445 consumer affairs specialist of the department or an employee  
3446 designated as the primary contact for consumers on issues  
3447 relating to sinkholes under s. 20.121 shall be available for  
3448 consultation to the extent that he or she may lawfully do so.

3449        ~~(9)-(10)~~ Evidence of an offer to settle a claim during the  
3450 neutral evaluation process, as well as any relevant conduct or  
3451 statements made in negotiations concerning the offer to settle a

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3452 claim, is inadmissible to prove liability or absence of  
3453 liability for the claim or its value, except as provided in  
3454 subsection (14) ~~(13)~~.

3455 (10)~~(11)~~ Regardless of when noticed, any court proceeding  
3456 related to the subject matter of the neutral evaluation shall be  
3457 stayed pending completion of the neutral evaluation and for 5  
3458 days after the filing of the neutral evaluator's report with the  
3459 court.

3460 (11) If, based upon his or her professional training and  
3461 credentials, a neutral evaluator is qualified to determine only  
3462 disputes relating to causation or method of repair, the  
3463 department shall allow the neutral evaluator to enlist the  
3464 assistance of another professional from the neutral evaluators  
3465 list not previously stricken, who, based upon his or her  
3466 professional training and credentials, is able to provide an  
3467 opinion as to other disputed issues. A professional who would be  
3468 disqualified for any reason listed in subsection (7) must be  
3469 disqualified. The neutral evaluator may also use the services of  
3470 professional engineers and professional geologists who are not  
3471 certified as neutral evaluators, as well as licensed building  
3472 contractors, in order to ensure that all items in dispute are  
3473 addressed and the neutral evaluation can be completed. Any  
3474 professional engineer, professional geologist, or licensed  
3475 building contractor retained may be disqualified for any of the  
3476 reasons listed in subsection (7). The neutral evaluator may  
3477 request the entity that performed the investigation pursuant to  
3478 s. 627.7072 perform such additional and reasonable testing as  
3479 deemed necessary in the professional opinion of the neutral  
3480 evaluator.



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3481           (12) ~~At For matters that are not resolved by the parties at~~  
3482 the conclusion of the neutral evaluation, the neutral evaluator  
3483 shall prepare a report describing all matters that are the  
3484 subject of the neutral evaluation, including whether, stating  
3485 ~~that~~ in his or her opinion, the sinkhole loss has been verified  
3486 or eliminated within a reasonable degree of professional  
3487 probability and, if verified, whether the sinkhole activity  
3488 caused structural damage to the covered building, and if so, the  
3489 need for and estimated costs of stabilizing the land and any  
3490 covered ~~structures or~~ buildings and other appropriate  
3491 remediation or necessary building ~~structural~~ repairs due to the  
3492 sinkhole loss. The evaluator's report shall be sent to all  
3493 parties ~~in attendance at the neutral evaluation~~ and to the  
3494 department, within 14 days after completing the neutral  
3495 evaluation conference.

3496           (13) The recommendation of the neutral evaluator is not  
3497 binding on any party, and the parties retain access to the  
3498 court. The neutral evaluator's written recommendation, oral  
3499 testimony, and full report shall be admitted ~~is admissible~~ in  
3500 any ~~subsequent~~ action, litigation, or proceeding relating to the  
3501 claim or to the cause of action giving rise to the claim.  
3502 However, oral or written statements or nonverbal conduct  
3503 intended to make an assertion made by a party or neutral  
3504 evaluator during the course of neutral evaluation, other than  
3505 those statements or conduct expressly required to be admitted by  
3506 this subsection, are confidential and may not be disclosed to a  
3507 person other than a party to neutral evaluation or a party's  
3508 counsel.

