

Committee Substitute for  
Committee Substitute for Senate Bill No. 1980

An act relating to property and casualty insurance; amending s. 215.555, F.S.; redefining the term "losses" for purposes of the Florida Hurricane Catastrophe Fund; allowing limited apportionment companies to purchase additional coverage amounts from the fund; revising certain reimbursement contract criteria; revising certain reimbursement premium requirements; specifying procedures for Citizens Property Insurance Corporation to obtain coverage for certain policies from the fund; deleting a requirement that bonds be validated; revising certain revenue bond emergency assessment requirements; specifying premiums that are subject to assessment; revising the date on which the exemption of medical malpractice premiums from emergency assessments is repealed; creating s. 215.5586, F.S.; establishing the Florida Comprehensive Hurricane Damage Mitigation Program within the Department of Financial Services; providing qualifications for the program administrator; providing program components and requirements; providing for wind certification and hurricane mitigation inspections; providing inspection requirements; providing inspector eligibility requirements; providing for grants; providing grant requirements; for loans; providing public education and consumer awareness requirements; amending s. 215.559, F.S.; creating the Manufactured Housing and Mobile Home Mitigation and Enhancement Program for specified purposes; requiring Tallahassee Community College to develop the program in consultation with certain entities; specifying requirements of the program as to certain concerns of the Department of Highway Safety and Motor Vehicles relating to manufactured homes and mobile homes; specifying that the program is a grant program for the improvement of mobile home and manufactured home parks; providing for the distribution of the grants to Tallahassee Community College for specified purposes; requiring the Citizens Property Insurance Corporation to grant certain insurance discounts, credits, rate differentials, or reductions in deductibles for property insurance premiums for owners of manufactured homes or mobile homes; specifying criteria for such premiums; specifying funding for tie-down enhancement systems; requiring Tallahassee Community College to provide an annual report on the program to the Governor and the Legislature; providing requirements relating to the report; providing an appropriation; creating s. 215.5595, F.S.; providing legislative findings concerning the appropriation of state funds to be used as surplus notes for residential property insurers; providing conditions and requirements for the issuance of surplus notes to new or existing residential property insurers under the Insurance Capital Build-Up Incentive Program; providing for the program to be administered by the State Board of Administration; limiting the amount of a surplus note; requiring that an insurer maintain a specified ratio of net written premium to surplus for the

term of the note; providing for the term of a surplus note and the rate of interest; providing that the state is a creditor for unpaid principal and interest on a surplus note; requiring the board to adopt emergency rules; providing requirements for the investment of appropriated funds; creating s. 252.63, F.S.; providing purpose and intent; providing powers of the Commissioner of Insurance Regulation during a state of emergency; authorizing the commissioner to issue certain orders in a state of emergency; providing for effect and duration of such orders; providing for legislative termination of such orders; requiring the commissioner to publish such orders and an explanatory statement; creating s. 626.8795, F.S.; prohibiting a public adjuster from engaging in certain activities that constitute a conflict of interest; providing an appropriation; amending s. 627.0613, F.S.; revising powers of the consumer advocate of the Chief Financial Officer with respect to appearance in certain proceedings; amending s. 626.918, F.S.; authorizing certain letters of credit to fund a surplus lines insurer's required policyholder protection trust fund; defining the term "qualified United States financial institution"; amending s. 627.062, F.S.; requiring the Office of Insurance Regulation to approve a rating factor relative to an insurer's rate of return; specifying certain rate filings as not subject to office determination as excessive or unfairly discriminatory; providing limitations; providing a definition; prohibiting certain rate filings under certain circumstances; preserving the office's authority to disapprove certain rate filings under certain circumstances; providing procedures for insurers submitting certain rate filings; revising provisions providing for recoupment of certain reinsurance costs; specifying nonapplication to certain types of insurance; providing that the burden is on the Office of Insurance Regulation to establish that certain rates are excessive; amending s. 627.0628, F.S.; authorizing certain determinations to be made in a rate hearing regarding the assumptions and factors found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology; amending s. 627.06281, F.S.; requiring the public hurricane loss-projection model to be submitted for review by the Florida Commission on Hurricane Loss Projection Methodology; allowing the Office of Insurance Regulation to use the public model until the commission determines that the public model is not accurate or reliable; amending s. 627.0629, F.S.; requiring that the office reevaluate the rate differentials for construction techniques that meet the requirements of the Florida Building Code; amending s. 627.351, F.S.; providing that certain responsibilities of the Office of Insurance Regulation with respect to the plan of operation of Citizens Property Insurance Corporation be assumed by the Financial Services Commission; defining the terms "homestead property" and "nonhomestead property" for use with respect to Citizens Property Insurance Corporation; limiting eligibility for personal lines coverage by the corporation; directing the corporation board to reduce or, with approval by necessary parties, restructure existing debt; requiring a report with respect thereto; providing for a reduction in aggregate amount of a regular assessment in certain circumstances; authorizing the board

