

2011408er

1  
2 An act relating to property and casualty insurance;  
3 amending s. 95.11, F.S.; specifying a statute of  
4 limitation for a breach of a property insurance  
5 contract runs from the date of loss; amending s.  
6 215.555, F.S.; revising the definition of "losses,"  
7 relating to the Florida Hurricane Catastrophe Fund, to  
8 include and exclude certain losses; providing  
9 applicability; amending s. 215.5595, F.S.; authorizing  
10 an insurer to renegotiate the terms a surplus note  
11 issued before a certain date; providing limitations;  
12 amending s. 624.407, F.S.; revising the amount of  
13 surplus funds required for domestic insurers applying  
14 for a certificate of authority; amending s. 624.408,  
15 F.S.; revising the minimum surplus that must be  
16 maintained by certain insurers; authorizing the Office  
17 of Insurance Regulation to reduce the surplus  
18 requirement under specified circumstances; amending s.  
19 626.854, F.S.; providing limitations on the amount of  
20 compensation that may be received by a public adjuster  
21 for a reopened or supplemental claim; providing  
22 limitations on the amount of compensation that may be  
23 received by a public adjuster for a claim; applying  
24 specified provisions regulating the conduct of public  
25 adjusters to condominium unit owners rather than to  
26 condominium associations as is currently required;  
27 providing statements that may be considered deceptive  
28 or misleading if made in any public adjuster's  
29 advertisement or solicitation; providing a definition

2011408er

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

2011408er

59 626.8796, F.S.; providing requirements for a public  
60 adjuster contract; creating s. 626.70132, F.S.;  
61 requiring that notice of a claim, supplemental claim,  
62 or reopened claim be given to the insurer within a  
63 specified period after a windstorm or hurricane  
64 occurs; providing a definition for the terms  
65 "supplemental claim" or "reopened claim"; providing  
66 applicability; repealing s. 627.0613(4), F.S.,  
67 relating to the requirement that the consumer advocate  
68 for the Chief Financial Officer prepare an annual  
69 report card for each personal residential property  
70 insurer; amending s. 627.062, F.S.; extending the  
71 expiration date for making a "file and use" filing;  
72 prohibiting the Office of Insurance Regulation from,  
73 directly or indirectly, impeding the right of an  
74 insurer to acquire policyholders, advertise or appoint  
75 agents, or regulate agent commissions; revising the  
76 information that must be included in a rate filing  
77 relating to certain reinsurance or financing products;  
78 deleting a provision that prohibited an insurer from  
79 making certain rate filings within a certain period of  
80 time after a rate increase; deleting a provision  
81 prohibiting an insurer from filing for a rate increase  
82 within 6 months after it makes certain rate filings;  
83 deleting obsolete provisions relating to legislation  
84 enacted during the 2003 Special Session D of the  
85 Legislature; providing for the submission of  
86 additional or supplementary information pursuant to a  
87 rate filing; revising provisions relating to the

2011408er

88           certifications that are required to be made under oath  
89           by certain officers or actuaries of an insurer  
90           regarding information that must accompany a rate  
91           filing; amending s. 627.06281, F.S.; providing  
92           limitations on fees charged for use of the public  
93           hurricane model; amending s. 627.0629, F.S.; deleting  
94           obsolete provisions; deleting a requirement that the  
95           Office of Insurance Regulation propose a method for  
96           establishing discounts, debits, credits, and other  
97           rate differentials for hurricane mitigation by a  
98           certain date; conforming provisions to changes made by  
99           the act; amending s. 627.351, F.S.; limiting an  
100          adjuster's fee for a claim against the corporation;  
101          renaming the "high-risk account" as the "coastal  
102          account"; revising the conditions under which the  
103          Citizens policyholder surcharge may be imposed;  
104          providing that members of the Citizens Property  
105          Insurance Corporation Board of Governors are not  
106          prohibited from practicing in a certain profession if  
107          not prohibited by law or ordinance; requiring the  
108          corporation to commission a consultant to prepare a  
109          report on outsourcing various functions and to submit  
110          such report to the Financial Services Commission by a  
111          certain date; limiting coverage for damage from  
112          sinkholes after a certain date; requiring the  
113          policyholders to sign a statement acknowledging that  
114          they may be assessed surcharges to cover corporate  
115          deficits; prohibiting board members from voting on  
116          certain measures; exempting sinkhole coverage from the

2011408er

117 corporation's annual rate increase requirements;  
118 deleting a requirement that the board provide an  
119 annual report to the Legislature relating to certain  
120 coverages; deleting a requirement that the board  
121 reduce the boundaries of certain high-risk areas  
122 eligible for wind-only coverages under certain  
123 circumstances; amending s. 627.3511, F.S.; conforming  
124 provisions to changes made by the act; amending s.  
125 627.4133, F.S.; revising the requirements for  
126 providing an insured with notice of nonrenewal,  
127 cancellation, or termination of personal lines or  
128 commercial residential property insurance; authorizing  
129 an insurer to cancel policies after 45 days' notice if  
130 the Office of Insurance Regulation determines that the  
131 cancellation of policies is necessary to protect the  
132 interests of the public or policyholders; authorizing  
133 the Office of Insurance Regulation to place an insurer  
134 under administrative supervision or appoint a receiver  
135 upon the consent of the insurer under certain  
136 circumstances; providing criteria and notice  
137 requirements relating to the nonrenewal of policy  
138 covering both a home and motor vehicle; creating s.  
139 627.43141, F.S.; providing definitions; requiring the  
140 delivery of a "Notice of Change in Policy Terms" under  
141 certain circumstances; specifying requirements for  
142 such notice; specifying actions constituting proof of  
143 notice; authorizing policy renewals to contain a  
144 change in policy terms; providing that receipt of  
145 payment by an insurer is deemed acceptance of new

2011408er

146 policy terms by an insured; providing that the  
147 original policy remains in effect until the occurrence  
148 of specified events if an insurer fails to provide  
149 notice; providing intent; amending s. 627.7011, F.S.;  
150 requiring the insurer to pay the actual cash value of  
151 an insured loss for a dwelling, less any applicable  
152 deductible; requiring the insurer to offer coverage  
153 under which the insurer is obligated to pay  
154 replacement costs; authorizing the insurer to offer  
155 coverage that limits the initial payment for personal  
156 property to the actual cash value of the property to  
157 be replaced and to require the insured to provide  
158 receipts for purchases; requiring the insurer to  
159 provide notice of this process before the policy is  
160 bound; requiring certain premium credits or discounts  
161 for such coverage; prohibiting an insurer from  
162 requiring the insured to advance payment; amending s.  
163 627.70131, F.S.; specifying application of certain  
164 time periods to initial or supplemental property  
165 insurance claim notices and payments; providing  
166 legislative findings with respect to 2005 statutory  
167 changes relating to sinkhole insurance coverage and  
168 statutory changes in this act; amending s. 627.706,  
169 F.S.; authorizing an insurer to limit coverage for  
170 catastrophic ground cover collapse to the principal  
171 building; authorizing an insurer to require an  
172 inspection before issuance of sinkhole loss coverage;  
173 revising definitions; defining the term "structural  
174 damage"; placing a 2-year statute of repose on claims

2011408er

175 for sinkhole coverage; amending s. 627.7061, F.S.;

176 conforming provisions to changes made by the act;

177 repealing s. 627.7065, F.S., relating to the

178 establishment of a sinkhole database; amending s.

179 627.707, F.S.; revising provisions relating to the

180 investigation of sinkholes by insurers; providing a

181 time limitation for demanding sinkhole testing by a

182 policyholder and entering into a contract for repairs;

183 requiring the insurer to provide repairs in accordance

184 with the insurer's engineer's recommendations or

185 tender the policy limits to the policyholder;

186 requiring all repairs to be completed within a certain

187 time; providing exceptions; providing criminal

188 penalties for a person performing repairs who offers a

189 rebate; amending s. 627.7073, F.S.; revising

190 provisions relating to inspection reports; revising

191 the reports that an insurer must file with the clerk

192 of the court; requiring the policyholder to file

193 certain reports as a precondition to accepting

194 payment; requiring the professional engineer

195 responsible for monitoring sinkhole repairs to issue a

196 report and certification to the property owner and

197 file such report with the court; providing that the

198 act does not create liability for an insurer based on

199 a representation or certification by the engineer;

200 amending s. 627.7074, F.S.; revising provisions

201 relating to neutral evaluation; requiring evaluation

202 in order to make certain determinations; requiring

203 that the neutral evaluator be allowed access to

2011408er

204 structures being evaluated; providing grounds for  
205 disqualifying an evaluator; allowing the Department of  
206 Financial Services to appoint an evaluator if the  
207 parties cannot come to agreement; revising the  
208 timeframes for scheduling a neutral evaluation  
209 conference; authorizing an evaluator to enlist another  
210 evaluator or other professionals; providing a time  
211 certain for issuing a report; requiring admission of  
212 certain information relating to the neutral evaluation  
213 into evidence; revising provisions relating to  
214 compliance with the evaluator's recommendations;  
215 providing that the evaluator is an agent of the  
216 department for the purposes of immunity from suit;  
217 requiring the department to adopt rules; amending s.  
218 627.711, F.S.; revising the requirement that the  
219 insurer pay for verification of a uniform mitigation  
220 verification form that the insurer requires; amending  
221 s. 627.712, F.S.; conforming provisions to changes  
222 made by the act; amending s. 631.54, F.S.; revising  
223 the definition of the term "covered claim" for  
224 purposes of the Florida Insurance Guaranty Association  
225 Act; providing for applicability; providing  
226 severability; providing effective dates.

227

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

229

230 Section 1. Subsection (2) of section 95.11, Florida  
231 Statutes, is amended to read:

232 95.11 Limitations other than for the recovery of real



2011408er

233 property.—Actions other than for recovery of real property shall  
234 be commenced as follows:

235 (2) WITHIN FIVE YEARS.—

236 (a) An action on a judgment or decree of any court, not of  
237 record, of this state or any court of the United States, any  
238 other state or territory in the United States, or a foreign  
239 country.

240 (b) A legal or equitable action on a contract, obligation,  
241 or liability founded on a written instrument, except for an  
242 action to enforce a claim against a payment bond, which shall be  
243 governed by the applicable provisions of ss. 255.05(10) and  
244 713.23(1)(e).

245 (c) An action to foreclose a mortgage.

246 (d) An action alleging a willful violation of s. 448.110.

247 (e) Notwithstanding paragraph (b), an action for breach of  
248 a property insurance contract, with the period running from the  
249 date of loss.

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

253 215.555 Florida Hurricane Catastrophe Fund.—

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

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

2011408er

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

264 2. Losses under liability coverages;

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

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

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

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

277 7. Amounts in excess of the coverage limits under the  
278 covered policy; or

279 8. Allocated or unallocated loss adjustment expenses.

280 Section 3. The amendment to s. 215.555, Florida Statutes,  
281 made by this act applies first to the Florida Hurricane  
282 Catastrophe Fund reimbursement contract that takes effect June  
283 1, 2011.

284 Section 4. Subsection (12) is added to section 215.5595,  
285 Florida Statutes, to read:

286 215.5595 Insurance Capital Build-Up Incentive Program.—

287 (12) The insurer may request that the board renegotiate the  
288 terms of any surplus note issued under this section before  
289 January 1, 2011. The request must be submitted to the board by  
290 January 1, 2012. If the insurer agrees to accelerate the payment

2011408er

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

302 Section 5. Section 624.407, Florida Statutes, is amended to  
303 read:

304 624.407 Surplus ~~Capital funds~~ required; new insurers.—

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

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

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

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

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

2011408er

320 or

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

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

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

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

334 (3)(2) The requirements of this section shall be based upon  
335 all the kinds of insurance actually transacted or to be  
336 transacted by the insurer in any and all areas in which it  
337 operates, whether or not only a portion of such kinds of  
338 insurance are ~~to be~~ transacted in this state.

339 (4)(3) As to surplus as to policyholders required for  
340 qualification to transact one or more kinds of insurance,  
341 domestic mutual insurers are governed by chapter 628, and  
342 domestic reciprocal insurers are governed by chapter 629.

343 (5)(4) For the purposes of this section, liabilities do  
344 ~~shall~~ not include liabilities required under s. 625.041(4). For  
345 purposes of computing minimum surplus as to policyholders  
346 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities  
347 required under s. 625.041(4).

348 ~~(5) The provisions of this section, as amended by this act,~~

2011408er

349 shall apply only to insurers applying for a certificate of  
350 authority on or after the effective date of this act.

351 Section 6. Section 624.408, Florida Statutes, is amended to  
352 read:

353 624.408 Surplus ~~as to policyholders~~ required; current new  
354 ~~and existing~~ insurers.-

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

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

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

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

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

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

373 (f)6. For residential any property insurers not and  
374 ~~casualty insurer~~ holding a certificate of authority before July  
375 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

376 (g) For residential property insurers holding a certificate  
377 of authority before July 1, 2011, and until June 30, 2016, \$5

2011408er

378 million; on or after July 1, 2016, and until June 30, 2021, \$10  
379 million; on or after July 1, 2021, \$15 million.

380  
381 The office may reduce the surplus requirement in paragraphs (f)  
382 and (g) if the insurer is not writing new business, has premiums  
383 in force of less than \$1 million per year in residential  
384 property insurance, or is a mutual insurance company. ~~following~~  
385 amounts apply instead of the \$4 million required by subparagraph  
386 (a)5.:

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

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

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

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

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

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

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

404 Section 7. Effective June 1, 2011, section 626.854, Florida  
405 Statutes, is amended to read:

406 626.854 "Public adjuster" defined; prohibitions.—The

2011408er

407 Legislature finds that it is necessary for the protection of the  
408 public to regulate public insurance adjusters and to prevent the  
409 unauthorized practice of law.

410 (1) A "public adjuster" is any person, except a duly  
411 licensed attorney at law as hereinafter in s. 626.860 provided,  
412 who, for money, commission, or any other thing of value,  
413 prepares, completes, or files an insurance claim form for an  
414 insured or third-party claimant or who, for money, commission,  
415 or any other thing of value, acts or aids in any manner on  
416 behalf of an insured or third-party claimant in negotiating for  
417 or effecting the settlement of a claim or claims for loss or  
418 damage covered by an insurance contract or who advertises for  
419 employment as an adjuster of such claims, and also includes any  
420 person who, for money, commission, or any other thing of value,  
421 solicits, investigates, or adjusts such claims on behalf of any  
422 such public adjuster.

423 (2) This definition does not apply to:

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

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

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

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

2011408er

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

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

448 (7) An insured or claimant may cancel a public adjuster's  
449 contract to adjust a claim without penalty or obligation within  
450 3 business days after the date on which the contract is executed  
451 or within 3 business days after the date on which the insured or  
452 claimant has notified the insurer of the claim, by phone or in  
453 writing, whichever is later. The public adjuster's contract  
454 shall disclose to the insured or claimant his or her right to  
455 cancel the contract and advise the insured or claimant that  
456 notice of cancellation must be submitted in writing and sent by  
457 certified mail, return receipt requested, or other form of  
458 mailing which provides proof thereof, to the public adjuster at  
459 the address specified in the contract; provided, during any  
460 state of emergency as declared by the Governor and for a period  
461 of 1 year after the date of loss, the insured or claimant shall  
462 have 5 business days after the date on which the contract is  
463 executed to cancel a public adjuster's contract.

464 (8) It is an unfair and deceptive insurance trade practice



2011408er

465 pursuant to s. 626.9541 for a public adjuster or any other  
466 person to circulate or disseminate any advertisement,  
467 announcement, or statement containing any assertion,  
468 representation, or statement with respect to the business of  
469 insurance which is untrue, deceptive, or misleading.

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

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

481 (11) (a) If a public adjuster enters into a contract with an  
482 insured or claimant to reopen a claim or ~~to~~ file a supplemental  
483 claim that seeks additional payments for a claim that has been  
484 previously paid in part or in full or settled by the insurer,  
485 the public adjuster may not charge, agree to, or accept any  
486 compensation, payment, commission, fee, or other thing of value  
487 based on a previous settlement or previous claim payments by the  
488 insurer for the same cause of loss. The charge, compensation,  
489 payment, commission, fee, or other thing of value may be based  
490 only on the claim payments or settlement obtained through the  
491 work of the public adjuster after entering into the contract  
492 with the insured or claimant. Compensation for the reopened or  
493 supplemental claim may not exceed 20 percent of the reopened or

2011408er

494 supplemental claim payment. The contracts described in this  
495 paragraph are not subject to the limitations in paragraph (b).

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

499 1. Ten percent of the amount of insurance claim payments  
500 made by the insurer for claims based on events that are the  
501 subject of a declaration of a state of emergency by the  
502 Governor. This provision applies to claims made during the  
503 period of 1 year after the declaration of emergency. After that  
504 1-year period, 20 percent of the amount of insurance claim  
505 payments made by the insurer.

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

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

517 (13) A public adjuster, public adjuster apprentice, or any  
518 person acting on behalf of a public adjuster or apprentice may  
519 not accept referrals of business from any person with whom the  
520 public adjuster conducts business if there is any form or manner  
521 of agreement to compensate the person, whether directly or  
522 indirectly, for referring business to the public adjuster. A

2011408er

523 public adjuster may not compensate any person, except for  
524 another public adjuster, whether directly or indirectly, for the  
525 principal purpose of referring business to the public adjuster.  
526

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

530 Section 8. Effective January 1, 2012, section 626.854,  
531 Florida Statutes, as amended by this act, is amended to read:

532 626.854 "Public adjuster" defined; prohibitions.—The  
533 Legislature finds that it is necessary for the protection of the  
534 public to regulate public insurance adjusters and to prevent the  
535 unauthorized practice of law.

536 (1) A "public adjuster" is any person, except a duly  
537 licensed attorney at law as exempted under ~~hereinafter in~~ s.  
538 626.860 ~~provided~~, who, for money, commission, or any other thing  
539 of value, prepares, completes, or files an insurance claim form  
540 for an insured or third-party claimant or who, for money,  
541 commission, or any other thing of value, acts ~~or aids in any~~  
542 ~~manner~~ on behalf of, or aids an insured or third-party claimant  
543 in negotiating for or effecting the settlement of a claim or  
544 claims for loss or damage covered by an insurance contract or  
545 who advertises for employment as an adjuster of such claims. The  
546 ~~term, and~~ also includes any person who, for money, commission,  
547 or any other thing of value, solicits, investigates, or adjusts  
548 such claims on behalf of a ~~any such~~ public adjuster.

549 (2) This definition does not apply to:

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

2011408er

552 patient.

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

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

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

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

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

574 (7) An insured or claimant may cancel a public adjuster's  
575 contract to adjust a claim without penalty or obligation within  
576 3 business days after the date on which the contract is executed  
577 or within 3 business days after the date on which the insured or  
578 claimant has notified the insurer of the claim, by phone or in  
579 writing, whichever is later. The public adjuster's contract must  
580 ~~shall~~ disclose to the insured or claimant his or her right to

2011408er

581 cancel the contract and advise the insured or claimant that  
582 notice of cancellation must be submitted in writing and sent by  
583 certified mail, return receipt requested, or other form of  
584 mailing that ~~which~~ provides proof thereof, to the public  
585 adjuster at the address specified in the contract; provided,  
586 during any state of emergency as declared by the Governor and  
587 for ~~a period of~~ 1 year after the date of loss, the insured or  
588 claimant has ~~shall have~~ 5 business days after the date on which  
589 the contract is executed to cancel a public adjuster's contract.

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

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

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

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

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

608 4. A statement or representation, or use of a logo or  
609 shield, that implies or could mistakenly be construed to imply

2011408er

610 that the solicitation was issued or distributed by a  
611 governmental agency or is sanctioned or endorsed by a  
612 governmental agency.

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

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

624  
625 (9) A public adjuster, a public adjuster apprentice, or any  
626 person or entity acting on behalf of a public adjuster or public  
627 adjuster apprentice may not give or offer to give a monetary  
628 loan or advance to a client or prospective client.

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

636 (11) (a) If a public adjuster enters into a contract with an  
637 insured or claimant to reopen a claim or file a supplemental  
638 claim that seeks additional payments for a claim that has been

2011408er

639 previously paid in part or in full or settled by the insurer,  
640 the public adjuster may not charge, agree to, or accept any  
641 compensation, payment, commission, fee, or other thing of value  
642 based on a previous settlement or previous claim payments by the  
643 insurer for the same cause of loss. The charge, compensation,  
644 payment, commission, fee, or other thing of value must be based  
645 only on the claim payments or settlement obtained through the  
646 work of the public adjuster after entering into the contract  
647 with the insured or claimant. Compensation for the reopened or  
648 supplemental claim may not exceed 20 percent of the reopened or  
649 supplemental claim payment. The contracts described in this  
650 paragraph are not subject to the limitations in paragraph (b).

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

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

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

664 (12) Each public adjuster must ~~shall~~ provide to the  
665 claimant or insured a written estimate of the loss to assist in  
666 the submission of a proof of loss or any other claim for payment  
667 of insurance proceeds. The public adjuster shall retain such

2011408er

668 written estimate for at least 5 years and shall make the ~~such~~  
669 estimate available to the claimant or insured, the insurer, and  
670 the department upon request.

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

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

690 (15) A public adjuster must ensure prompt notice of  
691 property loss claims submitted to an insurer by or through a  
692 public adjuster or on which a public adjuster represents the  
693 insured at the time the claim or notice of loss is submitted to  
694 the insurer. The public adjuster must ensure that notice is  
695 given to the insurer, the public adjuster's contract is provided  
696 to the insurer, the property is available for inspection of the



2011408er

697 loss or damage by the insurer, and the insurer is given an  
698 opportunity to interview the insured directly about the loss and  
699 claim. The insurer must be allowed to obtain necessary  
700 information to investigate and respond to the claim.

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

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

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

2011408er

726       (16) A licensed contractor under part I of chapter 489, or  
727 a subcontractor, may not adjust a claim on behalf of an insured  
728 unless licensed and compliant as a public adjuster under this  
729 chapter. However, the contractor may discuss or explain a bid  
730 for construction or repair of covered property with the  
731 residential property owner who has suffered loss or damage  
732 covered by a property insurance policy, or the insurer of such  
733 property, if the contractor is doing so for the usual and  
734 customary fees applicable to the work to be performed as stated  
735 in the contract between the contractor and the insured.