3509           (14) If the neutral evaluator ~~first~~ verifies the existence

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3510 of a sinkhole that caused structural damage and, ~~second,~~  
3511 recommends the need for and estimates costs of stabilizing the  
3512 land and any covered ~~structures or~~ buildings and other  
3513 appropriate remediation or building structural repairs, which  
3514 ~~costs~~ exceed the amount that the insurer estimates as necessary  
3515 to stabilize and repair, and the insurer refuses to comply with  
3516 the neutral evaluator's findings and recommendations ~~has offered~~  
3517 ~~to pay the policyholder,~~ the insurer is liable to the  
3518 policyholder for up to \$2,500 in attorney's fees for the  
3519 attorney's participation in the neutral evaluation process. ~~For~~  
3520 ~~purposes of this subsection, the term "offer to pay" means a~~  
3521 ~~written offer signed by the insurer or its legal representative~~  
3522 ~~and delivered to the policyholder within 10 days after the~~  
3523 ~~insurer receives notice that a request for neutral evaluation~~  
3524 ~~has been made under this section.~~

3525 (15) If the insurer timely agrees in writing to comply and  
3526 timely complies with the recommendation of the neutral  
3527 evaluator, but the policyholder declines to resolve the matter  
3528 in accordance with the recommendation of the neutral evaluator  
3529 pursuant to this section:

3530 (a) The insurer is not liable for extracontractual damages  
3531 related to a claim for a sinkhole loss but only as related to  
3532 the issues determined by the neutral evaluation process. This  
3533 section does not affect or impair claims for extracontractual  
3534 damages unrelated to the issues determined by the neutral  
3535 evaluation process contained in this section; and

3536 (b) The actions of the insurer are not a confession of  
3537 judgment or admission of liability, and the insurer is not  
3538 liable for attorney's fees under s. 627.428 or other provisions

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3539 of the insurance code unless the policyholder obtains a judgment  
3540 that is more favorable than the recommendation of the neutral  
3541 evaluator.

3542 (16) If the insurer agrees to comply with the neutral  
3543 evaluator's report, payments shall be made in accordance with  
3544 the terms and conditions of the applicable insurance policy  
3545 pursuant to s. 627.707(5).

3546 (17) Neutral evaluators are deemed to be agents of the  
3547 department and have immunity from suit as provided in s. 44.107.

3548 (18) The department shall adopt rules of procedure for the  
3549 neutral evaluation process.

3550 Section 29. Subsection (8) of section 627.711, Florida  
3551 Statutes, is amended to read:

3552 627.711 Notice of premium discounts for hurricane loss  
3553 mitigation; uniform mitigation verification inspection form.—

3554 (8) ~~At its expense,~~ The insurer may require that a any  
3555 uniform mitigation verification form provided by a policyholder,  
3556 a policyholder's agency, or an authorized mitigation inspector  
3557 or inspection company be independently verified by an inspector,  
3558 an inspection company, or an independent third-party quality  
3559 assurance provider which possesses ~~does possess~~ a quality  
3560 assurance program before ~~prior to~~ accepting the uniform  
3561 mitigation verification form as valid.

3562 Section 30. Subsection (1) of section 627.712, Florida  
3563 Statutes, is amended to read:

3564 627.712 Residential windstorm coverage required;  
3565 availability of exclusions for windstorm or contents.—

3566 (1) An insurer issuing a residential property insurance  
3567 policy must provide windstorm coverage. Except as provided in

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3568 paragraph (2)(c), this section does not apply ~~with respect~~ to  
3569 risks that are eligible for wind-only coverage from Citizens  
3570 Property Insurance Corporation under s. 627.351(6), and ~~with~~  
3571 ~~respect to~~ risks that are not eligible for coverage from  
3572 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.  
3573 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation  
3574 under s. 627.351(6)(a)3. or 5. is exempt from ~~the requirements~~  
3575 ~~of~~ this section only if the risk is located within the  
3576 boundaries of the coastal ~~high-risk~~ account of the corporation.

3577 Section 31. Except as otherwise expressly provided in this  
3578 act and except for this section, which shall take effect June 1,  
3579 2011, this act shall take effect July 1, 2011.