of governors of the corporation to levy an assessment if certain deficits occur; requiring the board to levy an assessment against nonhomestead policyholders; authorizing additional assessments against all policyholders of the corporation under certain circumstances; providing accounting requirements; authorizing the corporation to adopt policy forms that contain more restrictive coverage; requiring the executive director of the corporation to be confirmed by the Senate; deleting authority of the Chief Financial Officer to review corporate employees; prescribing a 10-day waiting period for applications for coverage for a new policy; authorizing exceptions; redesignating the market equalization surcharge as a Citizens policyholder surcharge and providing for its calculation; revising the liability of limited apportionment companies for regular assessments; providing for optional payment plans; requiring insurers to provide claims-adjusting services for certain wind coverage in certain circumstances; requiring the corporation to limit coverage on certain mobile homes; requiring prospective senior management employees of the corporation to successfully pass a background check; requiring employees of the corporation to sign annually a statement that they have no conflict of interest; providing that senior managers and members of the board of governors are subject to the code of ethics and must file financial disclosure; prohibiting employees and members of the board of governors from accepting gifts or expenditures from a persons or entity, or employee thereof, which has or is under consideration for a contract with the corporation; providing penalties; providing a limitation on senior managers' representation of persons before the corporation after retirement or termination of employment and on employment with an insurer that has received a take-out bonus; prescribing guidelines for purchases of goods and services; providing guidelines on use of outside counsel; prohibiting the corporation from retaining a lobbyist; authorizing full-time employees to register and engage in lobbying; creating the Office of Internal Auditor and prescribing its duties; providing record-retention requirements; requiring establishment of a unit or division to investigate claims involving possible fraud against the corporation and another to receive and respond to consumer complaints; requiring employees of the corporation to report suspected fraud; requiring a periodic comprehensive market conduct examination of the corporation; requiring periodic operational audits of the corporation by the Auditor General; prescribing elements to be included in such audits; providing requirements for the office with respect to rate filings; specifying circumstances under which a rate is deemed inadequate for certain policies; requiring the rate for certain policies to be based on certain loss events; providing a rate surcharge for certain nonhomestead property and property valued at more than a certain amount; providing that rates for the corporation are not subject to the requirements for being noncompetitive if the Office of Insurance Regulation makes a certain determination; deleting provisions relating to appointment of a rate methodology panel; providing for use of the public hurricane loss-projection model in ratemaking; prescribing requirements for paying takeout bonuses or payments to insurers; requiring records of takeout bonuses or other

payments for certain purposes; clarifying that debt obligations of the corporation are not subject to taxation; prohibiting the corporation and other persons from making certain filings under, or becoming a debtor under, the federal Bankruptcy Code; authorizing the corporation to assume the policies of an insurer placed in liquidation under conditions approved by the office; postponing the dates by which the boundaries of high-risk areas must be reduced; requiring a study of the viability of authorized insurers issuing and servicing, for a fee, certain high-risk insurance policies; requiring a report to legislative leaders; providing that insurance agents are not liable for certain action; requiring that the corporation make certain information concerning policies ineligible for renewal available to licensed general lines agents unless the policyholder has requested that the corporation withhold such information; providing registration requirements in order for an agent to obtain such information; authorizing a registered agent to contact and assist a policyholder in securing a replacement policy; providing applicability of specified provisions relating to assessments and surcharges; amending s. 627.3511, F.S.; extending the period for which an insurer that assumes Citizens Property Insurance Corporation's obligations under a policy must renew the replacement policy; revising circumstances under which replacement is not required; amending s. 627.3512, F.S.; authorizing a limited apportionment company to recoup assessments levied by Citizens Property Insurance Corporation; amending s. 627.3517, F.S.; providing that an insurance risk apportionment plan policyholder's right to retain his or her current agent does not apply during the first 10 days after a new application for coverage has been submitted to Citizens Property Insurance Corporation; creating s. 627.3519, F.S.; requiring the Financial Services Commission to report annually to the Legislature on probable maximum losses, financing options, and assessment potentials of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; amending s. 627.4035, F.S.; providing for a waiver of a written authorization requirement to pay claims by debit card or other electronic transfer; creating s. 627.6121, F.S.; prescribing circumstances under which an insurer must pay benefits to a primary policyholder of dual interest property; amending s. 627.7011, F.S.; limiting certain law and ordinance coverage; providing that the section does not prohibit an insurer from limiting its liability concerning certain replacement costs; creating s. 627.7019, F.S.; requiring the Financial Services Commission to adopt rules imposing standardized requirements applicable to insurers after certain natural events; providing criteria; providing requirements of the Office of Insurance Regulation; amending s. 627.706, F.S.; allowing for a deductible amount applicable to sinkhole losses in a policy for residential property insurance; defining the term "professional engineer"; amending s. 627.707, F.S.; revising references to certain engineers; authorizing insurers to make direct payment for certain repairs; excluding insurers from liability for repairs under certain circumstances; amending s. 627.7072, F.S.; revising references to certain engineers; deleting a standard for testing; amending s. 627.7073,