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

739       Section 9. Effective January 1, 2012, section 626.8796,  
740 Florida Statutes, is amended to read:

741       626.8796 Public adjuster contracts; fraud statement.-

742       (1) All contracts for public adjuster services must be in  
743 writing and ~~must~~ prominently display the following statement on  
744 the contract: "Pursuant to s. 817.234, Florida Statutes, any  
745 person who, with the intent to injure, defraud, or deceive an  
746 ~~any~~ insurer or insured, prepares, presents, or causes to be  
747 presented a proof of loss or estimate of cost or repair of  
748 damaged property in support of a claim under an insurance policy  
749 knowing that the proof of loss or estimate of claim or repairs  
750 contains ~~any~~ false, incomplete, or misleading information  
751 concerning any fact or thing material to the claim commits a  
752 felony of the third degree, punishable as provided in s.  
753 775.082, s. 775.083, or s. 775.084, Florida Statutes."

754       (2) A public adjuster contract relating to a property and

2011408er

755 casualty claim must contain the full name, permanent business  
756 address, and license number of the public adjuster; the full  
757 name of the public adjusting firm; and the insured's full name  
758 and street address, together with a brief description of the  
759 loss. The contract must state the percentage of compensation for  
760 the public adjuster's services; the type of claim, including an  
761 emergency claim, nonemergency claim, or supplemental claim; the  
762 signatures of the public adjuster and all named insureds; and  
763 the signature date. If all of the named insureds signatures are  
764 not available, the public adjuster must submit an affidavit  
765 signed by the available named insureds attesting that they have  
766 authority to enter into the contract and settle all claim issues  
767 on behalf of the named insureds. An unaltered copy of the  
768 executed contract must be remitted to the insurer within 30 days  
769 after execution.

770 Section 10. Effective June 1, 2011, section 626.70132,  
771 Florida Statutes, is created to read:

772 626.70132 Notice of windstorm or hurricane claim.—A claim,  
773 supplemental claim, or reopened claim under an insurance policy  
774 that provides property insurance, as defined in s. 624.604, for  
775 loss or damage caused by the peril of windstorm or hurricane is  
776 barred unless notice of the claim, supplemental claim, or  
777 reopened claim was given to the insurer in accordance with the  
778 terms of the policy within 3 years after the hurricane first  
779 made landfall or the windstorm caused the covered damage. For  
780 purposes of this section, the term "supplemental claim" or  
781 "reopened claim" means any additional claim for recovery from  
782 the insurer for losses from the same hurricane or windstorm  
783 which the insurer has previously adjusted pursuant to the

2011408er

784 initial claim. This section does not affect any applicable  
785 limitation on civil actions provided in s. 95.11 for claims,  
786 supplemental claims, or reopened claims timely filed under this  
787 section.

788 Section 11. Subsection (4) of section 627.0613, Florida  
789 Statutes, is repealed.

790 Section 12. Section 627.062, Florida Statutes, is amended  
791 to read:

792 627.062 Rate standards.—

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

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

797 (a) Insurers or rating organizations shall establish and  
798 use rates, rating schedules, or rating manuals that ~~to~~ allow the  
799 insurer a reasonable rate of return on the ~~such~~ classes of  
800 insurance written in this state. A copy of rates, rating  
801 schedules, rating manuals, premium credits or discount  
802 schedules, and surcharge schedules, and changes thereto, must  
803 ~~shall~~ be filed with the office under one of the following  
804 procedures ~~except as provided in subparagraph 3.:~~

805 1. If the filing is made at least 90 days before the  
806 proposed effective date and ~~the filing~~ is not implemented during  
807 the office's review of the filing and any proceeding and  
808 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file  
809 and use" filing. In such case, the office shall finalize its  
810 review by issuance of a notice of intent to approve or a notice  
811 of intent to disapprove within 90 days after receipt of the  
812 filing. The notice of intent to approve and the notice of intent

2011408er

813 to disapprove constitute agency action for purposes of the  
814 Administrative Procedure Act. Requests for supporting  
815 information, requests for mathematical or mechanical  
816 corrections, or notification to the insurer by the office of its  
817 preliminary findings does ~~shall~~ not toll the 90-day period  
818 during any such proceedings and subsequent judicial review. The  
819 rate shall be deemed approved if the office does not issue a  
820 notice of intent to approve or a notice of intent to disapprove  
821 within 90 days after receipt of the filing.

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

830 3. For all property insurance filings made or submitted  
831 after January 25, 2007, but before May 1, 2012 ~~December 31,~~  
832 ~~2010~~, an insurer seeking a rate that is greater than the rate  
833 most recently approved by the office shall make a "file and use"  
834 filing. For purposes of this subparagraph, motor vehicle  
835 collision and comprehensive coverages are not considered ~~to be~~  
836 property coverages.

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

2011408er

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

844 2. Past and prospective expenses.

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

847 4. Investment income reasonably expected by the insurer,  
848 consistent with the insurer's investment practices, from  
849 investable premiums anticipated in the filing, plus any other  
850 expected income from currently invested assets representing the  
851 amount expected on unearned premium reserves and loss reserves.  
852 The commission may adopt rules using reasonable techniques of  
853 actuarial science and economics to specify the manner in which  
854 insurers ~~shall~~ calculate investment income attributable to ~~such~~  
855 classes of insurance written in this state and the manner in  
856 which ~~such~~ investment income is ~~shall be~~ used to calculate  
857 insurance rates. Such manner must ~~shall~~ contemplate allowances  
858 for an underwriting profit factor and full consideration of  
859 investment income which produce a reasonable rate of return;  
860 however, investment income from invested surplus may not be  
861 considered.

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

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

867 7. The adequacy of loss reserves.

868 8. The cost of reinsurance. The office may ~~shall~~ not  
869 disapprove a rate as excessive solely due to the insurer having  
870 obtained catastrophic reinsurance to cover the insurer's

2011408er

871 estimated 250-year probable maximum loss or any lower level of  
872 loss.

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

875 10. Conflagration and catastrophe hazards, if applicable.

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

880 12. A reasonable margin for underwriting profit and  
881 contingencies.

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

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

885 (c) In the case of fire insurance rates, consideration must  
886 ~~shall~~ be given to the availability of water supplies and the  
887 experience of the fire insurance business during a period of not  
888 less than the most recent 5-year period for which such  
889 experience is available.

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

2011408er

900 must ~~shall~~ be placed in the catastrophe reserve.

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

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

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

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

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

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

928 6. A rate shall be deemed unfairly discriminatory as to a



2011408er

929 risk or group of risks if the application of premium discounts,  
930 credits, or surcharges among such risks does not bear a  
931 reasonable relationship to the expected loss and expense  
932 experience among the various risks.

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

938 (g) The office may at any time review a rate, rating  
939 schedule, rating manual, or rate change; the pertinent records  
940 of the insurer; and market conditions. If the office finds on a  
941 preliminary basis that a rate may be excessive, inadequate, or  
942 unfairly discriminatory, the office shall initiate proceedings  
943 to disapprove the rate and shall so notify the insurer. However,  
944 the office may not disapprove as excessive any rate for which it  
945 has given final approval or which has been deemed approved for a  
946 ~~period of~~ 1 year after the effective date of the filing unless  
947 the office finds that a material misrepresentation or material  
948 error was made by the insurer or was contained in the filing.  
949 Upon being ~~so~~ notified, the insurer or rating organization  
950 shall, within 60 days, file with the office all information that  
951 ~~which,~~ in the belief of the insurer or organization, proves the  
952 reasonableness, adequacy, and fairness of the rate or rate  
953 change. The office shall issue a notice of intent to approve or  
954 a notice of intent to disapprove pursuant to ~~the procedures of~~  
955 paragraph (a) within 90 days after receipt of the insurer's  
956 initial response. In such instances and in any administrative  
957 proceeding relating to the legality of the rate, the insurer or

2011408er

958 rating organization shall carry the burden of proof by a  
959 preponderance of the evidence to show that the rate is not  
960 excessive, inadequate, or unfairly discriminatory. After the  
961 office notifies an insurer that a rate may be excessive,  
962 inadequate, or unfairly discriminatory, unless the office  
963 withdraws the notification, the insurer may ~~shall~~ not alter the  
964 rate except to conform to ~~with~~ the office's notice until the  
965 earlier of 120 days after the date the notification was provided  
966 or 180 days after the date of implementing ~~the implementation of~~  
967 the rate. The office ~~may~~, subject to chapter 120, may disapprove  
968 without the 60-day notification any rate increase filed by an  
969 insurer within the prohibited time period or during the time  
970 that the legality of the increased rate is being contested.

971 (h) If ~~In the event~~ the office finds that a rate or rate  
972 change is excessive, inadequate, or unfairly discriminatory, the  
973 office shall issue an order of disapproval specifying that a new  
974 rate or rate schedule, which responds to the findings of the  
975 office, be filed by the insurer. The office shall further order,  
976 for any "use and file" filing made in accordance with  
977 subparagraph (a)2., that premiums charged each policyholder  
978 constituting the portion of the rate above that which was  
979 actuarially justified be returned to the ~~such~~ policyholder in  
980 the form of a credit or refund. If the office finds that an  
981 insurer's rate or rate change is inadequate, the new rate or  
982 rate schedule filed with the office in response to such a  
983 finding is ~~shall be~~ applicable only to new or renewal business  
984 of the insurer written on or after the effective date of the  
985 responsive filing.

986 (i) Except as otherwise specifically provided in this

2011408er

987 chapter, for property and casualty insurance the office may  
988 ~~shall~~ not directly or indirectly:

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

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

999 (j) With respect to residential property insurance rate  
1000 filings, the rate filing must account for mitigation measures  
1001 undertaken by policyholders to reduce hurricane losses.

1002 (k)1. A residential property ~~An~~ insurer may make a separate  
1003 filing limited solely to an adjustment of its rates for  
1004 reinsurance, the cost of financing products used as a  
1005 replacement for reinsurance, ~~or~~ financing costs incurred in the  
1006 purchase of reinsurance, ~~or financing products to replace or~~  
1007 ~~finance the payment of the amount covered by the Temporary~~  
1008 ~~Increase in Coverage Limits (TICL) portion of the Florida~~  
1009 ~~Hurricane Catastrophe Fund including replacement reinsurance for~~  
1010 ~~the TICL reductions made pursuant to s. 215.555(17)(e); the~~  
1011 ~~actual cost paid due to the application of the TICL premium~~  
1012 ~~factor pursuant to s. 215.555(17)(f); and the actual cost paid~~  
1013 due to the application of the cash build-up factor pursuant to  
1014 s. 215.555(5)(b) if the insurer:

1015 a. Elects to purchase financing products such as a

2011408er

1016 liquidity instrument or line of credit, in which case the cost  
1017 included in ~~the~~ filing for the liquidity instrument or line of  
1018 credit may not result in a premium increase exceeding 3 percent  
1019 for any individual policyholder. All costs contained in the  
1020 filing may not result in an overall premium increase of more  
1021 than 15 ~~10~~ percent for any individual policyholder.

1022 b. Includes in the filing a copy of all of its reinsurance,  
1023 liquidity instrument, or line of credit contracts; proof of the  
1024 billing or payment for the contracts; and the calculation upon  
1025 which the proposed rate change is based demonstrating  
1026 ~~demonstrates~~ that the costs meet the criteria of this section  
1027 ~~and are not loaded for expenses or profit for the insurer making~~  
1028 ~~the filing.~~

1029 e. ~~Includes no other changes to its rates in the filing.~~

1030 d. ~~Has not implemented a rate increase within the 6 months~~  
1031 ~~immediately preceding the filing.~~

1032 e. ~~Does not file for a rate increase under any other~~  
1033 ~~paragraph within 6 months after making a filing under this~~  
1034 ~~paragraph.~~

1035 2.f. ~~An insurer~~ that purchases reinsurance or financing  
1036 products from an affiliated company may make a separate filing  
1037 ~~in compliance with this paragraph does so~~ only if the costs for  
1038 such reinsurance or financing products are charged at or below  
1039 charges made for comparable coverage by nonaffiliated reinsurers  
1040 or financial entities making such coverage or financing products  
1041 available in this state.

1042 3.2. ~~An insurer may only~~ make only one filing per ~~in any~~  
1043 12-month period under this paragraph.

1044 4.3. An insurer that elects to implement a rate change

2011408er

1045 under this paragraph must file its rate filing with the office  
1046 at least 45 days before the effective date of the rate change.  
1047 After an insurer submits a complete filing that meets all of the  
1048 requirements of this paragraph, the office has 45 days after the  
1049 date of the filing to review the rate filing and determine if  
1050 the rate is excessive, inadequate, or unfairly discriminatory.

1051  
1052 The provisions of this subsection do ~~shall~~ not apply to workers'  
1053 compensation, and employer's liability insurance, and ~~to~~ motor  
1054 vehicle insurance.

1055 (3) (a) For individual risks that are not rated in  
1056 accordance with the insurer's rates, rating schedules, rating  
1057 manuals, and underwriting rules filed with the office and that  
1058 ~~which~~ have been submitted to the insurer for individual rating,  
1059 the insurer must maintain documentation on each risk subject to  
1060 individual risk rating. The documentation must identify the  
1061 named insured and specify the characteristics and classification  
1062 of the risk supporting the reason for the risk being  
1063 individually risk rated, including any modifications to existing  
1064 approved forms to be used on the risk. The insurer must maintain  
1065 these records for ~~a period of~~ at least 5 years after the  
1066 effective date of the policy.

1067 (b) Individual risk rates and modifications to existing  
1068 approved forms are not subject to this part or part II, except  
1069 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
1070 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,  
1071 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
1072 627.4265, 627.427, and 627.428, but are subject to all other  
1073 applicable provisions of this code and rules adopted thereunder.

2011408er

1074 (c) This subsection does not apply to private passenger  
1075 motor vehicle insurance.

1076 (d)1. The following categories or kinds of insurance and  
1077 types of commercial lines risks are not subject to paragraph  
1078 (2) (a) or paragraph (2) (f):

1079 a. Excess or umbrella.

1080 b. Surety and fidelity.

1081 c. Boiler and machinery and leakage and fire extinguishing  
1082 equipment.

1083 d. Errors and omissions.

1084 e. Directors and officers, employment practices, and  
1085 management liability.

1086 f. Intellectual property and patent infringement liability.

1087 g. Advertising injury and Internet liability insurance.

1088 h. Property risks rated under a highly protected risks  
1089 rating plan.

1090 i. Any other commercial lines categories or kinds of  
1091 insurance or types of commercial lines risks that the office  
1092 determines should not be subject to paragraph (2) (a) or  
1093 paragraph (2) (f) because of the existence of a competitive  
1094 market for such insurance, similarity of such insurance to other  
1095 categories or kinds of insurance not subject to paragraph (2) (a)  
1096 or paragraph (2) (f), or to improve the general operational  
1097 efficiency of the office.

1098 2. Insurers or rating organizations shall establish and use  
1099 rates, rating schedules, or rating manuals to allow the insurer  
1100 a reasonable rate of return on insurance and risks described in  
1101 subparagraph 1. which are written in this state.

1102 3. An insurer must notify the office of any changes to

2011408er

1103 rates for insurance and risks described in subparagraph 1.  
1104 within ~~no later than~~ 30 days after the effective date of the  
1105 change. The notice must include the name of the insurer, the  
1106 type or kind of insurance subject to rate change, total premium  
1107 written during the immediately preceding year by the insurer for  
1108 the type or kind of insurance subject to the rate change, and  
1109 the average statewide percentage change in rates. Underwriting  
1110 files, premiums, losses, and expense statistics with regard to  
1111 such insurance and risks ~~described in subparagraph 1.~~ written by  
1112 an insurer must ~~shall~~ be maintained by the insurer and subject  
1113 to examination by the office. Upon examination, the office  
1114 ~~shall~~, in accordance with generally accepted and reasonable  
1115 actuarial techniques, shall consider the rate factors in  
1116 paragraphs (2) (b), (c), and (d) and the standards in paragraph  
1117 (2) (e) to determine if the rate is excessive, inadequate, or  
1118 unfairly discriminatory.

1119 4. A rating organization must notify the office of any  
1120 changes to loss cost for insurance and risks described in  
1121 subparagraph 1. within ~~no later than~~ 30 days after the effective  
1122 date of the change. The notice must include the name of the  
1123 rating organization, the type or kind of insurance subject to a  
1124 loss cost change, loss costs during the immediately preceding  
1125 year for the type or kind of insurance subject to the loss cost  
1126 change, and the average statewide percentage change in loss  
1127 cost. Loss and exposure statistics with regard to risks  
1128 applicable to loss costs for a rating organization not subject  
1129 to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained  
1130 by the rating organization and are subject to examination by the  
1131 office. Upon examination, the office ~~shall~~, in accordance with

2011408er

1132 generally accepted and reasonable actuarial techniques, shall  
1133 consider the rate factors in paragraphs (2)(b)-(d) and the  
1134 standards in paragraph (2)(e) to determine if the rate is  
1135 excessive, inadequate, or unfairly discriminatory.

1136 5. In reviewing a rate, the office may require the insurer  
1137 to provide, at the insurer's expense, all information necessary  
1138 to evaluate the condition of the company and the reasonableness  
1139 of the rate according to the applicable criteria described in  
1140 this section.

1141 (4) The establishment of any rate, rating classification,  
1142 rating plan or schedule, or variation thereof in violation of  
1143 part IX of chapter 626 is also in violation of this section. ~~In  
1144 order to enhance the ability of consumers to compare premiums  
1145 and to increase the accuracy and usefulness of rate comparison  
1146 information provided by the office to the public, the office  
1147 shall develop a proposed standard rating territory plan to be  
1148 used by all authorized property and casualty insurers for  
1149 residential property insurance. In adopting the proposed plan,  
1150 the office may consider geographical characteristics relevant to  
1151 risk, county lines, major roadways, existing rating territories  
1152 used by a significant segment of the market, and other relevant  
1153 factors. Such plan shall be submitted to the President of the  
1154 Senate and the Speaker of the House of Representatives by  
1155 January 15, 2006. The plan may not be implemented unless  
1156 authorized by further act of the Legislature.~~

1157 (5) With respect to a rate filing involving coverage of the  
1158 type for which the insurer is required to pay a reimbursement  
1159 premium to the Florida Hurricane Catastrophe Fund, the insurer  
1160 may fully recoup in its property insurance premiums any



2011408er

1161 reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~  
1162 fund, together with reasonable costs of other reinsurance;  
1163 however, ~~but~~ except as otherwise provided in this section, the  
1164 insurer may not recoup reinsurance costs that duplicate coverage  
1165 provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer  
1166 may not recoup more than 1 year of reimbursement premium at a  
1167 time. Any under-recoupment from the prior year may be added to  
1168 the following year's reimbursement premium, and any over-  
1169 recoupment must ~~shall~~ be subtracted from the following year's  
1170 reimbursement premium.

1171 (6) (a) If an insurer requests an administrative hearing  
1172 pursuant to s. 120.57 related to a rate filing under this  
1173 section, the director of the Division of Administrative Hearings  
1174 shall expedite the hearing and assign an administrative law  
1175 judge who shall commence the hearing within 30 days after the  
1176 receipt of the formal request and ~~shall~~ enter a recommended  
1177 order within 30 days after the hearing or within 30 days after  
1178 receipt of the hearing transcript by the administrative law  
1179 judge, whichever is later. Each party shall have ~~be allowed~~ 10  
1180 days in which to submit written exceptions to the recommended  
1181 order. The office shall enter a final order within 30 days after  
1182 the entry of the recommended order. The provisions of this  
1183 paragraph may be waived upon stipulation of all parties.

1184 (b) Upon entry of a final order, the insurer may request a  
1185 expedited appellate review pursuant to the Florida Rules of  
1186 Appellate Procedure. It is the intent of the Legislature that  
1187 the First District Court of Appeal grant an insurer's request  
1188 for an expedited appellate review.

1189 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~

2011408er

1190 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~  
1191 control to the extent of any conflict with other provisions of  
1192 this section.

1193 (a) ~~(b)~~ Any portion of a judgment entered or settlement paid  
1194 as a result of a statutory or common-law bad faith action and  
1195 any portion of a judgment entered which awards punitive damages  
1196 against an insurer may not be included in the insurer's rate  
1197 base, and ~~shall not be~~ used to justify a rate or rate change.  
1198 Any common-law bad faith action identified as such, any portion  
1199 of a settlement entered as a result of a statutory or common-law  
1200 action, or any portion of a settlement wherein an insurer agrees  
1201 to pay specific punitive damages may not be used to justify a  
1202 rate or rate change. The portion of the taxable costs and  
1203 attorney's fees which is identified as being related to the bad  
1204 faith and punitive damages ~~in these judgments and settlements~~  
1205 may not be included in the insurer's rate base and used ~~may not~~  
1206 ~~be utilized~~ to justify a rate or rate change.

1207 (b) ~~(c)~~ Upon reviewing a rate filing and determining whether  
1208 the rate is excessive, inadequate, or unfairly discriminatory,  
1209 the office shall consider, in accordance with generally accepted  
1210 and reasonable actuarial techniques, past and present  
1211 prospective loss experience, ~~either~~ using loss experience solely  
1212 for this state or giving greater credibility to this state's  
1213 loss data after applying actuarially sound methods of assigning  
1214 credibility to such data.

1215 (c) ~~(d)~~ Rates shall be deemed excessive if, among other  
1216 standards established by this section, the rate structure  
1217 provides for replenishment of reserves or surpluses from  
1218 premiums when the replenishment is attributable to investment

2011408er

1219 losses.

1220 (d)~~(e)~~ The insurer must apply a discount or surcharge based  
1221 on the health care provider's loss experience or ~~shall~~ establish  
1222 an alternative method giving due consideration to the provider's  
1223 loss experience. The insurer must include in the filing a copy  
1224 of the surcharge or discount schedule or a description of the  
1225 alternative method used, and ~~must~~ provide a copy ~~of such~~  
1226 ~~schedule or description~~, as approved by the office, to  
1227 policyholders at the time of renewal and to prospective  
1228 policyholders at the time of application for coverage.

1229 (e)~~(f)~~ Each medical malpractice insurer must make a rate  
1230 filing under this section, sworn to by at least two executive  
1231 officers of the insurer, at least once each calendar year.

1232 ~~(8)(a)1. No later than 60 days after the effective date of~~  
1233 ~~medical malpractice legislation enacted during the 2003 Special~~  
1234 ~~Session D of the Florida Legislature, the office shall calculate~~  
1235 ~~a presumed factor that reflects the impact that the changes~~  
1236 ~~contained in such legislation will have on rates for medical~~  
1237 ~~malpractice insurance and shall issue a notice informing all~~  
1238 ~~insurers writing medical malpractice coverage of such presumed~~  
1239 ~~factor. In determining the presumed factor, the office shall use~~  
1240 ~~generally accepted actuarial techniques and standards provided~~  
1241 ~~in this section in determining the expected impact on losses,~~  
1242 ~~expenses, and investment income of the insurer. To the extent~~  
1243 ~~that the operation of a provision of medical malpractice~~  
1244 ~~legislation enacted during the 2003 Special Session D of the~~  
1245 ~~Florida Legislature is stayed pending a constitutional~~  
1246 ~~challenge, the impact of that provision shall not be included in~~  
1247 ~~the calculation of a presumed factor under this subparagraph.~~

2011408er

1248           ~~2. No later than 60 days after the office issues its notice~~  
1249 ~~of the presumed rate change factor under subparagraph 1., each~~  
1250 ~~insurer writing medical malpractice coverage in this state shall~~  
1251 ~~submit to the office a rate filing for medical malpractice~~  
1252 ~~insurance, which will take effect no later than January 1, 2004,~~  
1253 ~~and apply retroactively to policies issued or renewed on or~~  
1254 ~~after the effective date of medical malpractice legislation~~  
1255 ~~enacted during the 2003 Special Session D of the Florida~~  
1256 ~~Legislature. Except as authorized under paragraph (b), the~~  
1257 ~~filing shall reflect an overall rate reduction at least as great~~  
1258 ~~as the presumed factor determined under subparagraph 1. With~~  
1259 ~~respect to policies issued on or after the effective date of~~  
1260 ~~such legislation and prior to the effective date of the rate~~  
1261 ~~filing required by this subsection, the office shall order the~~  
1262 ~~insurer to make a refund of the amount that was charged in~~  
1263 ~~excess of the rate that is approved.~~

1264           ~~(b) Any insurer or rating organization that contends that~~  
1265 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~  
1266 ~~or unfairly discriminatory shall separately state in its filing~~  
1267 ~~the rate it contends is appropriate and shall state with~~  
1268 ~~specificity the factors or data that it contends should be~~  
1269 ~~considered in order to produce such appropriate rate. The~~  
1270 ~~insurer or rating organization shall be permitted to use all of~~  
1271 ~~the generally accepted actuarial techniques provided in this~~  
1272 ~~section in making any filing pursuant to this subsection. The~~  
1273 ~~office shall review each such exception and approve or~~  
1274 ~~disapprove it prior to use. It shall be the insurer's burden to~~  
1275 ~~actuarially justify any deviations from the rates required to be~~  
1276 ~~filed under paragraph (a). The insurer making a filing under~~

2011408er

1277 ~~this paragraph shall include in the filing the expected impact~~  
1278 ~~of medical malpractice legislation enacted during the 2003~~  
1279 ~~Special Session D of the Florida Legislature on losses,~~  
1280 ~~expenses, and rates.~~

1281 ~~(c) If any provision of medical malpractice legislation~~  
1282 ~~enacted during the 2003 Special Session D of the Florida~~  
1283 ~~Legislature is held invalid by a court of competent~~  
1284 ~~jurisdiction, the office shall permit an adjustment of all~~  
1285 ~~medical malpractice rates filed under this section to reflect~~  
1286 ~~the impact of such holding on such rates so as to ensure that~~  
1287 ~~the rates are not excessive, inadequate, or unfairly~~  
1288 ~~discriminatory.~~

1289 ~~(d) Rates approved on or before July 1, 2003, for medical~~  
1290 ~~malpractice insurance shall remain in effect until the effective~~  
1291 ~~date of a new rate filing approved under this subsection.~~

1292 ~~(e) The calculation and notice by the office of the~~  
1293 ~~presumed factor pursuant to paragraph (a) is not an order or~~  
1294 ~~rule that is subject to chapter 120. If the office enters into a~~  
1295 ~~contract with an independent consultant to assist the office in~~  
1296 ~~calculating the presumed factor, such contract shall not be~~  
1297 ~~subject to the competitive solicitation requirements of s.~~  
1298 ~~287.057.~~

1299 ~~(8)(9)~~ (a) The chief executive officer or chief financial  
1300 officer of a property insurer and the chief actuary of a  
1301 property insurer must certify under oath and subject to the  
1302 penalty of perjury, on a form approved by the commission, the  
1303 following information, which must accompany a rate filing:

1304 1. The signing officer and actuary have reviewed the rate  
1305 filing;

2011408er

1306           2. Based on the signing officer's and actuary's knowledge,  
1307 the rate filing does not contain any untrue statement of a  
1308 material fact or omit to state a material fact necessary ~~in~~  
1309 ~~order~~ to make the statements made, in light of the circumstances  
1310 under which such statements were made, not misleading;

1311           3. Based on the signing officer's and actuary's knowledge,  
1312 the information and other factors described in paragraph (2) (b),  
1313 including, but not limited to, investment income, fairly present  
1314 in all material respects the basis of the rate filing for the  
1315 periods presented in the filing; and

1316           4. Based on the signing officer's and actuary's knowledge,  
1317 the rate filing reflects all premium savings that are reasonably  
1318 expected to result from legislative enactments and are in  
1319 accordance with generally accepted and reasonable actuarial  
1320 techniques.

1321           (b) A signing officer or actuary who knowingly makes ~~making~~  
1322 a false certification under this subsection commits a violation  
1323 of s. 626.9541(1) (e) and is subject to the penalties under s.  
1324 626.9521.

1325           (c) Failure to provide such certification by the officer  
1326 and actuary shall result in the rate filing being disapproved  
1327 without prejudice to be refiled.

1328           (d) The certification made pursuant to paragraph (a) is not  
1329 rendered false if, after making the subject rate filing, the  
1330 insurer provides the office with additional or supplementary  
1331 information pursuant to a formal or informal request from the  
1332 office. However, the actuary who is primarily responsible for  
1333 preparing and submitting such information must certify the  
1334 information in accordance with the certification required under

2011408er

1335 paragraph (a) and the penalties in paragraph (b), except that  
1336 the chief executive officer, chief financial officer, or chief  
1337 actuary need not certify the additional or supplementary  
1338 information.

1339 (e)~~(d)~~ The commission may adopt rules and forms pursuant to  
1340 ~~ss. 120.536(1) and 120.54~~ to administer this subsection.

1341 (9)~~(10)~~ The burden is on the office to establish that rates  
1342 are excessive for personal lines residential coverage with a  
1343 dwelling replacement cost of \$1 million or more or for a single  
1344 condominium unit with a combined dwelling and contents  
1345 replacement cost of \$1 million or more. Upon request of the  
1346 office, the insurer shall provide ~~to the office~~ such loss and  
1347 expense information as the office reasonably needs to meet this  
1348 burden.

1349 (10)~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may  
1350 not be included in the insurer's rate base and may not be used  
1351 to justify a rate or rate change.

1352 Section 13. Paragraph (b) of subsection (3) of section  
1353 627.06281, Florida Statutes, is amended to read:

1354 627.06281 Public hurricane loss projection model; reporting  
1355 of data by insurers.—

1356 (3)

1357 (b) The fees charged for private sector access and use of  
1358 the model shall be the reasonable costs associated with the  
1359 operation and maintenance of the model by the office. Such fees  
1360 do not apply to access and use of the model by the office. By  
1361 ~~January 1, 2009, The office shall establish by rule a fee~~  
1362 ~~schedule for access to and the use of the model. The fee~~  
1363 ~~schedule must be reasonably calculated to cover only the actual~~

2011408er

1364 ~~costs of providing access to and the use of the model.~~

1365 Section 14. Subsections (1) and (5) of section 627.0629,  
1366 Florida Statutes, are amended to read:

1367 627.0629 Residential property insurance; rate filings.—

1368 (1) ~~(a)~~ It is the intent of the Legislature that insurers  
1369 ~~must~~ provide savings to consumers who install or implement  
1370 windstorm damage mitigation techniques, alterations, or  
1371 solutions to their properties to prevent windstorm losses. A  
1372 rate filing for residential property insurance must include  
1373 actuarially reasonable discounts, credits, or other rate  
1374 differentials, or appropriate reductions in deductibles, for  
1375 properties on which fixtures or construction techniques  
1376 demonstrated to reduce the amount of loss in a windstorm have  
1377 been installed or implemented. The fixtures or construction  
1378 techniques must ~~shall~~ include, but are not ~~be~~ limited to,  
1379 fixtures or construction techniques that ~~which~~ enhance roof  
1380 strength, roof covering performance, roof-to-wall strength,  
1381 wall-to-floor-to-foundation strength, opening protection, and  
1382 window, door, and skylight strength. Credits, discounts, or  
1383 other rate differentials, or appropriate reductions in  
1384 deductibles, for fixtures and construction techniques that ~~which~~  
1385 meet the minimum requirements of the Florida Building Code must  
1386 be included in the rate filing. ~~All insurance companies must~~  
1387 ~~make a rate filing which includes the credits, discounts, or~~  
1388 ~~other rate differentials or reductions in deductibles by~~  
1389 ~~February 28, 2003. By July 1, 2007, the office shall reevaluate~~  
1390 ~~the discounts, credits, other rate differentials, and~~  
1391 ~~appropriate reductions in deductibles for fixtures and~~  
1392 ~~construction techniques that meet the minimum requirements of~~



2011408er

1393 ~~the Florida Building Code, based upon actual experience or any~~  
1394 ~~other loss relativity studies available to the office. The~~  
1395 ~~office shall determine the discounts, credits, other rate~~  
1396 ~~differentials, and appropriate reductions in deductibles that~~  
1397 ~~reflect the full actuarial value of such revaluation, which may~~  
1398 ~~be used by insurers in rate filings.~~

1399 ~~(b) By February 1, 2011, the Office of Insurance~~  
1400 ~~Regulation, in consultation with the Department of Financial~~  
1401 ~~Services and the Department of Community Affairs, shall develop~~  
1402 ~~and make publicly available a proposed method for insurers to~~  
1403 ~~establish discounts, credits, or other rate differentials for~~  
1404 ~~hurricane mitigation measures which directly correlate to the~~  
1405 ~~numerical rating assigned to a structure pursuant to the uniform~~  
1406 ~~home grading scale adopted by the Financial Services Commission~~  
1407 ~~pursuant to s. 215.55865, including any proposed changes to the~~  
1408 ~~uniform home grading scale. By October 1, 2011, the commission~~  
1409 ~~shall adopt rules requiring insurers to make rate filings for~~  
1410 ~~residential property insurance which revise insurers' discounts,~~  
1411 ~~credits, or other rate differentials for hurricane mitigation~~  
1412 ~~measures so that such rate differentials correlate directly to~~  
1413 ~~the uniform home grading scale. The rules may include such~~  
1414 ~~changes to the uniform home grading scale as the commission~~  
1415 ~~determines are necessary, and may specify the minimum required~~  
1416 ~~discounts, credits, or other rate differentials. Such rate~~  
1417 ~~differentials must be consistent with generally accepted~~  
1418 ~~actuarial principles and wind loss mitigation studies. The rules~~  
1419 ~~shall allow a period of at least 2 years after the effective~~  
1420 ~~date of the revised mitigation discounts, credits, or other rate~~  
1421 ~~differentials for a property owner to obtain an inspection or~~

2011408er

1422 otherwise qualify for the revised credit, during which time the  
1423 insurer shall continue to apply the mitigation credit that was  
1424 applied immediately prior to the effective date of the revised  
1425 credit. Discounts, credits, and other rate differentials  
1426 established for rate filings under this paragraph shall  
1427 supersede, after adoption, the discounts, credits, and other  
1428 rate differentials included in rate filings under paragraph (a).

1429 (5) In order to provide an appropriate transition period,  
1430 an insurer may, ~~in its sole discretion,~~ implement an approved  
1431 rate filing for residential property insurance over a period of  
1432 years. Such ~~An insurer electing to phase in its rate filing~~ must  
1433 provide an informational notice to the office setting out its  
1434 schedule for implementation of the phased-in rate filing. The ~~An~~  
1435 insurer may include in its rate the actual cost of private  
1436 market reinsurance that corresponds to available coverage of the  
1437 Temporary Increase in Coverage Limits, TICL, from the Florida  
1438 Hurricane Catastrophe Fund. The insurer may also include the  
1439 cost of reinsurance to replace the TICL reduction implemented  
1440 pursuant to s. 215.555(17)(d)9. However, this cost for  
1441 reinsurance may not include any expense or profit load or result  
1442 in a total annual base rate increase in excess of 10 percent.

1443 Section 15. Paragraphs (a), (b), (c), (d), (n), (v), and  
1444 (y) of subsection (6) of section 627.351, Florida Statutes, are  
1445 amended to read:

1446 627.351 Insurance risk apportionment plans.—

1447 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1448 (a) ~~1. It is~~ The public purpose of this subsection is to  
1449 ensure that there is the existence of an orderly market for  
1450 property insurance for residents ~~Floridians~~ and ~~Florida~~

2011408er

1451 businesses of this state.

1452       1. The Legislature finds that private insurers are  
1453 unwilling or unable to provide affordable property insurance  
1454 coverage in this state to the extent sought and needed. The  
1455 absence of affordable property insurance threatens the public  
1456 health, safety, and welfare and likewise threatens the economic  
1457 health of the state. The state therefore has a compelling public  
1458 interest and a public purpose to assist in assuring that  
1459 property in the state is insured and that it is insured at  
1460 affordable rates so as to facilitate the remediation,  
1461 reconstruction, and replacement of damaged or destroyed property  
1462 in order to reduce or avoid the negative effects otherwise  
1463 resulting to the public health, safety, and welfare, to the  
1464 economy of the state, and to the revenues of the state and local  
1465 governments which are needed to provide for the public welfare.  
1466 It is necessary, therefore, to provide affordable property  
1467 insurance to applicants who are in good faith entitled to  
1468 procure insurance through the voluntary market but are unable to  
1469 do so. The Legislature intends, therefore, ~~by this subsection~~  
1470 that affordable property insurance be provided and that it  
1471 continue to be provided, as long as necessary, through Citizens  
1472 Property Insurance Corporation, a government entity that is an  
1473 integral part of the state, and that is not a private insurance  
1474 company. To that end, the ~~Citizens Property Insurance~~  
1475 corporation shall strive to increase the availability of  
1476 affordable property insurance in this state, while achieving  
1477 efficiencies and economies, and while providing service to  
1478 policyholders, applicants, and agents which is no less than the  
1479 quality generally provided in the voluntary market, for the

2011408er

1480 achievement of the foregoing public purposes. Because it is  
1481 essential for this government entity to have the maximum  
1482 financial resources to pay claims following a catastrophic  
1483 hurricane, it is the intent of the Legislature that the Citizens  
1484 ~~Property Insurance~~ corporation continue to be an integral part  
1485 of the state and that the income of the corporation be exempt  
1486 from federal income taxation and that interest on the debt  
1487 obligations issued by the corporation be exempt from federal  
1488 income taxation.

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

2011408er

1509 lines residential coverage, which consists of the type of  
1510 coverage provided by condominium association, apartment  
1511 building, and similar policies.

1512 3. Effective January 1, 2009, a personal lines residential  
1513 structure that has a dwelling replacement cost of \$2 million or  
1514 more, or a single condominium unit that has a combined dwelling  
1515 and contents ~~content~~ replacement cost of \$2 million or more is  
1516 not eligible for coverage by the corporation. Such dwellings  
1517 insured by the corporation on December 31, 2008, may continue to  
1518 be covered by the corporation until the end of the policy term.  
1519 However, such dwellings ~~that are insured by the corporation and~~  
1520 ~~become ineligible for coverage due to the provisions of this~~  
1521 ~~subparagraph~~ may reapply and obtain coverage if the property  
1522 owner provides the corporation with a sworn affidavit from one  
1523 or more insurance agents, on a form provided by the corporation,  
1524 stating that the agents have made their best efforts to obtain  
1525 coverage and that the property has been rejected for coverage by  
1526 at least one authorized insurer and at least three surplus lines  
1527 insurers. If such conditions are met, the dwelling may be  
1528 insured by the corporation for up to 3 years, after which time  
1529 the dwelling is ineligible for coverage. The office shall  
1530 approve the method used by the corporation for valuing the  
1531 dwelling replacement cost for the purposes of this subparagraph.  
1532 If a policyholder is insured by the corporation prior to being  
1533 determined to be ineligible pursuant to this subparagraph and  
1534 such policyholder files a lawsuit challenging the determination,  
1535 the policyholder may remain insured by the corporation until the  
1536 conclusion of the litigation.

1537 4. It is the intent of the Legislature that policyholders,

2011408er

1538 applicants, and agents of the corporation receive service and  
1539 treatment of the highest possible level but never less than that  
1540 generally provided in the voluntary market. It is also ~~is~~  
1541 intended that the corporation be held to service standards no  
1542 less than those applied to insurers in the voluntary market by  
1543 the office with respect to responsiveness, timeliness, customer  
1544 courtesy, and overall dealings with policyholders, applicants,  
1545 or agents of the corporation.

1546       5. Effective January 1, 2009, a personal lines residential  
1547 structure that is located in the "wind-borne debris region," as  
1548 defined in s. 1609.2, International Building Code (2006), and  
1549 that has an insured value on the structure of \$750,000 or more  
1550 is not eligible for coverage by the corporation unless the  
1551 structure has opening protections as required under the Florida  
1552 Building Code for a newly constructed residential structure in  
1553 that area. A residential structure shall be deemed to comply  
1554 with ~~the requirements of~~ this subparagraph if it has shutters or  
1555 opening protections on all openings and if such opening  
1556 protections complied with the Florida Building Code at the time  
1557 they were installed.

1558       6. For any claim filed under any policy of the corporation,  
1559 a public adjuster may not charge, agree to, or accept any  
1560 compensation, payment, commission, fee, or other thing of value  
1561 greater than 10 percent of the additional amount actually paid  
1562 over the amount that was originally offered by the corporation  
1563 for any one claim.

1564       (b)1. All insurers authorized to write one or more subject  
1565 lines of business in this state are subject to assessment by the  
1566 corporation and, for the purposes of this subsection, are

2011408er

1567 referred to collectively as "assessable insurers." Insurers  
1568 writing one or more subject lines of business in this state  
1569 pursuant to part VIII of chapter 626 are not assessable  
1570 insurers, but insureds who procure one or more subject lines of  
1571 business in this state pursuant to part VIII of chapter 626 are  
1572 subject to assessment by the corporation and are referred to  
1573 collectively as "assessable insureds." An ~~authorized~~ insurer's  
1574 assessment liability begins ~~shall begin~~ on the first day of the  
1575 calendar year following the year in which the insurer was issued  
1576 a certificate of authority to transact insurance for subject  
1577 lines of business in this state and terminates ~~shall terminate~~ 1  
1578 year after the end of the first calendar year during which the  
1579 insurer no longer holds a certificate of authority to transact  
1580 insurance for subject lines of business in this state.

1581 2.a. All revenues, assets, liabilities, losses, and  
1582 expenses of the corporation shall be divided into three separate  
1583 accounts as follows:

1584 (I) A personal lines account for personal residential  
1585 policies issued by the corporation, or issued by the Residential  
1586 Property and Casualty Joint Underwriting Association and renewed  
1587 by the corporation, which provides ~~that provide~~ comprehensive,  
1588 multiperil coverage on risks that are not located in areas  
1589 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting  
1590 Association as those areas were defined on January 1, 2002, and  
1591 for ~~such~~ policies that do not provide coverage for the peril of  
1592 wind on risks that are located in such areas;

1593 (II) A commercial lines account for commercial residential  
1594 and commercial nonresidential policies issued by the  
1595 corporation, or issued by the Residential Property and Casualty

2011408er

1596 Joint Underwriting Association and renewed by the corporation,l  
1597 which provides ~~that provide~~ coverage for basic property perils  
1598 on risks that are not located in areas eligible for coverage by  
1599 ~~in~~ the Florida Windstorm Underwriting Association as those areas  
1600 were defined on January 1, 2002, and for ~~such~~ policies that do  
1601 not provide coverage for the peril of wind on risks that are  
1602 located in such areas; and

1603 (III) A coastal ~~high-risk~~ account for personal residential  
1604 policies and commercial residential and commercial  
1605 nonresidential property policies issued by the corporation, or  
1606 transferred to the corporation, which provides ~~that provide~~  
1607 coverage for the peril of wind on risks that are located in  
1608 areas eligible for coverage by ~~in~~ the Florida Windstorm  
1609 Underwriting Association as those areas were defined on January  
1610 1, 2002. The corporation may offer policies that provide  
1611 multiperil coverage and the corporation shall continue to offer  
1612 policies that provide coverage only for the peril of wind for  
1613 risks located in areas eligible for coverage in the coastal  
1614 ~~high-risk~~ account. In issuing multiperil coverage, the  
1615 corporation may use its approved policy forms and rates for the  
1616 personal lines account. An applicant or insured who is eligible  
1617 to purchase a multiperil policy from the corporation may  
1618 purchase a multiperil policy from an authorized insurer without  
1619 prejudice to the applicant's or insured's eligibility to  
1620 prospectively purchase a policy that provides coverage only for  
1621 the peril of wind from the corporation. An applicant or insured  
1622 who is eligible for a corporation policy that provides coverage  
1623 only for the peril of wind may elect to purchase or retain such  
1624 policy and also purchase or retain coverage excluding wind from



2011408er

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

1646 b. The three separate accounts must be maintained as long  
1647 as financing obligations entered into by the Florida Windstorm  
1648 Underwriting Association or Residential Property and Casualty  
1649 Joint Underwriting Association are outstanding, in accordance  
1650 with the terms of the corresponding financing documents. If ~~When~~  
1651 the financing obligations are no longer outstanding, ~~in~~  
1652 ~~accordance with the terms of the corresponding financing~~  
1653 ~~documents,~~ the corporation may use a single account for all

2011408er

1654 revenues, assets, liabilities, losses, and expenses of the  
1655 corporation. Consistent with ~~the requirement of~~ this  
1656 subparagraph and prudent investment policies that minimize the  
1657 cost of carrying debt, the board shall exercise its best efforts  
1658 to retire existing debt or ~~to~~ obtain the approval of necessary  
1659 parties to amend the terms of existing debt, so as to structure  
1660 the most efficient plan to consolidate the three separate  
1661 accounts into a single account.

1662 c. Creditors of the Residential Property and Casualty Joint  
1663 Underwriting Association and ~~of~~ the accounts specified in sub-  
1664 sub-subparagraphs a.(I) and (II) may have a claim against, and  
1665 recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~  
1666 ~~subparagraphs a.(I) and (II) and shall have~~ no claim against, or  
1667 recourse to, the account referred to in sub-sub-subparagraph  
1668 a.(III). Creditors of the Florida Windstorm Underwriting  
1669 Association ~~shall~~ have a claim against, and recourse to, the  
1670 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~  
1671 ~~have~~ no claim against, or recourse to, the accounts referred to  
1672 in sub-sub-subparagraphs a.(I) and (II).

1673 d. Revenues, assets, liabilities, losses, and expenses not  
1674 attributable to particular accounts shall be prorated among the  
1675 accounts.

1676 e. The Legislature finds that the revenues of the  
1677 corporation are revenues that are necessary to meet the  
1678 requirements set forth in documents authorizing the issuance of  
1679 bonds under this subsection.

1680 f. No part of the income of the corporation may inure to  
1681 the benefit of any private person.

1682 3. With respect to a deficit in an account:

2011408er

1683 a. After accounting for the Citizens policyholder surcharge  
1684 imposed under sub-subparagraph h. i., ~~if when~~ the remaining  
1685 projected deficit incurred in a particular calendar year:

1686 (I) Is not greater than 6 percent of the aggregate  
1687 statewide direct written premium for the subject lines of  
1688 business for the prior calendar year, the entire deficit shall  
1689 be recovered through regular assessments of assessable insurers  
1690 under paragraph (q) and assessable insureds.

1691 ~~(II) b. After accounting for the Citizens policyholder~~  
1692 ~~surcharge imposed under sub-subparagraph i., when the remaining~~  
1693 ~~projected deficit incurred in a particular calendar year Exceeds~~  
1694 6 percent of the aggregate statewide direct written premium for  
1695 the subject lines of business for the prior calendar year, the  
1696 corporation shall levy regular assessments on assessable  
1697 insurers under paragraph (q) and on assessable insureds in an  
1698 amount equal to the greater of 6 percent of the deficit or 6  
1699 percent of the aggregate statewide direct written premium for  
1700 the subject lines of business for the prior calendar year. Any  
1701 remaining deficit shall be recovered through emergency  
1702 assessments under sub-subparagraph c. d.

1703 ~~b. e.~~ Each assessable insurer's share of the amount being  
1704 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~  
1705 ~~shall~~ be in the proportion that the assessable insurer's direct  
1706 written premium for the subject lines of business for the year  
1707 preceding the assessment bears to the aggregate statewide direct  
1708 written premium for the subject lines of business for that year.  
1709 The assessment percentage applicable to each assessable insured  
1710 is the ratio of the amount being assessed under sub-subparagraph  
1711 a. ~~or sub-subparagraph b.~~ to the aggregate statewide direct

2011408er

1712 written premium for the subject lines of business for the prior  
1713 year. Assessments levied by the corporation on assessable  
1714 insurers under sub-subparagraph a. must ~~sub-subparagraphs a. and~~  
1715 ~~b. shall~~ be paid as required by the corporation's plan of  
1716 operation and paragraph (q). Assessments levied by the  
1717 corporation on assessable insureds under sub-subparagraph a.  
1718 ~~sub-subparagraphs a. and b.~~ shall be collected by the surplus  
1719 lines agent at the time the surplus lines agent collects the  
1720 surplus lines tax required by s. 626.932, and ~~shall be paid to~~  
1721 the Florida Surplus Lines Service Office at the time the surplus  
1722 lines agent pays the surplus lines tax to that ~~the Florida~~  
1723 ~~Surplus Lines Service~~ office. Upon receipt of regular  
1724 assessments from surplus lines agents, the Florida Surplus Lines  
1725 Service Office shall transfer the assessments directly to the  
1726 corporation as determined by the corporation.

1727 c.d. Upon a determination by the board of governors that a  
1728 deficit in an account exceeds the amount that will be recovered  
1729 through regular assessments under sub-subparagraph a. ~~or sub-~~  
1730 ~~subparagraph b.~~, plus the amount that is expected to be  
1731 recovered through surcharges under sub-subparagraph h. i., ~~as to~~  
1732 ~~the remaining projected deficit~~ the board ~~shall levy~~, after  
1733 verification by the office, shall levy emergency assessments,  
1734 for as many years as necessary to cover the deficits, to be  
1735 collected by assessable insurers and the corporation and  
1736 collected from assessable insureds upon issuance or renewal of  
1737 policies for subject lines of business, excluding National Flood  
1738 Insurance policies. The amount ~~of the emergency assessment~~  
1739 collected in a particular year must ~~shall~~ be a uniform  
1740 percentage of that year's direct written premium for subject

2011408er

1741 lines of business and all accounts of the corporation, excluding  
1742 National Flood Insurance Program policy premiums, as annually  
1743 determined by the board and verified by the office. The office  
1744 shall verify the arithmetic calculations involved in the board's  
1745 determination within 30 days after receipt of the information on  
1746 which the determination was based. Notwithstanding any other  
1747 provision of law, the corporation and each assessable insurer  
1748 that writes subject lines of business shall collect emergency  
1749 assessments from its policyholders without such obligation being  
1750 affected by any credit, limitation, exemption, or deferment.  
1751 Emergency assessments levied by the corporation on assessable  
1752 insureds shall be collected by the surplus lines agent at the  
1753 time the surplus lines agent collects the surplus lines tax  
1754 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus  
1755 Lines Service Office at the time the surplus lines agent pays  
1756 the surplus lines tax to that ~~the Florida Surplus Lines Service~~  
1757 ~~office.~~ The emergency assessments ~~so~~ collected shall be  
1758 transferred directly to the corporation on a periodic basis as  
1759 determined by the corporation and ~~shall be~~ held by the  
1760 corporation solely in the applicable account. The aggregate  
1761 amount of emergency assessments levied for an account under this  
1762 sub-subparagraph in any calendar year may, ~~at the discretion of~~  
1763 ~~the board of governors,~~ be less than but may not exceed the  
1764 greater of 10 percent of the amount needed to cover the deficit,  
1765 plus interest, fees, commissions, required reserves, and other  
1766 costs associated with financing ~~of~~ the original deficit, or 10  
1767 percent of the aggregate statewide direct written premium for  
1768 subject lines of business and ~~for~~ all accounts of the  
1769 corporation for the prior year, plus interest, fees,

2011408er

1770 commissions, required reserves, and other costs associated with  
1771 financing the deficit.

1772 d.e. The corporation may pledge the proceeds of  
1773 assessments, projected recoveries from the Florida Hurricane  
1774 Catastrophe Fund, other insurance and reinsurance recoverables,  
1775 policyholder surcharges and other surcharges, and other funds  
1776 available to the corporation as the source of revenue for and to  
1777 secure bonds issued under paragraph (q), bonds or other  
1778 indebtedness issued under subparagraph (c)3., or lines of credit  
1779 or other financing mechanisms issued or created under this  
1780 subsection, or to retire any other debt incurred as a result of  
1781 deficits or events giving rise to deficits, or in any other way  
1782 that the board determines will efficiently recover such  
1783 deficits. The purpose of the lines of credit or other financing  
1784 mechanisms is to provide additional resources to assist the  
1785 corporation in covering claims and expenses attributable to a  
1786 catastrophe. As used in this subsection, the term "assessments"  
1787 includes regular assessments under sub-subparagraph a., ~~sub-~~  
1788 ~~subparagraph b.~~ or subparagraph (q)1. and emergency assessments  
1789 under sub-subparagraph d. Emergency assessments collected under  
1790 sub-subparagraph d. are not part of an insurer's rates, are not  
1791 premium, and are not subject to premium tax, fees, or  
1792 commissions; however, failure to pay the emergency assessment  
1793 shall be treated as failure to pay premium. The emergency  
1794 assessments under sub-subparagraph c. ~~d.~~ shall continue as long  
1795 as any bonds issued or other indebtedness incurred with respect  
1796 to a deficit for which the assessment was imposed remain  
1797 outstanding, unless adequate provision has been made for the  
1798 payment of such bonds or other indebtedness pursuant to the

2011408er

1799 documents governing such bonds or ~~other~~ indebtedness.

1800 e.f. As used in this subsection for purposes of any deficit  
1801 incurred on or after January 25, 2007, the term "subject lines  
1802 of business" means insurance written by assessable insurers or  
1803 procured by assessable insureds for all property and casualty  
1804 lines of business in this state, but not including workers'  
1805 compensation or medical malpractice. As used in this ~~the~~ sub-  
1806 subparagraph, the term "property and casualty lines of business"  
1807 includes all lines of business identified on Form 2, Exhibit of  
1808 Premiums and Losses, in the annual statement required of  
1809 authorized insurers under ~~by~~ s. 624.424 and any rule adopted  
1810 under this section, except for those lines identified as  
1811 accident and health insurance and except for policies written  
1812 under the National Flood Insurance Program or the Federal Crop  
1813 Insurance Program. For purposes of this sub-subparagraph, the  
1814 term "workers' compensation" includes both workers' compensation  
1815 insurance and excess workers' compensation insurance.

1816 f.g. The Florida Surplus Lines Service Office shall  
1817 determine annually the aggregate statewide written premium in  
1818 subject lines of business procured by assessable insureds and  
1819 ~~shall~~ report that information to the corporation in a form and  
1820 at a time the corporation specifies to ensure that the  
1821 corporation can meet the requirements of this subsection and the  
1822 corporation's financing obligations.

1823 g.h. The Florida Surplus Lines Service Office shall verify  
1824 the proper application by surplus lines agents of assessment  
1825 percentages for regular assessments and emergency assessments  
1826 levied under this subparagraph on assessable insureds and ~~shall~~  
1827 assist the corporation in ensuring the accurate, timely

2011408er

1828 collection and payment of assessments by surplus lines agents as  
1829 required by the corporation.

1830 ~~h.i.~~ If a deficit is incurred in any account in 2008 or  
1831 thereafter, the board of governors shall levy a Citizens  
1832 policyholder surcharge against all policyholders of the  
1833 corporation. ~~for a 12-month period, which~~

1834 (I) The surcharge shall be levied ~~collected at the time of~~  
1835 ~~issuance or renewal of a policy,~~ as a uniform percentage of the  
1836 premium for the policy of up to 15 percent of such premium,  
1837 which funds shall be used to offset the deficit.

1838 (II) The surcharge is payable upon cancellation or  
1839 termination of the policy, upon renewal of the policy, or upon  
1840 issuance of a new policy by the corporation within the first 12  
1841 months after the date of the levy or the period of time  
1842 necessary to fully collect the surcharge amount.

1843 (III) The corporation may not levy any regular assessments  
1844 under paragraph (q) pursuant to sub-subparagraph a. or sub-  
1845 subparagraph b. with respect to a particular year's deficit  
1846 until the corporation has first levied the full amount of the  
1847 surcharge authorized by this sub-subparagraph.

1848 (IV) The surcharge is ~~Citizens policyholder surcharges~~  
1849 ~~under this sub-subparagraph~~ are not considered premium and is  
1850 ~~are~~ not subject to commissions, fees, or premium taxes. However,  
1851 failure to pay the surcharge ~~such surcharges~~ shall be treated as  
1852 failure to pay premium.

1853 ~~i.j.~~ If the amount of any assessments or surcharges  
1854 collected from corporation policyholders, assessable insurers or  
1855 their policyholders, or assessable insureds exceeds the amount  
1856 of the deficits, such excess amounts shall be remitted to and



2011408er

1857 retained by the corporation in a reserve to be used by the  
1858 corporation, as determined by the board of governors and  
1859 approved by the office, to pay claims or reduce any past,  
1860 present, or future plan-year deficits or to reduce outstanding  
1861 debt.

1862 (c) The corporation's plan of operation ~~of the corporation~~:

1863 1. Must provide for adoption of residential property and  
1864 casualty insurance policy forms and commercial residential and  
1865 nonresidential property insurance forms, which ~~forms~~ must be  
1866 approved by the office before ~~prior to~~ use. The corporation  
1867 shall adopt the following policy forms:

1868 a. Standard personal lines policy forms that are  
1869 comprehensive multiperil policies providing full coverage of a  
1870 residential property equivalent to the coverage provided in the  
1871 private insurance market under an HO-3, HO-4, or HO-6 policy.

1872 b. Basic personal lines policy forms that are policies  
1873 similar to an HO-8 policy or a dwelling fire policy that provide  
1874 coverage meeting the requirements of the secondary mortgage  
1875 market, but which ~~coverage~~ is more limited than the coverage  
1876 under a standard policy.

1877 c. Commercial lines residential and nonresidential policy  
1878 forms that are generally similar to the basic perils of full  
1879 coverage obtainable for commercial residential structures and  
1880 commercial nonresidential structures in the admitted voluntary  
1881 market.

1882 d. Personal lines and commercial lines residential property  
1883 insurance forms that cover the peril of wind only. The forms are  
1884 applicable only to residential properties located in areas  
1885 eligible for coverage under the coastal ~~high-risk~~ account

2011408er

1886 referred to in sub-subparagraph (b)2.a.

1887 e. Commercial lines nonresidential property insurance forms  
1888 that cover the peril of wind only. The forms are applicable only  
1889 to nonresidential properties located in areas eligible for  
1890 coverage under the coastal ~~high-risk~~ account referred to in sub-  
1891 subparagraph (b)2.a.

1892 f. The corporation may adopt variations of the policy forms  
1893 listed in sub-subparagraphs a.-e. which ~~that~~ contain more  
1894 restrictive coverage.

1895 ~~2.a.~~ Must provide that the corporation adopt a program in  
1896 which the corporation and authorized insurers enter into quota  
1897 share primary insurance agreements for hurricane coverage, as  
1898 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
1899 property insurance forms for eligible risks which cover the  
1900 peril of wind only.

1901 a. As used in this subsection, the term:

1902 (I) "Quota share primary insurance" means an arrangement in  
1903 which the primary hurricane coverage of an eligible risk is  
1904 provided in specified percentages by the corporation and an  
1905 authorized insurer. The corporation and authorized insurer are  
1906 each solely responsible for a specified percentage of hurricane  
1907 coverage of an eligible risk as set forth in a quota share  
1908 primary insurance agreement between the corporation and an  
1909 authorized insurer and the insurance contract. The  
1910 responsibility of the corporation or authorized insurer to pay  
1911 its specified percentage of hurricane losses of an eligible  
1912 risk, as set forth in the ~~quota share primary insurance~~  
1913 agreement, may not be altered by the inability of the other  
1914 party ~~to the agreement~~ to pay its specified percentage of

2011408er

1915 ~~hurricane~~ losses. Eligible risks that are provided hurricane  
1916 coverage through a quota share primary insurance arrangement  
1917 must be provided policy forms that set forth the obligations of  
1918 the corporation and authorized insurer under the arrangement,  
1919 clearly specify the percentages of quota share primary insurance  
1920 provided by the corporation and authorized insurer, and  
1921 conspicuously and clearly state that ~~neither~~ the authorized  
1922 insurer and ~~nor~~ the corporation may not be held responsible  
1923 beyond their ~~its~~ specified percentage of coverage of hurricane  
1924 losses.

1925 (II) "Eligible risks" means personal lines residential and  
1926 commercial lines residential risks that meet the underwriting  
1927 criteria of the corporation and are located in areas that were  
1928 eligible for coverage by the Florida Windstorm Underwriting  
1929 Association on January 1, 2002.

1930 b. The corporation may enter into quota share primary  
1931 insurance agreements with authorized insurers at corporation  
1932 coverage levels of 90 percent and 50 percent.

1933 c. If the corporation determines that additional coverage  
1934 levels are necessary to maximize participation in quota share  
1935 primary insurance agreements by authorized insurers, the  
1936 corporation may establish additional coverage levels. However,  
1937 the corporation's quota share primary insurance coverage level  
1938 may not exceed 90 percent.

1939 d. Any quota share primary insurance agreement entered into  
1940 between an authorized insurer and the corporation must provide  
1941 for a uniform specified percentage of coverage of hurricane  
1942 losses, by county or territory as set forth by the corporation  
1943 board, for all eligible risks of the authorized insurer covered

2011408er

1944 under the ~~quota share primary insurance~~ agreement.

1945 e. Any quota share primary insurance agreement entered into  
1946 between an authorized insurer and the corporation is subject to  
1947 review and approval by the office. However, such agreement shall  
1948 be authorized only as to insurance contracts entered into  
1949 between an authorized insurer and an insured who is already  
1950 insured by the corporation for wind coverage.

1951 f. For all eligible risks covered under quota share primary  
1952 insurance agreements, the exposure and coverage levels for both  
1953 the corporation and authorized insurers shall be reported by the  
1954 corporation to the Florida Hurricane Catastrophe Fund. For all  
1955 policies of eligible risks covered under such ~~quota share~~  
1956 ~~primary insurance~~ agreements, the corporation and the authorized  
1957 insurer must ~~shall~~ maintain complete and accurate records for  
1958 the purpose of exposure and loss reimbursement audits as  
1959 required by ~~Florida Hurricane Catastrophe~~ fund rules. The  
1960 corporation and the authorized insurer shall each maintain  
1961 duplicate copies of policy declaration pages and supporting  
1962 claims documents.

1963 g. The corporation board shall establish in its plan of  
1964 operation standards for quota share agreements which ensure that  
1965 there is no discriminatory application among insurers as to the  
1966 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~  
1967 agreements, incentive provisions if any, and consideration paid  
1968 for servicing policies or adjusting claims.

1969 h. The quota share primary insurance agreement between the  
1970 corporation and an authorized insurer must set forth the  
1971 specific terms under which coverage is provided, including, but  
1972 not limited to, the sale and servicing of policies issued under

2011408er

1973 the agreement by the insurance agent of the authorized insurer  
1974 producing the business, the reporting of information concerning  
1975 eligible risks, the payment of premium to the corporation, and  
1976 arrangements for the adjustment and payment of hurricane claims  
1977 incurred on eligible risks by the claims adjuster and personnel  
1978 of the authorized insurer. Entering into a quota sharing  
1979 insurance agreement between the corporation and an authorized  
1980 insurer is ~~shall be~~ voluntary and at the discretion of the  
1981 authorized insurer.

1982       3.a. May provide that the corporation may employ or  
1983 otherwise contract with individuals or other entities to provide  
1984 administrative or professional services that may be appropriate  
1985 to effectuate the plan. The corporation may ~~shall have the power~~  
1986 ~~to~~ borrow funds, by issuing bonds or by incurring other  
1987 indebtedness, and shall have other powers reasonably necessary  
1988 to effectuate the requirements of this subsection, including,  
1989 without limitation, the power to issue bonds and incur other  
1990 indebtedness in order to refinance outstanding bonds or other  
1991 indebtedness. The corporation ~~may, but is not required to,~~ seek  
1992 judicial validation of its bonds or other indebtedness under  
1993 chapter 75. The corporation may issue bonds or incur other  
1994 indebtedness, or have bonds issued on its behalf by a unit of  
1995 local government pursuant to subparagraph (q)2.7 in the absence  
1996 of a hurricane or other weather-related event, upon a  
1997 determination by the corporation, subject to approval by the  
1998 office, that such action would enable it to efficiently meet the  
1999 financial obligations of the corporation and that such  
2000 financings are reasonably necessary to effectuate the  
2001 requirements of this subsection. The corporation may ~~is~~

2011408er

2002 ~~authorized to~~ take all actions needed to facilitate tax-free  
2003 status for ~~any~~ such bonds or indebtedness, including formation  
2004 of trusts or other affiliated entities. The corporation may  
2005 ~~shall have the authority to~~ pledge assessments, projected  
2006 recoveries from the Florida Hurricane Catastrophe Fund, other  
2007 reinsurance recoverables, market equalization and other  
2008 surcharges, and other funds available to the corporation as  
2009 security for bonds or other indebtedness. In recognition of s.  
2010 10, Art. I of the State Constitution, prohibiting the impairment  
2011 of obligations of contracts, it is the intent of the Legislature  
2012 that no action be taken whose purpose is to impair any bond  
2013 indenture or financing agreement or any revenue source committed  
2014 by contract to such bond or other indebtedness.

2015 b. To ensure that the corporation is operating in an  
2016 efficient and economic manner while providing quality service to  
2017 policyholders, applicants, and agents, the board shall  
2018 commission an independent third-party consultant having  
2019 expertise in insurance company management or insurance company  
2020 management consulting to prepare a report and make  
2021 recommendations on the relative costs and benefits of  
2022 outsourcing various policy issuance and service functions to  
2023 private servicing carriers or entities performing similar  
2024 functions in the private market for a fee, rather than  
2025 performing such functions in house. In making such  
2026 recommendations, the consultant shall consider how other  
2027 residual markets, both in this state and around the country,  
2028 outsource appropriate functions or use servicing carriers to  
2029 better match expenses with revenues that fluctuate based on a  
2030 widely varying policy count. The report must be completed by

2011408er

2031 July 1, 2012. Upon receiving the report, the board shall develop  
2032 a plan to implement the report and submit the plan for review,  
2033 modification, and approval to the Financial Services Commission.  
2034 Upon the commission's approval of the plan, the board shall  
2035 begin implementing the plan by January 1, 2013.

2036 4.~~a.~~ Must require that the corporation operate subject to  
2037 the supervision and approval of a board of governors consisting  
2038 of eight individuals who are residents of this state, from  
2039 different geographical areas of this state.

2040 a. The Governor, the Chief Financial Officer, the President  
2041 of the Senate, and the Speaker of the House of Representatives  
2042 shall each appoint two members of the board. At least one of the  
2043 two members appointed by each appointing officer must have  
2044 demonstrated expertise in insurance, and is deemed to be within  
2045 the scope of the exemption provided in s. 112.313(7)(b). The  
2046 Chief Financial Officer shall designate one of the appointees as  
2047 chair. All board members serve at the pleasure of the appointing  
2048 officer. All members of the board ~~of governors~~ are subject to  
2049 removal at will by the officers who appointed them. All board  
2050 members, including the chair, must be appointed to serve for 3-  
2051 year terms beginning annually on a date designated by the plan.  
2052 However, for the first term beginning on or after July 1, 2009,  
2053 each appointing officer shall appoint one member of the board  
2054 for a 2-year term and one member for a 3-year term. A ~~Any~~ board  
2055 vacancy shall be filled for the unexpired term by the appointing  
2056 officer. The Chief Financial Officer shall appoint a technical  
2057 advisory group to provide information and advice to the board ~~of~~  
2058 ~~governors~~ in connection with the board's duties under this  
2059 subsection. The executive director and senior managers of the

2011408er

2060 corporation shall be engaged by the board and serve at the  
2061 pleasure of the board. Any executive director appointed on or  
2062 after July 1, 2006, is subject to confirmation by the Senate.  
2063 The executive director is responsible for employing other staff  
2064 as the corporation may require, subject to review and  
2065 concurrence by the board.

2066 b. The board shall create a Market Accountability Advisory  
2067 Committee to assist the corporation in developing awareness of  
2068 its rates and its customer and agent service levels in  
2069 relationship to the voluntary market insurers writing similar  
2070 coverage.

2071 (I) The members of the advisory committee ~~shall~~ consist of  
2072 the following 11 persons, one of whom must be elected chair by  
2073 the members of the committee: four representatives, one  
2074 appointed by the Florida Association of Insurance Agents, one by  
2075 the Florida Association of Insurance and Financial Advisors, one  
2076 by the Professional Insurance Agents of Florida, and one by the  
2077 Latin American Association of Insurance Agencies; three  
2078 representatives appointed by the insurers with the three highest  
2079 voluntary market share of residential property insurance  
2080 business in the state; one representative from the Office of  
2081 Insurance Regulation; one consumer appointed by the board who is  
2082 insured by the corporation at the time of appointment to the  
2083 committee; one representative appointed by the Florida  
2084 Association of Realtors; and one representative appointed by the  
2085 Florida Bankers Association. All members shall be appointed to  
2086 ~~must serve for~~ 3-year terms and may serve for consecutive terms.

2087 (II) The committee shall report to the corporation at each  
2088 board meeting on insurance market issues which may include rates



2011408er

2089 and rate competition with the voluntary market; service,  
2090 including policy issuance, claims processing, and general  
2091 responsiveness to policyholders, applicants, and agents; and  
2092 matters relating to depopulation.

2093 5. Must provide a procedure for determining the eligibility  
2094 of a risk for coverage, as follows:

2095 a. Subject to ~~the provisions of~~ s. 627.3517, with respect  
2096 to personal lines residential risks, if the risk is offered  
2097 coverage from an authorized insurer at the insurer's approved  
2098 rate under ~~either~~ a standard policy including wind coverage or,  
2099 if consistent with the insurer's underwriting rules as filed  
2100 with the office, a basic policy including wind coverage, for a  
2101 new application to the corporation for coverage, the risk is not  
2102 eligible for any policy issued by the corporation unless the  
2103 premium for coverage from the authorized insurer is more than 15  
2104 percent greater than the premium for comparable coverage from  
2105 the corporation. If the risk is not able to obtain ~~any~~ such  
2106 offer, the risk is eligible for ~~either~~ a standard policy  
2107 including wind coverage or a basic policy including wind  
2108 coverage issued by the corporation; however, if the risk could  
2109 not be insured under a standard policy including wind coverage  
2110 regardless of market conditions, the risk is ~~shall be~~ eligible  
2111 for a basic policy including wind coverage unless rejected under  
2112 subparagraph 8. However, ~~with regard to~~ a policyholder of the  
2113 corporation or a policyholder removed from the corporation  
2114 through an assumption agreement until the end of the assumption  
2115 period, ~~the policyholder~~ remains eligible for coverage from the  
2116 corporation regardless of any offer of coverage from an  
2117 authorized insurer or surplus lines insurer. The corporation

2011408er

2118 shall determine the type of policy to be provided on the basis  
2119 of objective standards specified in the underwriting manual and  
2120 based on generally accepted underwriting practices.

2121 (I) If the risk accepts an offer of coverage through the  
2122 market assistance plan or ~~an offer of coverage~~ through a  
2123 mechanism established by the corporation before a policy is  
2124 issued to the risk by the corporation or during the first 30  
2125 days of coverage by the corporation, and the producing agent who  
2126 submitted the application to the plan or to the corporation is  
2127 not currently appointed by the insurer, the insurer shall:

2128 (A) Pay to the producing agent of record of the policy<sup>7</sup> for  
2129 the first year, an amount that is the greater of the insurer's  
2130 usual and customary commission for the type of policy written or  
2131 a fee equal to the usual and customary commission of the  
2132 corporation; or

2133 (B) Offer to allow the producing agent of record of the  
2134 policy to continue servicing the policy for at least ~~a period of~~  
2135 ~~not less than~~ 1 year and offer to pay the agent the greater of  
2136 the insurer's or the corporation's usual and customary  
2137 commission for the type of policy written.

2138  
2139 If the producing agent is unwilling or unable to accept  
2140 appointment, the new insurer shall pay the agent in accordance  
2141 with sub-sub-sub-subparagraph (A).

2142 (II) If ~~When~~ the corporation enters into a contractual  
2143 agreement for a take-out plan, the producing agent of record of  
2144 the corporation policy is entitled to retain any unearned  
2145 commission on the policy, and the insurer shall:

2146 (A) Pay to the producing agent of record ~~of the corporation~~

2011408er

2147 ~~policy~~, for the first year, an amount that is the greater of the  
2148 insurer's usual and customary commission for the type of policy  
2149 written or a fee equal to the usual and customary commission of  
2150 the corporation; or

2151 (B) Offer to allow the producing agent of record ~~of the~~  
2152 ~~corporation policy~~ to continue servicing the policy for at least  
2153 ~~a period of not less than~~ 1 year and offer to pay the agent the  
2154 greater of the insurer's or the corporation's usual and  
2155 customary commission for the type of policy written.

2156

2157 If the producing agent is unwilling or unable to accept  
2158 appointment, the new insurer shall pay the agent in accordance  
2159 with sub-sub-sub-subparagraph (A).

2160 b. With respect to commercial lines residential risks, for  
2161 a new application to the corporation for coverage, if the risk  
2162 is offered coverage under a policy including wind coverage from  
2163 an authorized insurer at its approved rate, the risk is not  
2164 eligible for a ~~any~~ policy issued by the corporation unless the  
2165 premium for coverage from the authorized insurer is more than 15  
2166 percent greater than the premium for comparable coverage from  
2167 the corporation. If the risk is not able to obtain any such  
2168 offer, the risk is eligible for a policy including wind coverage  
2169 issued by the corporation. However, ~~with regard to~~ a  
2170 policyholder of the corporation or a policyholder removed from  
2171 the corporation through an assumption agreement until the end of  
2172 the assumption period, ~~the policyholder~~ remains eligible for  
2173 coverage from the corporation regardless of an ~~any~~ offer of  
2174 coverage from an authorized insurer or surplus lines insurer.

2175 (I) If the risk accepts an offer of coverage through the

2011408er

2176 market assistance plan or ~~an offer of coverage~~ through a  
2177 mechanism established by the corporation before a policy is  
2178 issued to the risk by the corporation or during the first 30  
2179 days of coverage by the corporation, and the producing agent who  
2180 submitted the application to the plan or the corporation is not  
2181 currently appointed by the insurer, the insurer shall:

2182 (A) Pay to the producing agent of record of the policy, for  
2183 the first year, an amount that is the greater of the insurer's  
2184 usual and customary commission for the type of policy written or  
2185 a fee equal to the usual and customary commission of the  
2186 corporation; or

2187 (B) Offer to allow the producing agent of record of the  
2188 policy to continue servicing the policy for at least ~~a period of~~  
2189 ~~not less than~~ 1 year and offer to pay the agent the greater of  
2190 the insurer's or the corporation's usual and customary  
2191 commission for the type of policy written.

2192  
2193 If the producing agent is unwilling or unable to accept  
2194 appointment, the new insurer shall pay the agent in accordance  
2195 with sub-sub-sub-subparagraph (A).

2196 (II) If ~~When~~ the corporation enters into a contractual  
2197 agreement for a take-out plan, the producing agent of record of  
2198 the corporation policy is entitled to retain any unearned  
2199 commission on the policy, and the insurer shall:

2200 (A) Pay to the producing agent of record ~~of the corporation~~  
2201 policy, for the first year, an amount that is the greater of the  
2202 insurer's usual and customary commission for the type of policy  
2203 written or a fee equal to the usual and customary commission of  
2204 the corporation; or

2011408er

2205 (B) Offer to allow the producing agent of record ~~of the~~  
2206 ~~corporation policy~~ to continue servicing the policy for at least  
2207 ~~a period of not less than~~ 1 year and offer to pay the agent the  
2208 greater of the insurer's or the corporation's usual and  
2209 customary commission for the type of policy written.

2210  
2211 If the producing agent is unwilling or unable to accept  
2212 appointment, the new insurer shall pay the agent in accordance  
2213 with sub-sub-sub-subparagraph (A).

2214 c. For purposes of determining comparable coverage under  
2215 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based  
2216 on those forms and coverages that are reasonably comparable. The  
2217 corporation may rely on a determination of comparable coverage  
2218 and premium made by the producing agent who submits the  
2219 application to the corporation, made in the agent's capacity as  
2220 the corporation's agent. A comparison may be made solely of the  
2221 premium with respect to the main building or structure only on  
2222 the following basis: the same coverage A or other building  
2223 limits; the same percentage hurricane deductible that applies on  
2224 an annual basis or that applies to each hurricane for commercial  
2225 residential property; the same percentage of ordinance and law  
2226 coverage, if the same limit is offered by both the corporation  
2227 and the authorized insurer; the same mitigation credits, to the  
2228 extent the same types of credits are offered both by the  
2229 corporation and the authorized insurer; the same method for loss  
2230 payment, such as replacement cost or actual cash value, if the  
2231 same method is offered both by the corporation and the  
2232 authorized insurer in accordance with underwriting rules; and  
2233 any other form or coverage that is reasonably comparable as

2011408er

2234 determined by the board. If an application is submitted to the  
2235 corporation for wind-only coverage in the coastal ~~high-risk~~  
2236 account, the premium for the corporation's wind-only policy plus  
2237 the premium for the ex-wind policy that is offered by an  
2238 authorized insurer to the applicant must ~~shall~~ be compared to  
2239 the premium for multiperil coverage offered by an authorized  
2240 insurer, subject to the standards for comparison specified in  
2241 this subparagraph. If the corporation or the applicant requests  
2242 from the authorized insurer a breakdown of the premium of the  
2243 offer by types of coverage so that a comparison may be made by  
2244 the corporation or its agent and the authorized insurer refuses  
2245 or is unable to provide such information, the corporation may  
2246 treat the offer as not being an offer of coverage from an  
2247 authorized insurer at the insurer's approved rate.

2248 6. Must include rules for classifications of risks and  
2249 rates ~~therefor~~.

2250 7. Must provide that if premium and investment income for  
2251 an account attributable to a particular calendar year are in  
2252 excess of projected losses and expenses for the account  
2253 attributable to that year, such excess shall be held in surplus  
2254 in the account. Such surplus must ~~shall~~ be available to defray  
2255 deficits in that account as to future years and ~~shall be~~ used  
2256 for that purpose before ~~prior to~~ assessing assessable insurers  
2257 and assessable insureds as to any calendar year.

2258 8. Must provide objective criteria and procedures to be  
2259 uniformly applied to ~~for~~ all applicants in determining whether  
2260 an individual risk is so hazardous as to be uninsurable. In  
2261 making this determination and in establishing the criteria and  
2262 procedures, the following must ~~shall~~ be considered:

2011408er

2263           a. Whether the likelihood of a loss for the individual risk  
2264 is substantially higher than for other risks of the same class;  
2265 and

2266           b. Whether the uncertainty associated with the individual  
2267 risk is such that an appropriate premium cannot be determined.

2268

2269 The acceptance or rejection of a risk by the corporation shall  
2270 be construed as the private placement of insurance, and the  
2271 provisions of chapter 120 do ~~shall~~ not apply.

2272           9. Must provide that the corporation ~~shall~~ make its best  
2273 efforts to procure catastrophe reinsurance at reasonable rates,  
2274 to cover its projected 100-year probable maximum loss as  
2275 determined by the board of governors.

2276           10. The policies issued by the corporation must provide  
2277 that, if the corporation or the market assistance plan obtains  
2278 an offer from an authorized insurer to cover the risk at its  
2279 approved rates, the risk is no longer eligible for renewal  
2280 through the corporation, except as otherwise provided in this  
2281 subsection.

2282           11. Corporation policies and applications must include a  
2283 notice that the corporation policy could, under this section, be  
2284 replaced with a policy issued by an authorized insurer which  
2285 ~~that~~ does not provide coverage identical to the coverage  
2286 provided by the corporation. The notice must ~~shall~~ also specify  
2287 that acceptance of corporation coverage creates a conclusive  
2288 presumption that the applicant or policyholder is aware of this  
2289 potential.

2290           12. May establish, subject to approval by the office,  
2291 different eligibility requirements and operational procedures

2011408er

2292 for any line or type of coverage for any specified county or  
2293 area if the board determines that such changes ~~to the~~  
2294 ~~eligibility requirements and operational procedures~~ are  
2295 justified due to the voluntary market being sufficiently stable  
2296 and competitive in such area or for such line or type of  
2297 coverage and that consumers who, in good faith, are unable to  
2298 obtain insurance through the voluntary market through ordinary  
2299 methods ~~would~~ continue to have access to coverage from the  
2300 corporation. If ~~When~~ coverage is sought in connection with a  
2301 real property transfer, the ~~such~~ requirements and procedures may  
2302 ~~shall~~ not provide ~~for~~ an effective date of coverage later than  
2303 the date of the closing of the transfer as established by the  
2304 transferor, the transferee, and, if applicable, the lender.

2305 13. Must provide that, with respect to the coastal high-  
2306 ~~risk~~ account, any assessable insurer with a surplus as to  
2307 policyholders of \$25 million or less writing 25 percent or more  
2308 of its total countrywide property insurance premiums in this  
2309 state may petition the office, within the first 90 days of each  
2310 calendar year, to qualify as a limited apportionment company. A  
2311 regular assessment levied by the corporation on a limited  
2312 apportionment company for a deficit incurred by the corporation  
2313 for the coastal high-risk account ~~in 2006 or thereafter~~ may be  
2314 paid to the corporation on a monthly basis as the assessments  
2315 are collected by the limited apportionment company from its  
2316 insureds pursuant to s. 627.3512, but the regular assessment  
2317 must be paid in full within 12 months after being levied by the  
2318 corporation. A limited apportionment company shall collect from  
2319 its policyholders any emergency assessment imposed under sub-  
2320 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the



2011408er

2321 office determines that any regular assessment will result in an  
2322 impairment of the surplus of a limited apportionment company,  
2323 the office may direct that all or part of such assessment be  
2324 deferred as provided in subparagraph (q)4. However, ~~there shall~~  
2325 ~~be no limitation or deferment of~~ an emergency assessment to be  
2326 collected from policyholders under sub-subparagraph (b)3.d. may  
2327 not be limited or deferred.

2328 14. Must provide that the corporation appoint as its  
2329 licensed agents only those agents who also hold an appointment  
2330 as defined in s. 626.015(3) with an insurer who at the time of  
2331 the agent's initial appointment by the corporation is authorized  
2332 to write and is actually writing personal lines residential  
2333 property coverage, commercial residential property coverage, or  
2334 commercial nonresidential property coverage within the state.

2335 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan  
2336 option to its policyholders which, ~~allows~~ at a minimum, allows  
2337 for quarterly and semiannual payment of premiums. A monthly  
2338 payment plan may, but is not required to, be offered.

2339 16. Must limit coverage on mobile homes or manufactured  
2340 homes built before ~~prior to~~ 1994 to actual cash value of the  
2341 dwelling rather than replacement costs of the dwelling.

2342 17. May provide such limits of coverage as the board  
2343 determines, consistent with the requirements of this subsection.

2344 18. May require commercial property to meet specified  
2345 hurricane mitigation construction features as a condition of  
2346 eligibility for coverage.

2347 19. Must provide that new or renewal policies issued by the  
2348 corporation on or after January 1, 2012, which cover sinkhole  
2349 loss do not include coverage for any loss to appurtenant

2011408er

2350 structures, driveways, sidewalks, decks, or patios that are  
2351 directly or indirectly caused by sinkhole activity. The  
2352 corporation shall exclude such coverage using a notice of  
2353 coverage change, which may be included with the policy renewal,  
2354 and not by issuance of a notice of nonrenewal of the excluded  
2355 coverage upon renewal of the current policy.

2356 20. As of January 1, 2012, must require that the agent  
2357 obtain from an applicant for coverage from the corporation an  
2358 acknowledgement signed by the applicant, which includes, at a  
2359 minimum, the following statement:

2360  
2361 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE  
2362 AND ASSESSMENT LIABILITY:  
2363

2364 1. AS A POLICYHOLDER OF CITIZENS PROPERTY  
2365 INSURANCE CORPORATION, I UNDERSTAND THAT IF THE  
2366 CORPORATION SUSTAINS A DEFICIT AS A RESULT OF  
2367 HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY  
2368 COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
2369 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF  
2370 THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH  
2371 AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS  
2372 IMPOSED BY THE FLORIDA LEGISLATURE.

2373 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO  
2374 EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS  
2375 POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A  
2376 DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
2377 LEGISLATURE.

2378 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY

2011408er

2379 INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL  
2380 FAITH AND CREDIT OF THE STATE OF FLORIDA.

2381  
2382 a. The corporation shall maintain, in electronic format or  
2383 otherwise, a copy of the applicant's signed acknowledgement and  
2384 provide a copy of the statement to the policyholder as part of  
2385 the first renewal after the effective date of this subparagraph.

2386 b. The signed acknowledgement form creates a conclusive  
2387 presumption that the policyholder understood and accepted his or  
2388 her potential surcharge and assessment liability as a  
2389 policyholder of the corporation.

2390 (d)1. All prospective employees for senior management  
2391 positions, as defined by the plan of operation, are subject to  
2392 background checks as a prerequisite for employment. The office  
2393 shall conduct the background checks ~~on such prospective~~  
2394 ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2395 2. On or before July 1 of each year, employees of the  
2396 corporation must ~~are required to~~ sign and submit a statement  
2397 attesting that they do not have a conflict of interest, as  
2398 defined in part III of chapter 112. As a condition of  
2399 employment, all prospective employees must ~~are required to~~ sign  
2400 and submit to the corporation a conflict-of-interest statement.

2401 3. Senior managers and members of the board of governors  
2402 are subject to ~~the provisions of~~ part III of chapter 112,  
2403 including, but not limited to, the code of ethics and public  
2404 disclosure and reporting of financial interests, pursuant to s.  
2405 112.3145. Notwithstanding s. 112.3143(2), a board member may not  
2406 vote on any measure that would inure to his or her special  
2407 private gain or loss; that he or she knows would inure to the

2011408er

2408 special private gain or loss of any principal by whom he or she  
2409 is retained or to the parent organization or subsidiary of a  
2410 corporate principal by which he or she is retained, other than  
2411 an agency as defined in s. 112.312; or that he or she knows  
2412 would inure to the special private gain or loss of a relative or  
2413 business associate of the public officer. Before the vote is  
2414 taken, such member shall publicly state to the assembly the  
2415 nature of his or her interest in the matter from which he or she  
2416 is abstaining from voting and, within 15 days after the vote  
2417 occurs, disclose the nature of his or her interest as a public  
2418 record in a memorandum filed with the person responsible for  
2419 recording the minutes of the meeting, who shall incorporate the  
2420 memorandum in the minutes. Senior managers and board members are  
2421 also required to file such disclosures with the Commission on  
2422 Ethics and the Office of Insurance Regulation. The executive  
2423 director of the corporation or his or her designee shall notify  
2424 each existing and newly appointed ~~and existing appointed~~ member  
2425 of the board of governors and senior managers of their duty to  
2426 comply with the reporting requirements of part III of chapter  
2427 112. At least quarterly, the executive director or his or her  
2428 designee shall submit to the Commission on Ethics a list of  
2429 names of the senior managers and members of the board of  
2430 governors who are subject to the public disclosure requirements  
2431 under s. 112.3145.

2432 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other  
2433 provision of law, an employee or board member may not knowingly  
2434 accept, directly or indirectly, any gift or expenditure from a  
2435 person or entity, or an employee or representative of such  
2436 person or entity, which ~~that~~ has a contractual relationship with

2011408er

2437 the corporation or who is under consideration for a contract. An  
2438 employee or board member who fails to comply with subparagraph  
2439 3. or this subparagraph is subject to penalties provided under  
2440 ss. 112.317 and 112.3173.

2441 5. Any senior manager of the corporation who is employed on  
2442 or after January 1, 2007, regardless of the date of hire, who  
2443 subsequently retires or terminates employment is prohibited from  
2444 representing another person or entity before the corporation for  
2445 2 years after retirement or termination of employment from the  
2446 corporation.

2447 6. Any senior manager of the corporation who is employed on  
2448 or after January 1, 2007, regardless of the date of hire, who  
2449 subsequently retires or terminates employment is prohibited from  
2450 having any employment or contractual relationship for 2 years  
2451 with an insurer that has entered into a take-out bonus agreement  
2452 with the corporation.

2453 (n)1. Rates for coverage provided by the corporation must  
2454 ~~shall~~ be actuarially sound and subject to ~~the requirements of s.~~  
2455 627.062, except as otherwise provided in this paragraph. The  
2456 corporation shall file its recommended rates with the office at  
2457 least annually. The corporation shall provide any additional  
2458 information regarding the rates which the office requires. The  
2459 office shall consider the recommendations of the board and issue  
2460 a final order establishing the rates for the corporation within  
2461 45 days after the recommended rates are filed. The corporation  
2462 may not pursue an administrative challenge or judicial review of  
2463 the final order of the office.

2464 2. In addition to the rates otherwise determined pursuant  
2465 to this paragraph, the corporation shall impose and collect an

2011408er

2466 amount equal to the premium tax provided ~~for~~ in s. 624.509 to  
2467 augment the financial resources of the corporation.

2468 3. After the public hurricane loss-projection model under  
2469 s. 627.06281 has been found to be accurate and reliable by the  
2470 Florida Commission on Hurricane Loss Projection Methodology, the  
2471 ~~that~~ model shall serve as the minimum benchmark for determining  
2472 the windstorm portion of the corporation's rates. This  
2473 subparagraph does not require or allow the corporation to adopt  
2474 rates lower than the rates otherwise required or allowed by this  
2475 paragraph.

2476 4. The rate filings for the corporation which were approved  
2477 by the office and ~~which~~ took effect January 1, 2007, are  
2478 rescinded, except for those rates that were lowered. As soon as  
2479 possible, the corporation shall begin using the lower rates that  
2480 were in effect on December 31, 2006, and ~~shall~~ provide refunds  
2481 to policyholders who ~~have~~ paid higher rates as a result of that  
2482 rate filing. The rates in effect on December 31, 2006, ~~shall~~  
2483 remain in effect for the 2007 and 2008 calendar years except for  
2484 any rate change that results in a lower rate. The next rate  
2485 change that may increase rates shall take effect pursuant to a  
2486 new rate filing recommended by the corporation and established  
2487 by the office, subject to ~~the requirements of~~ this paragraph.

2488 5. Beginning on July 15, 2009, and annually ~~each year~~  
2489 thereafter, the corporation must make a recommended actuarially  
2490 sound rate filing for each personal and commercial line of  
2491 business it writes, to be effective no earlier than January 1,  
2492 2010.

2493 6. Beginning on or after January 1, 2010, and  
2494 notwithstanding the board's recommended rates and the office's

2011408er

2495 final order regarding the corporation's filed rates under  
2496 subparagraph 1., the corporation shall annually implement a rate  
2497 increase ~~each year~~ which, except for sinkhole coverage, does not  
2498 exceed 10 percent for any single policy issued by the  
2499 corporation, excluding coverage changes and surcharges.

2500 7. The corporation may also implement an increase to  
2501 reflect the effect on the corporation of the cash buildup factor  
2502 pursuant to s. 215.555(5) (b).

2503 8. The corporation's implementation of rates as prescribed  
2504 in subparagraph 6. shall cease for any line of business written  
2505 by the corporation upon the corporation's implementation of  
2506 actuarially sound rates. Thereafter, the corporation shall  
2507 annually make a recommended actuarially sound rate filing for  
2508 each commercial and personal line of business the corporation  
2509 writes.

2510 (v)1. Effective July 1, 2002, policies of the Residential  
2511 Property and Casualty Joint Underwriting Association ~~shall~~  
2512 become policies of the corporation. All obligations, rights,  
2513 assets and liabilities of the ~~Residential Property and Casualty~~  
2514 ~~Joint Underwriting~~ association, including bonds, note and debt  
2515 obligations, and the financing documents pertaining to them  
2516 become those of the corporation as of July 1, 2002. The  
2517 corporation is not required to issue endorsements or  
2518 certificates of assumption to insureds during the remaining term  
2519 of in-force transferred policies.

2520 2. Effective July 1, 2002, policies of the Florida  
2521 Windstorm Underwriting Association are transferred to the  
2522 corporation and ~~shall~~ become policies of the corporation. All  
2523 obligations, rights, assets, and liabilities of the ~~Florida~~

2011408er

2524 ~~Windstorm Underwriting~~ association, including bonds, note and  
2525 debt obligations, and the financing documents pertaining to them  
2526 are transferred to and assumed by the corporation on July 1,  
2527 2002. The corporation is not required to issue endorsements or  
2528 certificates of assumption to insureds during the remaining term  
2529 of in-force transferred policies.

2530         3. The Florida Windstorm Underwriting Association and the  
2531 Residential Property and Casualty Joint Underwriting Association  
2532 shall take all actions necessary ~~as may be proper~~ to further  
2533 evidence the transfers and ~~shall~~ provide the documents and  
2534 instruments of further assurance as may reasonably be requested  
2535 by the corporation for that purpose. The corporation shall  
2536 execute assumptions and instruments as the trustees or other  
2537 parties to the financing documents of the Florida Windstorm  
2538 Underwriting Association or the Residential Property and  
2539 Casualty Joint Underwriting Association may reasonably request  
2540 to further evidence the transfers and assumptions, which  
2541 transfers and assumptions, however, are effective on the date  
2542 provided under this paragraph whether or not, and regardless of  
2543 the date on which, the assumptions or instruments are executed  
2544 by the corporation. Subject to the relevant financing documents  
2545 pertaining to their outstanding bonds, notes, indebtedness, or  
2546 other financing obligations, the moneys, investments,  
2547 receivables, choses in action, and other intangibles of the  
2548 Florida Windstorm Underwriting Association shall be credited to  
2549 the coastal ~~high-risk~~ account of the corporation, and those of  
2550 the personal lines residential coverage account and the  
2551 commercial lines residential coverage account of the Residential  
2552 Property and Casualty Joint Underwriting Association shall be



2011408er

2553 credited to the personal lines account and the commercial lines  
2554 account, respectively, of the corporation.

2555 4. Effective July 1, 2002, a new applicant for property  
2556 insurance coverage who would otherwise have been eligible for  
2557 coverage in the Florida Windstorm Underwriting Association is  
2558 eligible for coverage from the corporation as provided in this  
2559 subsection.

2560 5. The transfer of all policies, obligations, rights,  
2561 assets, and liabilities from the Florida Windstorm Underwriting  
2562 Association to the corporation and the renaming of the  
2563 Residential Property and Casualty Joint Underwriting Association  
2564 as the corporation does not ~~shall in no way~~ affect the coverage  
2565 with respect to covered policies as defined in s. 215.555(2)(c)  
2566 provided to these entities by the Florida Hurricane Catastrophe  
2567 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~  
2568 fund to the Florida Windstorm Underwriting Association based on  
2569 its exposures as of June 30, 2002, and each June 30 thereafter  
2570 shall be redesignated as coverage for the coastal high-risk  
2571 account of the corporation. Notwithstanding any other provision  
2572 of law, the coverage provided by the ~~Florida Hurricane~~  
2573 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint  
2574 Underwriting Association based on its exposures as of June 30,  
2575 2002, and each June 30 thereafter shall be transferred to the  
2576 personal lines account and the commercial lines account of the  
2577 corporation. Notwithstanding any other provision of law, the  
2578 coastal high-risk account shall be treated, for all Florida  
2579 Hurricane Catastrophe Fund purposes, as if it were a separate  
2580 participating insurer with its own exposures, reimbursement  
2581 premium, and loss reimbursement. Likewise, the personal lines

2011408er

2582 and commercial lines accounts shall be viewed together, for all  
2583 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two  
2584 accounts were one and represent a single, separate participating  
2585 insurer with its own exposures, reimbursement premium, and loss  
2586 reimbursement. The coverage provided by the ~~Florida Hurricane~~  
2587 ~~Catastrophe~~ fund to the corporation shall constitute and operate  
2588 as a full transfer of coverage from the Florida Windstorm  
2589 Underwriting Association and Residential Property and Casualty  
2590 Joint Underwriting to the corporation.

2591 (y) It is the intent of the Legislature that the amendments  
2592 to this subsection enacted in 2002 should, over time, reduce the  
2593 probable maximum windstorm losses in the residual markets and  
2594 ~~should reduce~~ the potential assessments to be levied on property  
2595 insurers and policyholders statewide. ~~In furtherance of this~~  
2596 ~~intent:~~

2597 ~~1. the board shall, on or before February 1 of each year,~~  
2598 ~~provide a report to the President of the Senate and the Speaker~~  
2599 ~~of the House of Representatives showing the reduction or~~  
2600 ~~increase in the 100-year probable maximum loss attributable to~~  
2601 ~~wind-only coverages and the quota share program under this~~  
2602 ~~subsection combined, as compared to the benchmark 100-year~~  
2603 ~~probable maximum loss of the Florida Windstorm Underwriting~~  
2604 ~~Association. For purposes of this paragraph, the benchmark 100-~~  
2605 ~~year probable maximum loss of the Florida Windstorm Underwriting~~  
2606 ~~Association shall be the calculation dated February 2001 and~~  
2607 ~~based on November 30, 2000, exposures. In order to ensure~~  
2608 ~~comparability of data, the board shall use the same methods for~~  
2609 ~~calculating its probable maximum loss as were used to calculate~~  
2610 ~~the benchmark probable maximum loss.~~

2011408er

2611           ~~2. Beginning December 1, 2010, if the report under~~  
2612 ~~subparagraph 1. for any year indicates that the 100-year~~  
2613 ~~probable maximum loss attributable to wind-only coverages and~~  
2614 ~~the quota share program combined does not reflect a reduction of~~  
2615 ~~at least 25 percent from the benchmark, the board shall reduce~~  
2616 ~~the boundaries of the high-risk area eligible for wind-only~~  
2617 ~~coverages under this subsection in a manner calculated to reduce~~  
2618 ~~such probable maximum loss to an amount at least 25 percent~~  
2619 ~~below the benchmark.~~

2620           ~~3. Beginning February 1, 2015, if the report under~~  
2621 ~~subparagraph 1. for any year indicates that the 100-year~~  
2622 ~~probable maximum loss attributable to wind-only coverages and~~  
2623 ~~the quota share program combined does not reflect a reduction of~~  
2624 ~~at least 50 percent from the benchmark, the boundaries of the~~  
2625 ~~high-risk area eligible for wind-only coverages under this~~  
2626 ~~subsection shall be reduced by the elimination of any area that~~  
2627 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~  
2628 ~~Waterway.~~

2629           Section 16. Paragraph (a) of subsection (5) of section  
2630 627.3511, Florida Statutes, is amended to read:

2631           627.3511 Depopulation of Citizens Property Insurance  
2632 Corporation.—

2633           (5) APPLICABILITY.—

2634           (a) The take-out bonus provided by subsection (2) and the  
2635 exemption from assessment provided by paragraph (3) (a) apply  
2636 only if the corporation policy is replaced by ~~either~~ a standard  
2637 policy including wind coverage or, if consistent with the  
2638 insurer's underwriting rules ~~as~~ filed with the office, a basic  
2639 policy including wind coverage; however, for ~~with respect to~~

2011408er

2640 risks located in areas where coverage through the coastal high-  
2641 ~~risk~~ account of the corporation is available, the replacement  
2642 policy need not provide wind coverage. The insurer must renew  
2643 the replacement policy at approved rates on substantially  
2644 similar terms for four additional 1-year terms, unless canceled  
2645 or not renewed by the policyholder. If an insurer assumes the  
2646 corporation's obligations for a policy, it must issue a  
2647 replacement policy for a 1-year term upon expiration of the  
2648 corporation policy and must renew the replacement policy at  
2649 approved rates on substantially similar terms for four  
2650 additional 1-year terms, unless canceled or not renewed by the  
2651 policyholder. For each replacement policy canceled or nonrenewed  
2652 by the insurer for any reason during the 5-year coverage period  
2653 ~~required by this paragraph~~, the insurer must remove from the  
2654 corporation one additional policy covering a risk similar to the  
2655 risk covered by the canceled or nonrenewed policy. In addition  
2656 ~~to these requirements~~, the corporation must place the bonus  
2657 moneys in escrow for ~~a period of~~ 5 years; such moneys may be  
2658 released from escrow only to pay claims. If the policy is  
2659 canceled or nonrenewed before the end of the 5-year period, the  
2660 amount of the take-out bonus must be prorated for the time  
2661 period the policy was insured. A take-out bonus provided by  
2662 subsection (2) or subsection (6) is ~~shall~~ not be ~~considered~~  
2663 premium income for purposes of taxes and assessments under the  
2664 Florida Insurance Code and ~~shall~~ remain the property of the  
2665 corporation, subject to the prior security interest of the  
2666 insurer under the escrow agreement until it is released from  
2667 escrow; ~~and~~ after it is released from escrow it is ~~shall be~~  
2668 considered an asset of the insurer and credited to the insurer's

2011408er

2669 capital and surplus.

2670 Section 17. Paragraph (b) of subsection (2) of section  
2671 627.4133, Florida Statutes, is amended to read:

2672 627.4133 Notice of cancellation, nonrenewal, or renewal  
2673 premium.—

2674 (2) With respect to any personal lines or commercial  
2675 residential property insurance policy, including, but not  
2676 limited to, any homeowner's, mobile home owner's, farmowner's,  
2677 condominium association, condominium unit owner's, apartment  
2678 building, or other policy covering a residential structure or  
2679 its contents:

2680 (b) The insurer shall give the named insured written notice  
2681 of nonrenewal, cancellation, or termination at least 100 days  
2682 before ~~prior to~~ the effective date of the nonrenewal,  
2683 cancellation, or termination. However, the insurer shall give at  
2684 least 100 days' written notice, or written notice by June 1,  
2685 whichever is earlier, for any nonrenewal, cancellation, or  
2686 termination that would be effective between June 1 and November  
2687 30. The notice must include the reason or reasons for the  
2688 nonrenewal, cancellation, or termination, except that:

2689 1. The insurer shall give the named insured written notice  
2690 of nonrenewal, cancellation, or termination at least 120 ~~180~~  
2691 days prior to the effective date of the nonrenewal,  
2692 cancellation, or termination for a named insured whose  
2693 residential structure has been insured by that insurer or an  
2694 affiliated insurer for at least a 5-year period immediately  
2695 prior to the date of the written notice.

2696 2. If ~~When~~ cancellation is for nonpayment of premium, at  
2697 least 10 days' written notice of cancellation accompanied by the

2011408er

2698 reason therefor must ~~shall~~ be given. As used in this  
2699 subparagraph, the term "nonpayment of premium" means failure of  
2700 the named insured to discharge when due ~~any of~~ her or his  
2701 obligations in connection with the payment of premiums on a  
2702 policy or any installment of such premium, whether the premium  
2703 is payable directly to the insurer or its agent or indirectly  
2704 under any premium finance plan or extension of credit, or  
2705 failure to maintain membership in an organization if such  
2706 membership is a condition precedent to insurance coverage. The  
2707 term "~~Nonpayment of premium~~" also means the failure of a  
2708 financial institution to honor an insurance applicant's check  
2709 after delivery to a licensed agent for payment of a premium,  
2710 even if the agent has previously delivered or transferred the  
2711 premium to the insurer. If a dishonored check represents the  
2712 initial premium payment, the contract and all contractual  
2713 obligations are ~~shall be~~ void ab initio unless the nonpayment is  
2714 cured within the earlier of 5 days after actual notice by  
2715 certified mail is received by the applicant or 15 days after  
2716 notice is sent to the applicant by certified mail or registered  
2717 mail, and if the contract is void, any premium received by the  
2718 insurer from a third party must ~~shall~~ be refunded to that party  
2719 in full.

2720 3. If ~~When~~ such cancellation or termination occurs during  
2721 the first 90 days ~~during which~~ the insurance is in force and the  
2722 insurance is canceled or terminated for reasons other than  
2723 nonpayment of premium, at least 20 days' written notice of  
2724 cancellation or termination accompanied by the reason therefor  
2725 must ~~shall~~ be given unless ~~except where~~ there has been a  
2726 material misstatement or misrepresentation or failure to comply

2011408er

2727 with the underwriting requirements established by the insurer.

2728 4. The requirement for providing written notice ~~of~~  
2729 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective  
2730 between June 1 and November 30 does not apply to the following  
2731 situations, but the insurer remains subject to the requirement  
2732 to provide such notice at least 100 days before ~~prior to~~ the  
2733 effective date of nonrenewal:

2734 a. A policy that is nonrenewed due to a revision in the  
2735 coverage for sinkhole losses and catastrophic ground cover  
2736 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~  
2737 ~~2007-1, Laws of Florida.~~

2738 b. A policy that is nonrenewed by Citizens Property  
2739 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
2740 that has been assumed by an authorized insurer offering  
2741 replacement ~~or renewal~~ coverage to the policyholder is exempt  
2742 from the notice requirements of paragraph (a) and this  
2743 paragraph. In such cases, the corporation must give the named  
2744 insured written notice of nonrenewal at least 45 days before the  
2745 effective date of the nonrenewal.

2746  
2747 After the policy has been in effect for 90 days, the policy may  
2748 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there  
2749 has been a material misstatement, a nonpayment of premium, a  
2750 failure to comply with underwriting requirements established by  
2751 the insurer within 90 days after ~~of~~ the date of effectuation of  
2752 coverage, or a substantial change in the risk covered by the  
2753 policy or if ~~when~~ the cancellation is for all insureds under  
2754 such policies for a given class of insureds. This paragraph does  
2755 not apply to individually rated risks having a policy term of

2011408er

2756 less than 90 days.

2757 5. Notwithstanding any other provision of law, an insurer  
2758 may cancel or nonrenew a property insurance policy after at  
2759 least 45 days' notice if the office finds that the early  
2760 cancellation of some or all of the insurer's policies is  
2761 necessary to protect the best interests of the public or  
2762 policyholders and the office approves the insurer's plan for  
2763 early cancellation or nonrenewal of some or all of its policies.  
2764 The office may base such finding upon the financial condition of  
2765 the insurer, lack of adequate reinsurance coverage for hurricane  
2766 risk, or other relevant factors. The office may condition its  
2767 finding on the consent of the insurer to be placed under  
2768 administrative supervision pursuant to s. 624.81 or to the  
2769 appointment of a receiver under chapter 631.

2770 6. A policy covering both a home and motor vehicle may be  
2771 nonrenewed for any reason applicable to either the property or  
2772 motor vehicle insurance after providing 90 days' notice.

2773 Section 18. Section 627.43141, Florida Statutes, is created  
2774 to read:

2775 627.43141 Notice of change in policy terms.—

2776 (1) As used in this section, the term:

2777 (a) "Change in policy terms" means the modification,  
2778 addition, or deletion of any term, coverage, duty, or condition  
2779 from the previous policy. The correction of typographical or  
2780 scrivener's errors or the application of mandated legislative  
2781 changes is not a change in policy terms.

2782 (b) "Policy" means a written contract of property and  
2783 casualty insurance or written agreement for such insurance, by  
2784 whatever name called, and includes all clauses, riders,



2011408er

2785 endorsements, and papers that are a part of such policy. The  
2786 term does not include a binder as defined in s. 627.420 unless  
2787 the duration of the binder period exceeds 60 days.

2788 (c) "Renewal" means the issuance and delivery by an insurer  
2789 of a policy superseding at the end of the policy period a policy  
2790 previously issued and delivered by the same insurer or the  
2791 issuance and delivery of a certificate or notice extending the  
2792 term of a policy beyond its policy period or term. Any policy  
2793 that has a policy period or term of less than 6 months or that  
2794 does not have a fixed expiration date shall, for purposes of  
2795 this section, be considered as written for successive policy  
2796 periods or terms of 6 months.

2797 (2) A renewal policy may contain a change in policy terms.  
2798 If a renewal policy does contain such change, the insurer must  
2799 give the named insured written notice of the change, which must  
2800 be enclosed along with the written notice of renewal premium  
2801 required by ss. 627.4133 and 627.728. Such notice shall be  
2802 entitled "Notice of Change in Policy Terms."

2803 (3) Although not required, proof of mailing or registered  
2804 mailing through the United States Postal Service of the Notice  
2805 of Change in Policy Terms to the named insured at the address  
2806 shown in the policy is sufficient proof of notice.

2807 (4) Receipt of the premium payment for the renewal policy  
2808 by the insurer is deemed to be acceptance of the new policy  
2809 terms by the named insured.

2810 (5) If an insurer fails to provide the notice required in  
2811 subsection (2), the original policy terms remain in effect until  
2812 the next renewal and the proper service of the notice, or until  
2813 the effective date of replacement coverage obtained by the named

2011408er

2814 insured, whichever occurs first.

2815 (6) The intent of this section is to:

2816 (a) Allow an insurer to make a change in policy terms  
2817 without nonrenewing those policyholders that the insurer wishes  
2818 to continue insuring.

2819 (b) Alleviate concern and confusion to the policyholder  
2820 caused by the required policy nonrenewal for the limited issue  
2821 if an insurer intends to renew the insurance policy, but the new  
2822 policy contains a change in policy terms.

2823 (c) Encourage policyholders to discuss their coverages with  
2824 their insurance agents.

2825 Section 19. Section 627.7011, Florida Statutes, is amended  
2826 to read:

2827 627.7011 Homeowners' policies; offer of replacement cost  
2828 coverage and law and ordinance coverage.—

2829 (1) ~~Prior to issuing a homeowner's insurance policy on or~~  
2830 ~~after October 1, 2005, or prior to the first renewal of a~~  
2831 ~~homeowner's insurance policy on or after October 1, 2005, the~~  
2832 insurer must offer each of the following:

2833 (a) A policy or endorsement providing that any loss that  
2834 ~~which~~ is repaired or replaced will be adjusted on the basis of  
2835 replacement costs to the dwelling not exceeding policy limits ~~as~~  
2836 ~~to the dwelling~~, rather than actual cash value, but not  
2837 including costs necessary to meet applicable laws and ordinances  
2838 regulating the construction, use, or repair of any property or  
2839 requiring the tearing down of any property, including the costs  
2840 of removing debris.

2841 (b) A policy or endorsement providing that, subject to  
2842 other policy provisions, any loss that ~~which~~ is repaired or

2011408er

2843 replaced at any location will be adjusted on the basis of  
2844 replacement costs to the dwelling not exceeding policy limits ~~as~~  
2845 ~~to the dwelling~~, rather than actual cash value, and also  
2846 including costs necessary to meet applicable laws and ordinances  
2847 regulating the construction, use, or repair of any property or  
2848 requiring the tearing down of any property, including the costs  
2849 of removing debris.~~;~~ However, ~~such~~ additional costs necessary to  
2850 meet applicable laws and ordinances may be limited to ~~either~~ 25  
2851 percent or 50 percent of the dwelling limit, as selected by the  
2852 policyholder, and such coverage applies ~~shall apply~~ only to  
2853 repairs of the damaged portion of the structure unless the total  
2854 damage to the structure exceeds 50 percent of the replacement  
2855 cost of the structure.

2856  
2857 An insurer is not required to make the offers required by this  
2858 subsection with respect to the issuance or renewal of a  
2859 homeowner's policy that contains the provisions specified in  
2860 paragraph (b) for law and ordinance coverage limited to 25  
2861 percent of the dwelling limit, except that the insurer must  
2862 offer the law and ordinance coverage limited to 50 percent of  
2863 the dwelling limit. This subsection does not prohibit the offer  
2864 of a guaranteed replacement cost policy.

2865 (2) Unless the insurer obtains the policyholder's written  
2866 refusal of the policies or endorsements specified in subsection  
2867 (1), any policy covering the dwelling is deemed to include the  
2868 law and ordinance coverage limited to 25 percent of the dwelling  
2869 limit. The rejection or selection of alternative coverage shall  
2870 be made on a form approved by the office. The form must ~~shall~~  
2871 fully advise the applicant of the nature of the coverage being

2011408er

2872 rejected. If this form is signed by a named insured, it ~~is will~~  
2873 ~~be~~ conclusively presumed that there was an informed, knowing  
2874 rejection of the coverage or election of the alternative  
2875 coverage on behalf of all insureds. Unless the policyholder  
2876 requests in writing the coverage specified in this section, it  
2877 need not be provided in or supplemental to any other policy that  
2878 renews, insures, extends, changes, supersedes, or replaces an  
2879 existing policy ~~if when~~ the policyholder has rejected the  
2880 coverage specified in this section or has selected alternative  
2881 coverage. The insurer must provide the ~~such~~ policyholder with  
2882 notice of the availability of such coverage in a form approved  
2883 by the office at least once every 3 years. The failure to  
2884 provide such notice constitutes a violation of this code, but  
2885 does not affect the coverage provided under the policy.

2886 (3) In the event of a loss for which a dwelling or personal  
2887 property is insured on the basis of replacement costs:

2888 (a) For a dwelling, the insurer must initially pay at least  
2889 the actual cash value of the insured loss, less any applicable  
2890 deductible. The insurer shall pay any remaining amounts  
2891 necessary to perform such repairs as work is performed and  
2892 expenses are incurred. If a total loss of a dwelling occurs, the  
2893 insurer shall pay the replacement cost coverage without  
2894 reservation or holdback of any depreciation in value, pursuant  
2895 to s. 627.702.

2896 (b) For personal property:

2897 1. The insurer must offer coverage under which the insurer  
2898 is obligated to pay the replacement cost without reservation or  
2899 holdback for any depreciation in value, whether or not the  
2900 insured replaces the property.

2011408er

2901       2. The insurer may also offer coverage under which the  
2902 insurer may limit the initial payment to the actual cash value  
2903 of the personal property to be replaced, require the insured to  
2904 provide receipts for the purchase of the property financed by  
2905 the initial payment, use such receipts to make the next payment  
2906 requested by the insured for the replacement of insured  
2907 property, and continue this process until the insured remits all  
2908 receipts up to the policy limits for replacement costs. The  
2909 insurer must provide clear notice of this process before the  
2910 policy is bound. A policyholder must be provided an actuarially  
2911 reasonable premium credit or discount for this coverage. The  
2912 insurer may not require the policyholder to advance payment for  
2913 the replaced property, the insurer shall pay the replacement  
2914 cost without reservation or holdback of any depreciation in  
2915 value, whether or not the insured replaces or repairs the  
2916 dwelling or property.

2917       (4) ~~A Any~~ homeowner's insurance policy ~~issued or renewed on~~  
2918 ~~or after October 1, 2005,~~ must include in bold type no smaller  
2919 than 18 points the following statement:

2920       "LAWS AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE  
2921       THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO  
2922       CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE  
2923       NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS  
2924       COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE  
2925       DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

2926  
2927       The intent of this subsection is to encourage policyholders to  
2928       purchase sufficient coverage to protect them in case events  
2929       excluded from the standard homeowners policy, such as law and

2011408er

2930 ordinance enforcement and flood, combine with covered events to  
2931 produce damage or loss to the insured property. The intent is  
2932 also to encourage policyholders to discuss these issues with  
2933 their insurance agent.

2934 ~~(5) Nothing in This section does not: shall be construed to~~

2935 (a) Apply to policies not considered to be "homeowners'  
2936 policies," as that term is commonly understood in the insurance  
2937 industry. ~~This section specifically does not~~

2938 (b) Apply to mobile home policies. ~~Nothing in this section~~

2939 (c) Limit ~~shall be construed as limiting~~ the ability of an  
2940 ~~any~~ insurer to reject or nonrenew any insured or applicant on  
2941 the grounds that the structure does not meet underwriting  
2942 criteria applicable to replacement cost or law and ordinance  
2943 policies or for other lawful reasons.

2944 (d) ~~(6) This section does not~~ Prohibit an insurer from  
2945 limiting its liability under a policy or endorsement providing  
2946 that loss will be adjusted on the basis of replacement costs to  
2947 the lesser of:

2948 1. ~~(a)~~ The limit of liability shown on the policy  
2949 declarations page;

2950 2. ~~(b)~~ The reasonable and necessary cost to repair the  
2951 damaged, destroyed, or stolen covered property; or

2952 3. ~~(e)~~ The reasonable and necessary cost to replace the  
2953 damaged, destroyed, or stolen covered property.

2954 (e) ~~(7) This section does not~~ Prohibit an insurer from  
2955 exercising its right to repair damaged property in compliance  
2956 with its policy and s. 627.702(7).

2957 Section 20. Paragraph (a) of subsection (5) of section  
2958 627.70131, Florida Statutes, is amended to read:

2011408er

2959 627.70131 Insurer's duty to acknowledge communications  
2960 regarding claims; investigation.—

2961 (5) (a) Within 90 days after an insurer receives notice of  
2962 an initial, reopened, or supplemental a property insurance claim  
2963 from a policyholder, the insurer shall pay or deny such claim or  
2964 a portion of the claim unless the failure to pay ~~such claim or a~~  
2965 ~~portion of the claim~~ is caused by factors beyond the control of  
2966 the insurer which reasonably prevent such payment. Any payment  
2967 of an initial or supplemental a claim or portion of such a claim  
2968 made paid 90 days after the insurer receives notice of the  
2969 claim, or made paid more than 15 days after there are no longer  
2970 factors beyond the control of the insurer which reasonably  
2971 prevented such payment, whichever is later, bears ~~shall bear~~  
2972 interest at the rate set forth in s. 55.03. Interest begins to  
2973 accrue from the date the insurer receives notice of the claim.  
2974 The provisions of this subsection may not be waived, voided, or  
2975 nullified by the terms of the insurance policy. If there is a  
2976 right to prejudgment interest, the insured shall select whether  
2977 to receive prejudgment interest or interest under this  
2978 subsection. Interest is payable when the claim or portion of the  
2979 claim is paid. Failure to comply with this subsection  
2980 constitutes a violation of this code. However, failure to comply  
2981 with this subsection does ~~shall~~ not form the sole basis for a  
2982 private cause of action.

2983 Section 21. The Legislature finds and declares:

2984 (1) There is a compelling state interest in maintaining a  
2985 viable and orderly private-sector market for property insurance  
2986 in this state. The lack of a viable and orderly property market  
2987 reduces the availability of property insurance coverage to state

2011408er

2988 residents, increases the cost of property insurance, and  
2989 increases the state's reliance on a residual property insurance  
2990 market and its potential for imposing assessments on  
2991 policyholders throughout the state.

2992 (2) In 2005, the Legislature revised ss. 627.706-627.7074,  
2993 Florida Statutes, to adopt certain geological or technical  
2994 terms; to increase reliance on objective, scientific testing  
2995 requirements; and generally to reduce the number of sinkhole  
2996 claims and related disputes arising under prior law. The  
2997 Legislature determined that since the enactment of these  
2998 statutory revisions, both private-sector insurers and Citizens  
2999 Property Insurance Corporation have, nevertheless, continued to  
3000 experience high claims frequency and severity for sinkhole  
3001 insurance claims. In addition, many properties remain unrepaired  
3002 even after loss payments, which reduces the local property tax  
3003 base and adversely affects the real estate market. Therefore,  
3004 the Legislature finds that losses associated with sinkhole  
3005 claims adversely affect the public health, safety, and welfare  
3006 of this state and its citizens.

3007 (3) Pursuant to sections 22 through 27 of this act,  
3008 technical or scientific definitions adopted in the 2005  
3009 legislation are clarified to implement and advance the  
3010 Legislature's intended reduction of sinkhole claims and  
3011 disputes. Certain other revisions to ss. 627.706-627.7074,  
3012 Florida Statutes, are enacted to advance legislative intent to  
3013 rely on scientific or technical determinations relating to  
3014 sinkholes and sinkhole claims, reduce the number and cost of  
3015 disputes relating to sinkhole claims, and ensure that repairs  
3016 are made commensurate with the scientific and technical



2011408er

3017 determinations and insurance claims payments.

3018 Section 22. Section 627.706, Florida Statutes, is reordered  
3019 and amended to read:

3020 627.706 Sinkhole insurance; catastrophic ground cover  
3021 collapse; definitions.—

3022 (1) (a) Every insurer authorized to transact property  
3023 insurance in this state must ~~shall~~ provide coverage for a  
3024 catastrophic ground cover collapse.

3025 (b) The insurer ~~and~~ shall make available, for an  
3026 appropriate additional premium, coverage for sinkhole losses on  
3027 any structure, including the contents of personal property  
3028 contained therein, to the extent provided in the form to which  
3029 the coverage attaches. The insurer may require an inspection of  
3030 the property before issuance of sinkhole loss coverage. A policy  
3031 for residential property insurance may include a deductible  
3032 amount applicable to sinkhole losses equal to 1 percent, 2  
3033 percent, 5 percent, or 10 percent of the policy dwelling limits,  
3034 with appropriate premium discounts offered with each deductible  
3035 amount.

3036 (c) The insurer may restrict catastrophic ground cover  
3037 collapse and sinkhole loss coverage to the principal building,  
3038 as defined in the applicable policy.

3039 (2) As used in ss. 627.706-627.7074, and as used in  
3040 connection with any policy providing coverage for a catastrophic  
3041 ground cover collapse or for sinkhole losses, the term:

3042 (a) "Catastrophic ground cover collapse" means geological  
3043 activity that results in all the following:

- 3044 1. The abrupt collapse of the ground cover;  
3045 2. A depression in the ground cover clearly visible to the

2011408er

3046 naked eye;

3047 3. Structural damage to the covered building, including the  
3048 foundation; and

3049 4. The insured structure being condemned and ordered to be  
3050 vacated by the governmental agency authorized by law to issue  
3051 such an order for that structure.

3052

3053 Contents coverage applies if there is a loss resulting from a  
3054 catastrophic ground cover collapse. ~~Structural~~ Damage consisting  
3055 merely of the settling or cracking of a foundation, structure,  
3056 or building does not constitute a loss resulting from a  
3057 catastrophic ground cover collapse.

3058 (b) "Neutral evaluation" means the alternative dispute  
3059 resolution provided in s. 627.7074.

3060 (c) "Neutral evaluator" means a professional engineer or a  
3061 professional geologist who has completed a course of study in  
3062 alternative dispute resolution designed or approved by the  
3063 department for use in the neutral evaluation process and who is  
3064 determined by the department to be fair and impartial.

3065 (h) ~~(b)~~ "Sinkhole" means a landform created by subsidence of  
3066 soil, sediment, or rock as underlying strata are dissolved by  
3067 groundwater. A sinkhole forms ~~may form~~ by collapse into  
3068 subterranean voids created by dissolution of limestone or  
3069 dolostone or by subsidence as these strata are dissolved.

3070 (j) ~~(e)~~ "Sinkhole loss" means structural damage to the  
3071 covered building, including the foundation, caused by sinkhole  
3072 activity. Contents coverage and additional living expenses ~~shall~~  
3073 apply only if there is structural damage to the covered building  
3074 caused by sinkhole activity.

2011408er

3075        (i)~~(d)~~ "Sinkhole activity" means settlement or systematic  
3076        weakening of the earth supporting the covered building ~~such~~  
3077        ~~property~~ only if the ~~when such~~ settlement or systematic  
3078        weakening results from contemporaneous movement or raveling of  
3079        soils, sediments, or rock materials into subterranean voids  
3080        created by the effect of water on a limestone or similar rock  
3081        formation.

3082        (f)~~(e)~~ "Professional engineer" means a person, as defined  
3083        in s. 471.005, who has a bachelor's degree or higher in  
3084        engineering ~~with a specialty in the geotechnical engineering~~  
3085        ~~field~~. A professional engineer must also have ~~geotechnical~~  
3086        experience and expertise in the identification of sinkhole  
3087        activity as well as other potential causes of structural damage  
3088        ~~to the structure~~.

3089        (g)~~(f)~~ "Professional geologist" means a person, as defined  
3090        in ~~by~~ s. 492.102, who has a bachelor's degree or higher in  
3091        geology or related earth science and ~~with expertise in the~~  
3092        ~~geology of Florida~~. A professional geologist must have  
3093        ~~geological~~ experience and expertise in the identification of  
3094        sinkhole activity as well as other potential geologic causes of  
3095        structural damage ~~to the structure~~.

3096        (k) "Structural damage" means a covered building,  
3097        regardless of the date of its construction, has experienced the  
3098        following:

3099        1. Interior floor displacement or deflection in excess of  
3100        acceptable variances as defined in ACI 117-90 or the Florida  
3101        Building Code, which results in settlement related damage to the  
3102        interior such that the interior building structure or members  
3103        become unfit for service or represents a safety hazard as

2011408er

3104 defined within the Florida Building Code;

3105 2. Foundation displacement or deflection in excess of  
3106 acceptable variances as defined in ACI 318-95 or the Florida  
3107 Building Code, which results in settlement related damage to the  
3108 primary structural members or primary structural systems that  
3109 prevents those members or systems from supporting the loads and  
3110 forces they were designed to support to the extent that stresses  
3111 in those primary structural members or primary structural  
3112 systems exceeds one and one-third the nominal strength allowed  
3113 under the Florida Building Code for new buildings of similar  
3114 structure, purpose, or location;

3115 3. Damage that results in listing, leaning, or buckling of  
3116 the exterior load bearing walls or other vertical primary  
3117 structural members to such an extent that a plumb line passing  
3118 through the center of gravity does not fall inside the middle  
3119 one-third of the base as defined within the Florida Building  
3120 Code;

3121 4. Damage that results in the building, or any portion of  
3122 the building containing primary structural members or primary  
3123 structural systems, being significantly likely to imminently  
3124 collapse because of the movement or instability of the ground  
3125 within the influence zone of the supporting ground within the  
3126 sheer plane necessary for the purpose of supporting such  
3127 building as defined within the Florida Building Code; or

3128 5. Damage occurring on or after October 15, 2005, that  
3129 qualifies as "substantial structural damage" as defined in the  
3130 Florida Building Code.

3131 (d) "Primary structural member" means a structural element  
3132 designed to provide support and stability for the vertical or

2011408er

3133 lateral loads of the overall structure.

3134 (e) "Primary structural system" means an assemblage of  
3135 primary structural members.

3136 ~~(3) On or before June 1, 2007, Every insurer authorized to~~  
3137 ~~transact property insurance in this state shall make a proper~~  
3138 ~~filing with the office for the purpose of extending the~~  
3139 ~~appropriate forms of property insurance to include coverage for~~  
3140 ~~eatastrophic ground cover collapse or for sinkhole losses.~~  
3141 ~~coverage for catastrophic ground cover collapse may not go into~~  
3142 ~~effect until the effective date provided for in the filing~~  
3143 ~~approved by the office.~~

3144 (3)~~(4)~~ Insurers offering policies that exclude coverage for  
3145 sinkhole losses must ~~shall~~ inform policyholders in bold type of  
3146 not less than 14 points as follows: "YOUR POLICY PROVIDES  
3147 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS  
3148 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,  
3149 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU  
3150 MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN  
3151 ADDITIONAL PREMIUM."

3152 (4)~~(5)~~ An insurer offering sinkhole coverage to  
3153 policyholders before or after the adoption of s. 30, chapter  
3154 2007-1, Laws of Florida, may nonrenew the policies of  
3155 policyholders maintaining sinkhole coverage ~~in Pasco County or~~  
3156 ~~Hernando County,~~ at the option of the insurer, and provide an  
3157 offer of coverage that ~~to such policyholders which~~ includes  
3158 catastrophic ground cover collapse and excludes sinkhole  
3159 coverage. Insurers acting in accordance with this subsection are  
3160 subject to the following requirements:

3161 (a) Policyholders must be notified that a nonrenewal is for

2011408er

3162 purposes of removing sinkhole coverage, and that the  
3163 policyholder is ~~still~~ being offered a policy that provides  
3164 coverage for catastrophic ground cover collapse.

3165 (b) Policyholders must be provided an actuarially  
3166 reasonable premium credit or discount for the removal of  
3167 sinkhole coverage and provision of only catastrophic ground  
3168 cover collapse.

3169 (c) Subject to the provisions of this subsection and the  
3170 insurer's approved underwriting or insurability guidelines, the  
3171 insurer shall provide each policyholder with the opportunity to  
3172 purchase an endorsement to his or her policy providing sinkhole  
3173 coverage and may require an inspection of the property before  
3174 issuance of a sinkhole coverage endorsement.

3175 (d) Section 624.4305 does not apply to nonrenewal notices  
3176 issued pursuant to this subsection.

3177 (5) Any claim, including, but not limited to, initial,  
3178 supplemental, and reopened claims under an insurance policy that  
3179 provides sinkhole coverage is barred unless notice of the claim  
3180 was given to the insurer in accordance with the terms of the  
3181 policy within 2 years after the policyholder knew or reasonably  
3182 should have known about the sinkhole loss.

3183 Section 23. Section 627.7061, Florida Statutes, is amended  
3184 to read:

3185 627.7061 Coverage inquiries.—Inquiries about coverage on a  
3186 property insurance contract are not claim activity, unless an  
3187 actual claim is filed by the policyholder which ~~insured that~~  
3188 results in a company investigation of the claim.

3189 Section 24. Section 627.7065, Florida Statutes, is  
3190 repealed.

2011408er

3191 Section 25. Section 627.707, Florida Statutes, is amended  
3192 to read:

3193 627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~  
3194 ~~insurers; insurer payment; nonrenewals.~~—Upon receipt of a claim  
3195 for a sinkhole loss to a covered building, an insurer must meet  
3196 the following standards in investigating a claim:

3197 (1) The insurer must inspect ~~make an inspection of~~ the  
3198 policyholder's insured's premises to determine if there is  
3199 structural ~~has been physical~~ damage that ~~to the structure which~~  
3200 may be the result of sinkhole activity.

3201 (2) If the insurer confirms that structural damage exists  
3202 but is unable to identify a valid cause of such damage or  
3203 discovers that such damage is consistent with sinkhole loss  
3204 ~~Following the insurer's initial inspection~~, the insurer shall  
3205 engage a professional engineer or a professional geologist to  
3206 conduct testing as provided in s. 627.7072 to determine the  
3207 cause of the loss within a reasonable professional probability  
3208 and issue a report as provided in s. 627.7073, only if sinkhole  
3209 loss is covered under the policy. Except as provided in  
3210 subsections (4) and (6), the fees and costs of the professional  
3211 engineer or professional geologist shall be paid by the  
3212 insurer.†

3213 ~~(a) The insurer is unable to identify a valid cause of the~~  
3214 ~~damage or discovers damage to the structure which is consistent~~  
3215 ~~with sinkhole loss; or~~

3216 ~~(b) The policyholder demands testing in accordance with~~  
3217 ~~this section or s. 627.7072.~~

3218 (3) Following the initial inspection of the policyholder's  
3219 ~~insured~~ premises, the insurer shall provide written notice to

2011408er

3220 the policyholder disclosing the following information:

3221 (a) What the insurer has determined to be the cause of  
3222 damage, if the insurer has made such a determination.

3223 (b) A statement of the circumstances under which the  
3224 insurer is required to engage a professional engineer or a  
3225 professional geologist to verify or eliminate sinkhole loss and  
3226 to engage a professional engineer to make recommendations  
3227 regarding land and building stabilization and foundation repair.

3228 (c) A statement regarding the right of the policyholder to  
3229 request testing by a professional engineer or a professional  
3230 geologist, ~~and~~ the circumstances under which the policyholder  
3231 may demand certain testing, and the circumstances under which  
3232 the policyholder may incur costs associated with testing.

3233 (4) (a) If the insurer determines that there is no sinkhole  
3234 loss, the insurer may deny the claim.

3235 (b) If coverage for sinkhole loss is available and ~~If~~ the  
3236 insurer denies the claim, ~~without performing testing under s.~~  
3237 627.7072, the policyholder may demand testing by the insurer  
3238 under s. 627.7072.

3239 1. The policyholder's demand for testing must be  
3240 communicated to the insurer in writing within 60 days after the  
3241 policyholder's receipt of the insurer's denial of the claim.

3242 2. The policyholder shall pay 50 percent of the actual  
3243 costs of the analyses and services provided under ss. 627.7072  
3244 and 627.7073 or \$2,500, whichever is less.

3245 3. The insurer shall reimburse the policyholder for the  
3246 costs if the insurer's engineer or geologist provides written  
3247 certification pursuant to s. 627.7073 that there is sinkhole  
3248 loss.



2011408er

3249           (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is  
3250 verified, the insurer shall pay to stabilize the land and  
3251 building and repair the foundation in accordance with the  
3252 recommendations of the professional engineer retained pursuant  
3253 to subsection (2), as provided under s. 627.7073, and in  
3254 consultation with notice to the policyholder, subject to the  
3255 coverage and terms of the policy. The insurer shall pay for  
3256 other repairs to the structure and contents in accordance with  
3257 the terms of the policy. If a covered building suffers a  
3258 sinkhole loss or a catastrophic ground cover collapse, the  
3259 insured must repair such damage or loss in accordance with the  
3260 insurer's professional engineer's recommended repairs. However,  
3261 if the insurer's professional engineer determines that the  
3262 repair cannot be completed within policy limits, the insurer  
3263 must pay to complete the repairs recommended by the insurer's  
3264 professional engineer or tender the policy limits to the  
3265 policyholder.

3266           ~~(a) (b)~~ The insurer may limit its total claims payment to  
3267 the actual cash value of the sinkhole loss, which does not  
3268 include including underpinning or grouting or any other repair  
3269 technique performed below the existing foundation of the  
3270 building, until the policyholder enters into a contract for the  
3271 performance of building stabilization or foundation repairs in  
3272 accordance with the recommendations set forth in the insurer's  
3273 report issued pursuant to s. 627.7073.

3274           (b) In order to prevent additional damage to the building  
3275 or structure, the policyholder must enter into a contract for  
3276 the performance of building stabilization and foundation repairs  
3277 within 90 days after the insurance company confirms coverage for

2011408er

3278 the sinkhole loss and notifies the policyholder of such  
3279 confirmation. This time period is tolled if either party invokes  
3280 the neutral evaluation process, and begins again 10 days after  
3281 the conclusion of the neutral evaluation process.

3282 (c) After the policyholder enters into the contract for the  
3283 performance of building stabilization and foundation repairs,  
3284 the insurer shall pay the amounts necessary to begin and perform  
3285 such repairs as the work is performed and the expenses are  
3286 incurred. The insurer may not require the policyholder to  
3287 advance payment for such repairs. If repair covered by a  
3288 personal lines residential property insurance policy has begun  
3289 and the professional engineer selected or approved by the  
3290 insurer determines that the repair cannot be completed within  
3291 the policy limits, the insurer must ~~either~~ complete the  
3292 professional engineer's recommended repair or tender the policy  
3293 limits to the policyholder without a reduction for the repair  
3294 expenses incurred.

3295 (d) The stabilization and all other repairs to the  
3296 structure and contents must be completed within 12 months after  
3297 entering into the contract for repairs described in paragraph  
3298 (b) unless:

3299 1. There is a mutual agreement between the insurer and the  
3300 policyholder;

3301 2. The claim is involved with the neutral evaluation  
3302 process;

3303 3. The claim is in litigation; or

3304 4. The claim is under appraisal or mediation.

3305 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of  
3306 ~~the policyholder and~~ any lienholder, the insurer may make

2011408er

3307 payment directly to the persons selected by the policyholder to  
3308 perform the land and building stabilization and foundation  
3309 repairs. The decision by the insurer to make payment to such  
3310 persons does not hold the insurer liable for the work performed.  
3311 The policyholder may not accept a rebate from any person  
3312 performing the repairs specified in this section. If a  
3313 policyholder does receive a rebate, coverage is void and the  
3314 policyholder must refund the amount of the rebate to the  
3315 insurer. Any person making the repairs specified in this section  
3316 who offers a rebate commits insurance fraud punishable as a  
3317 third degree felony as provided in s. 775.082, s. 775.083, or s.  
3318 775.084.

3319 ~~(6) Except as provided in subsection (7), the fees and~~  
3320 ~~costs of the professional engineer or the professional geologist~~  
3321 ~~shall be paid by the insurer.~~

3322 (6)(7) If the insurer obtains, pursuant to s. 627.7073,  
3323 written certification that there is no sinkhole loss or that the  
3324 cause of the damage was not sinkhole activity, and if the  
3325 policyholder has submitted the sinkhole claim without good faith  
3326 grounds for submitting such claim, the policyholder shall  
3327 reimburse the insurer for 50 percent of the actual costs of the  
3328 analyses and services provided under ss. 627.7072 and 627.7073;  
3329 however, a policyholder is not required to reimburse an insurer  
3330 more than \$2,500 with respect to any claim. A policyholder is  
3331 required to pay reimbursement under this subsection only if the  
3332 policyholder requested the analysis and services provided under  
3333 ss. 627.7072 and 627.7073 and the insurer, before ~~prior to~~  
3334 ordering the analysis under s. 627.7072, informs the  
3335 policyholder in writing of the policyholder's potential

2011408er

3336 liability for reimbursement and gives the policyholder the  
3337 opportunity to withdraw the claim.

3338 (7)~~(8)~~ An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of  
3339 property insurance on the basis of filing of claims for sinkhole  
3340 ~~partial~~ loss if ~~caused by sinkhole damage or clay shrinkage as~~  
3341 ~~long as~~ the total of such payments does not equal or exceed the  
3342 ~~current~~ policy limits of coverage for the policy in effect on  
3343 the date of loss, for property damage to the covered building,  
3344 as set forth on the declarations page, or if ~~and provided~~ the  
3345 policyholder ~~insured~~ has repaired the structure in accordance  
3346 with the engineering recommendations made pursuant to subsection  
3347 (2) upon which any payment or policy proceeds were based. If the  
3348 insurer pays such limits, it may nonrenew the policy.

3349 (8)~~(9)~~ The insurer may engage a professional structural  
3350 engineer to make recommendations as to the repair of the  
3351 structure.

3352 Section 26. Section 627.7073, Florida Statutes, is amended  
3353 to read:

3354 627.7073 Sinkhole reports.—

3355 (1) Upon completion of testing as provided in s. 627.7072,  
3356 the professional engineer or professional geologist shall issue  
3357 a report and certification to the insurer and the policyholder  
3358 as provided in this section.

3359 (a) Sinkhole loss is verified if, based upon tests  
3360 performed in accordance with s. 627.7072, a professional  
3361 engineer or a professional geologist issues a written report and  
3362 certification stating:

3363 1. That structural damage to the covered building has been  
3364 identified within a reasonable professional probability.

2011408er

3365           ~~2.1.~~ That the cause of the ~~actual physical and~~ structural  
3366 damage is sinkhole activity within a reasonable professional  
3367 probability.

3368           ~~3.2.~~ That the analyses conducted were of sufficient scope  
3369 to identify sinkhole activity as the cause of damage within a  
3370 reasonable professional probability.

3371           ~~4.3.~~ A description of the tests performed.

3372           ~~5.4.~~ A recommendation by the professional engineer of  
3373 methods for stabilizing the land and building and for making  
3374 repairs to the foundation.

3375           (b) If there is no structural damage or if sinkhole  
3376 activity is eliminated as the cause of such damage to the  
3377 covered building ~~structure~~, the professional engineer or  
3378 professional geologist shall issue a written report and  
3379 certification to the policyholder and the insurer stating:

3380           1. That there is no structural damage or the cause of such  
3381 ~~the~~ damage is not sinkhole activity within a reasonable  
3382 professional probability.

3383           2. That the analyses and tests conducted were of sufficient  
3384 scope to eliminate sinkhole activity as the cause of the  
3385 structural damage within a reasonable professional probability.

3386           3. A statement of the cause of the structural damage within  
3387 a reasonable professional probability.

3388           4. A description of the tests performed.

3389           (c) The respective findings, opinions, and recommendations  
3390 of the insurer's professional engineer or professional geologist  
3391 as to the cause of distress to the property and the findings,  
3392 opinions, and recommendations of the insurer's professional  
3393 engineer as to land and building stabilization and foundation

2011408er

3394 repair set forth by s. 627.7072 shall be presumed correct.

3395       (2)~~(a)~~ An Any insurer that has paid a claim for a sinkhole  
3396 loss shall file a copy of the report and certification, prepared  
3397 pursuant to subsection (1), including the legal description of  
3398 the real property and the name of the property owner, the  
3399 neutral evaluator's report, if any, which indicates that  
3400 sinkhole activity caused the damage claimed, a copy of the  
3401 certification indicating that stabilization has been completed,  
3402 if applicable, and the amount of the payment, with the county  
3403 clerk of court, who shall record the report and certification.  
3404 The insurer shall bear the cost of filing and recording one or  
3405 more reports and certifications ~~the report and certification~~.  
3406 There shall be no cause of action or liability against an  
3407 insurer for compliance with this section.

3408       (a) The recording of the report and certification does not:

3409       1. Constitute a lien, encumbrance, or restriction on the  
3410 title to the real property or constitute a defect in the title  
3411 to the real property;

3412       2. Create any cause of action or liability against any  
3413 grantor of the real property for breach of any warranty of good  
3414 title or warranty against encumbrances; or

3415       3. Create any cause of action or liability against any  
3416 title insurer that insures the title to the real property.

3417       (b) As a precondition to accepting payment for a sinkhole  
3418 loss, the policyholder must file a copy of any sinkhole report  
3419 regarding the insured property which was prepared on behalf or  
3420 at the request of the policyholder. The policyholder shall bear  
3421 the cost of filing and recording the sinkhole report. The  
3422 recording of the report does not:

2011408er

3423 1. Constitute a lien, encumbrance, or restriction on the  
3424 title to the real property or constitute a defect in the title  
3425 to the real property;

3426 2. Create any cause of action or liability against any  
3427 grantor of the real property for breach of any warranty of good  
3428 title or warranty against encumbrances; or

3429 3. Create any cause of action or liability against a title  
3430 insurer that insures the title to the real property.

3431 (c) ~~(b)~~ The seller of real property upon which a sinkhole  
3432 claim has been made by the seller and paid by the insurer must  
3433 ~~shall~~ disclose to the buyer of such property, before the  
3434 closing, that a claim has been paid and whether or not the full  
3435 amount of the proceeds were used to repair the sinkhole damage.

3436 (3) Upon completion of any building stabilization or  
3437 foundation repairs for a verified sinkhole loss, the  
3438 professional engineer responsible for monitoring the repairs  
3439 shall issue a report to the property owner which specifies what  
3440 repairs have been performed and certifies within a reasonable  
3441 degree of professional probability that such repairs have been  
3442 properly performed. The professional engineer issuing the report  
3443 shall file a copy of the report and certification, which  
3444 includes a legal description of the real property and the name  
3445 of the property owner, with the county clerk of the court, who  
3446 shall record the report and certification. This subsection does  
3447 not create liability for an insurer based on any representation  
3448 or certification by a professional engineer related to the  
3449 stabilization or foundation repairs for the verified sinkhole  
3450 loss.

3451 Section 27. Section 627.7074, Florida Statutes, is amended

2011408er

3452 to read:

3453 627.7074 Alternative procedure for resolution of disputed  
3454 sinkhole insurance claims.-

3455 ~~(1) As used in this section, the term:~~

3456 ~~(a) "Neutral evaluation" means the alternative dispute  
3457 resolution provided for in this section.~~

3458 ~~(b) "Neutral evaluator" means a professional engineer or a  
3459 professional geologist who has completed a course of study in  
3460 alternative dispute resolution designed or approved by the  
3461 department for use in the neutral evaluation process, who is  
3462 determined to be fair and impartial.~~

3463 (1) (2) (a) The department shall:

3464 (a) Certify and maintain a list of persons who are neutral  
3465 evaluators.

3466 ~~(b) The department shall~~ Prepare a consumer information  
3467 pamphlet for distribution by insurers to policyholders which  
3468 clearly describes the neutral evaluation process and includes  
3469 information ~~and forms~~ necessary for the policyholder to request  
3470 a neutral evaluation.

3471 (2) Neutral evaluation is available to either party if a  
3472 sinkhole report has been issued pursuant to s. 627.7073. At a  
3473 minimum, neutral evaluation must determine:

3474 (a) Causation;

3475 (b) All methods of stabilization and repair both above and  
3476 below ground;

3477 (c) The costs for stabilization and all repairs; and

3478 (d) Information necessary to carry out subsection (12).

3479 (3) Following the receipt of the report provided under s.  
3480 627.7073 or the denial of a claim for a sinkhole loss, the



2011408er

3481 insurer shall notify the policyholder of his or her right to  
3482 participate in the neutral evaluation program under this  
3483 section. Neutral evaluation supersedes the alternative dispute  
3484 resolution process under s. 627.7015, but does not invalidate  
3485 the appraisal clause of the insurance policy. The insurer shall  
3486 provide to the policyholder the consumer information pamphlet  
3487 prepared by the department pursuant to subsection (1)  
3488 electronically or by United States mail ~~paragraph (2)(b)~~.

3489 (4) Neutral evaluation is nonbinding, but mandatory if  
3490 requested by either party. A request for neutral evaluation may  
3491 be filed with the department by the policyholder or the insurer  
3492 on a form approved by the department. The request for neutral  
3493 evaluation must state the reason for the request and must  
3494 include an explanation of all the issues in dispute at the time  
3495 of the request. Filing a request for neutral evaluation tolls  
3496 the applicable time requirements for filing suit for ~~a period of~~  
3497 60 days following the conclusion of the neutral evaluation  
3498 process or the time prescribed in s. 95.11, whichever is later.

3499 (5) Neutral evaluation shall be conducted as an informal  
3500 process in which formal rules of evidence and procedure need not  
3501 be observed. A party to neutral evaluation is not required to  
3502 attend neutral evaluation if a representative of the party  
3503 attends and has the authority to make a binding decision on  
3504 behalf of the party. All parties shall participate in the  
3505 evaluation in good faith. The neutral evaluator must be allowed  
3506 reasonable access to the interior and exterior of insured  
3507 structures to be evaluated or for which a claim has been made.  
3508 Any reports initiated by the policyholder, or an agent of the  
3509 policyholder, confirming a sinkhole loss or disputing another

2011408er

3510 sinkhole report regarding insured structures must be provided to  
3511 the neutral evaluator before the evaluator's physical inspection  
3512 of the insured property.

3513 (6) The insurer shall pay reasonable ~~the~~ costs associated  
3514 with the neutral evaluation. However, if a party chooses to hire  
3515 a court reporter or stenographer to contemporaneously record and  
3516 document the neutral evaluation, that party must bear such  
3517 costs.

3518 (7) Upon receipt of a request for neutral evaluation, the  
3519 department shall provide the parties a list of certified neutral  
3520 evaluators. ~~The parties shall mutually select a neutral~~  
3521 ~~evaluator from the list and promptly inform the department. If~~  
3522 ~~the parties cannot agree to a neutral evaluator within 10~~  
3523 ~~business days,~~ The department shall allow the parties to submit  
3524 requests to disqualify evaluators on the list for cause.

3525 (a) The department shall disqualify neutral evaluators for  
3526 cause based only on any of the following grounds:

3527 1. A familial relationship exists between the neutral  
3528 evaluator and either party or a representative of either party  
3529 within the third degree.

3530 2. The proposed neutral evaluator has, in a professional  
3531 capacity, previously represented either party or a  
3532 representative of either party, in the same or a substantially  
3533 related matter.

3534 3. The proposed neutral evaluator has, in a professional  
3535 capacity, represented another person in the same or a  
3536 substantially related matter and that person's interests are  
3537 materially adverse to the interests of the parties. The term  
3538 "substantially related matter" means participation by the

2011408er

3539 neutral evaluator on the same claim, property, or adjacent  
3540 property.

3541 4. The proposed neutral evaluator has, within the preceding  
3542 5 years, worked as an employer or employee of any party to the  
3543 case.

3544 (b) The parties shall appoint a neutral evaluator from the  
3545 department list and promptly inform the department. If the  
3546 parties cannot agree to a neutral evaluator within 14 business  
3547 days, the department shall appoint a neutral evaluator from the  
3548 list of certified neutral evaluators. The department shall allow  
3549 each party to disqualify two neutral evaluators without cause.  
3550 Upon selection or appointment, the department shall promptly  
3551 refer the request to the neutral evaluator.

3552 (c) Within 14 5 business days after the referral, the  
3553 neutral evaluator shall notify the policyholder and the insurer  
3554 of the date, time, and place of the neutral evaluation  
3555 conference. The conference may be held by telephone, if feasible  
3556 and desirable. The neutral evaluator shall make reasonable  
3557 efforts to hold the neutral evaluation conference shall be held  
3558 within 90 45 days after the receipt of the request by the  
3559 department. Failure of the neutral evaluator to hold the  
3560 conference within 90 days does not invalidate either party's  
3561 right to neutral evaluation or to a neutral evaluation  
3562 conference held outside this timeframe.

3563 ~~(8) The department shall adopt rules of procedure for the~~  
3564 ~~neutral evaluation process.~~

3565 ~~(8)(9)~~ For policyholders not represented by an attorney, a  
3566 consumer affairs specialist of the department or an employee  
3567 designated as the primary contact for consumers on issues

2011408er

3568 relating to sinkholes under s. 20.121 shall be available for  
3569 consultation to the extent that he or she may lawfully do so.

3570 (9)~~(10)~~ Evidence of an offer to settle a claim during the  
3571 neutral evaluation process, as well as any relevant conduct or  
3572 statements made in negotiations concerning the offer to settle a  
3573 claim, is inadmissible to prove liability or absence of  
3574 liability for the claim or its value, except as provided in  
3575 subsection (14) ~~(13)~~.

3576 (10)~~(11)~~ Regardless of when noticed, any court proceeding  
3577 related to the subject matter of the neutral evaluation shall be  
3578 stayed pending completion of the neutral evaluation and for 5  
3579 days after the filing of the neutral evaluator's report with the  
3580 court.

3581 (11) If, based upon his or her professional training and  
3582 credentials, a neutral evaluator is qualified to determine only  
3583 disputes relating to causation or method of repair, the  
3584 department shall allow the neutral evaluator to enlist the  
3585 assistance of another professional from the neutral evaluators  
3586 list not previously stricken, who, based upon his or her  
3587 professional training and credentials, is able to provide an  
3588 opinion as to other disputed issues. A professional who would be  
3589 disqualified for any reason listed in subsection (7) must be  
3590 disqualified. The neutral evaluator may also use the services of  
3591 professional engineers and professional geologists who are not  
3592 certified as neutral evaluators, as well as licensed building  
3593 contractors, in order to ensure that all items in dispute are  
3594 addressed and the neutral evaluation can be completed. Any  
3595 professional engineer, professional geologist, or licensed  
3596 building contractor retained may be disqualified for any of the

2011408er

3597 reasons listed in subsection (7). The neutral evaluator may  
3598 request the entity that performed the investigation pursuant to  
3599 s. 627.7072 perform such additional and reasonable testing as  
3600 deemed necessary in the professional opinion of the neutral  
3601 evaluator.

3602 (12) ~~At For matters that are not resolved by the parties at~~  
3603 the conclusion of the neutral evaluation, the neutral evaluator  
3604 shall prepare a report describing all matters that are the  
3605 subject of the neutral evaluation, including whether, stating  
3606 ~~that~~ in his or her opinion, the sinkhole loss has been verified  
3607 or eliminated within a reasonable degree of professional  
3608 probability and, if verified, whether the sinkhole activity  
3609 caused structural damage to the covered building, and if so, the  
3610 need for and estimated costs of stabilizing the land and any  
3611 covered ~~structures or~~ buildings and other appropriate  
3612 remediation or necessary building structural repairs due to the  
3613 sinkhole loss. The evaluator's report shall be sent to all  
3614 parties ~~in attendance at the neutral evaluation~~ and to the  
3615 department, within 14 days after completing the neutral  
3616 evaluation conference.

3617 (13) The recommendation of the neutral evaluator is not  
3618 binding on any party, and the parties retain access to the  
3619 court. The neutral evaluator's written recommendation, oral  
3620 testimony, and full report shall be admitted ~~is admissible~~ in  
3621 any ~~subsequent~~ action, litigation, or proceeding relating to the  
3622 claim or to the cause of action giving rise to the claim.

3623 (14) If the neutral evaluator ~~first~~ verifies the existence  
3624 of a sinkhole that caused structural damage and, second,  
3625 recommends the need for and estimates costs of stabilizing the

2011408er

3626 land and any covered ~~structures or~~ buildings and other  
3627 appropriate remediation or building structural repairs, which  
3628 ~~costs~~ exceed the amount that the insurer has offered to pay the  
3629 policyholder, the insurer is liable to the policyholder for up  
3630 to \$2,500 in attorney's fees for the attorney's participation in  
3631 the neutral evaluation process. For purposes of this subsection,  
3632 the term "offer to pay" means a written offer signed by the  
3633 insurer or its legal representative and delivered to the  
3634 policyholder within 10 days after the insurer receives notice  
3635 that a request for neutral evaluation has been made under this  
3636 section.

3637 (15) If the insurer timely agrees in writing to comply and  
3638 timely complies with the recommendation of the neutral  
3639 evaluator, but the policyholder declines to resolve the matter  
3640 in accordance with the recommendation of the neutral evaluator  
3641 pursuant to this section:

3642 (a) The insurer is not liable for extracontractual damages  
3643 related to a claim for a sinkhole loss but only as related to  
3644 the issues determined by the neutral evaluation process. This  
3645 section does not affect or impair claims for extracontractual  
3646 damages unrelated to the issues determined by the neutral  
3647 evaluation process contained in this section; and

3648 (b) The actions of the insurer are not a confession of  
3649 judgment or admission of liability, and the insurer is not  
3650 liable for attorney's fees under s. 627.428 or other provisions  
3651 of the insurance code unless the policyholder obtains a judgment  
3652 that is more favorable than the recommendation of the neutral  
3653 evaluator.

3654 (16) If the insurer agrees to comply with the neutral

2011408er

3655 evaluator's report, payments shall be made in accordance with  
3656 the terms and conditions of the applicable insurance policy  
3657 pursuant to s. 627.707(5).

3658 (17) Neutral evaluators are deemed to be agents of the  
3659 department and have immunity from suit as provided in s. 44.107.

3660 (18) The department shall adopt rules of procedure for the  
3661 neutral evaluation process.

3662 Section 28. Subsection (8) of section 627.711, Florida  
3663 Statutes, is amended to read:

3664 627.711 Notice of premium discounts for hurricane loss  
3665 mitigation; uniform mitigation verification inspection form.—

3666 (8) At its expense, the insurer may require that a any  
3667 uniform mitigation verification form provided by a policyholder,  
3668 a policyholder's agent, or an authorized mitigation inspector or  
3669 inspection company be independently verified by an inspector, an  
3670 inspection company, or an independent third-party quality  
3671 assurance provider which possesses ~~does possess~~ a quality  
3672 assurance program before ~~prior to~~ accepting the uniform  
3673 mitigation verification form as valid.

3674 Section 29. Subsection (1) of section 627.712, Florida  
3675 Statutes, is amended to read:

3676 627.712 Residential windstorm coverage required;  
3677 availability of exclusions for windstorm or contents.—

3678 (1) An insurer issuing a residential property insurance  
3679 policy must provide windstorm coverage. Except as provided in  
3680 paragraph (2)(c), this section does not apply ~~with respect~~ to  
3681 risks that are eligible for wind-only coverage from Citizens  
3682 Property Insurance Corporation under s. 627.351(6), and ~~with~~  
3683 ~~respect to~~ risks that are not eligible for coverage from

2011408er

3684 Citizens Property Insurance Corporation under s. 627.351(6) (a)3.  
3685 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation  
3686 under s. 627.351(6) (a)3. or 5. is exempt from ~~the requirements~~  
3687 ~~of~~ this section only if the risk is located within the  
3688 boundaries of the coastal ~~high-risk~~ account of the corporation.

3689 Section 30. Subsection (3) of section 631.54, Florida  
3690 Statutes, is amended to read:

3691 631.54 Definitions.—As used in this part:

3692 (3) "Covered claim" means an unpaid claim, including one of  
3693 unearned premiums, which arises out of, and is within the  
3694 coverage, and not in excess of, the applicable limits of an  
3695 insurance policy to which this part applies, issued by an  
3696 insurer, if such insurer becomes an insolvent insurer and the  
3697 claimant or insured is a resident of this state at the time of  
3698 the insured event or the property from which the claim arises is  
3699 permanently located in this state. For entities other than  
3700 individuals, the residence of a claimant, insured, or  
3701 policyholder is the state in which the entity's principal place  
3702 of business is located at the time of the insured event. The  
3703 term does ~~"Covered claim" shall~~ not include:

3704 (a) Any amount due any reinsurer, insurer, insurance pool,  
3705 or underwriting association, sought directly or indirectly  
3706 through a third party, as subrogation, contribution,  
3707 indemnification, or otherwise; ~~or~~

3708 (b) Any claim that would otherwise be a covered claim under  
3709 this part that has been rejected by any other state guaranty  
3710 fund on the grounds that an insured's net worth is greater than  
3711 that allowed under that state's guaranty law. Member insurers  
3712 shall have no right of subrogation, contribution,



2011408er

3713 indemnification, or otherwise, sought directly or indirectly  
3714 through a third party, against the insured of any insolvent  
3715 member; or

3716 (c) Any amount payable for a sinkhole loss other than  
3717 testing deemed appropriate by the association or payable for the  
3718 actual repair of the loss, except that the association may not  
3719 pay for attorney's fees or public adjuster's fees in connection  
3720 with a sinkhole loss or pay the policyholder. The association  
3721 may pay for actual repairs to the property, but is not liable  
3722 for amounts in excess of policy limits.

3723 Section 31. If any provision of this act, or the  
3724 application thereof to any person or circumstance is held  
3725 invalid, such invalidity shall not affect other provisions or  
3726 applications of this act which can be given effect without the  
3727 invalid provision or application. It is the express intent of  
3728 the Legislature to enact multiple important, but independent,  
3729 reforms to Florida law relating to sinkhole insurance coverage  
3730 and related claims. The Legislature further intends that the  
3731 multiple reforms in the act could and should be enforced if one  
3732 or more provisions are held invalid. To this end, the provisions  
3733 of this act are declared to be severable.

3734 Section 32. Except as otherwise expressly provided in this  
3735 act, this act shall take effect upon becoming a law.