F.S.; revising requirements for sinkhole reports by professional engineers and professional geologists; providing for the recording of sinkhole reports by the clerk of court rather than the property appraiser; providing that the recording of the report and certification does not constitute certain restrictions or create certain causes of action or liabilities; creating s. 627.7074, F.S.; prescribing an alternative method for resolving disputed sinkhole insurance claims; providing definitions; prescribing procedures for invoking the alternative method; providing that a recommendation by a neutral evaluator is not binding on any party; providing for payments of costs; requiring the insurer to pay attorney's fees of the policyholder up to a specified amount under certain conditions; providing that an insurer is not liable for attorney's fees or for certain damages under certain conditions; amending s. 627.727, F.S.; conforming a cross-reference; amending s. 631.181, F.S.; providing an exception to certain requirements for a signed statement for certain claims related to the insolvency of an insurer; providing requirements; amending s. 631.54, F.S.; redefining the term "covered claim" and defining the term "homeowner's insurance" for purposes of the Florida Insurance Guaranty Association; amending s. 631.55, F.S.; conforming a cross-reference; amending s. 631.57, F.S.; revising requirements and limitations for obligations of the Florida Insurance Guaranty Association for covered claims; authorizing the association to contract with counties, municipalities, and legal entities to issue revenue bonds for certain purposes; authorizing the Office of Insurance Regulation to levy assessments and emergency assessments on insurers under certain circumstances for certain bond repayment purposes; providing requirements for and limitations on such assessments; providing for payment, collection, and distribution of such assessments; requiring insurers to include an analysis of revenues from such assessments in a required report; providing rate filing requirements for insurers relating to such assessments; providing for continuing annual assessments under certain circumstances; specifying emergency assessments as not premium and not subject to certain taxes, fees, or commissions; specifying insurer liability for emergency assessments; providing an exception; creating s. 631.695, F.S.; providing legislative findings and purposes; providing for issuance of revenue bonds through counties and municipalities to fund assistance programs for paying covered claims for hurricane damage; providing procedures, requirements, and limitations for counties, municipalities, and the Florida Insurance Guaranty Association, Inc., relating to issuance and validation of such bonds; prohibiting pledging the funds, credit, property, and taxing power of the state, counties, and municipalities for payment of bonds; specifying authorized uses of bond proceeds; limiting the term of bonds; specifying a state covenant to protect bondholders from adverse actions relating to such bonds; specifying exemptions for bonds, notes, and other obligations of counties and municipalities from certain taxes or assessments on property and revenues; authorizing counties and municipalities to create a legal entity to exercise certain powers; requiring the association to issue an annual report on the status of certain uses of bond

proceeds; providing report requirements; requiring the association to provide a copy of the report to the Legislature and Chief Financial Officer; prohibiting repeal of certain provisions relating to certain bonds under certain circumstances; amending s. 877.02, F.S.; prohibiting certain solicitations by contractors and other persons providing sinkhole remediation services; providing penalties; requiring the Office of Insurance Regulation to submit reports to the Legislature relating to the insurability of certain attached or free-standing structures and relating to an objective rating system for homes; requiring the Office of Insurance Regulation to calculate a presumed factor that reflects certain provisions of the act related to sinkhole claims and by ss. 17, 18, 19, 20, and 21 of ch. 2005-111, Laws of Florida; providing procedures; requiring residential property insurers to use the presumed factor in calculating rates after a specified date; providing appropriations; requiring that an appropriation be transferred to Citizens Property Insurance Corporation to reduce the amount of the regular assessment for a specified deficit; requiring the corporation to notify assessable insurers of the amount by which assessments have been reduced; requiring insurers who recoup assessments to notify policyholders of the amount by which the surcharge has been reduced; providing penalties for a violation; defining terms; requiring that emergency assessments be amortized over a specified period; repealing s. 215.559(3), F.S.; deleting the requirement that the Department of Community Affairs develop a low-interest loan program for retrofitting homes; amending s. 627.701, F.S.; allowing insurers to offer the insured certain deductible options; amending s. 627.4133, F.S.; defining the term “nonpayment of premium” for purposes of insurance contracts; providing effective dates.

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

Section 1. Effective June 1, 2006, paragraph (d) of subsection (2), paragraphs (b), (c), and (d) of subsection (4), paragraph (b) of subsection (5), and paragraphs (a) and (b) of subsection (6) of section 215.555, Florida Statutes, are amended, and paragraph (e) is added to subsection (5) of that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(d) “Losses” means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and shall exclude loss adjustment expenses. “Losses” does not include losses for fair rental value, loss of rent or rental income use, or business interruption losses.

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each

covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

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

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

4. Notwithstanding any other provision contained in this section, the board shall make available to insurers qualifying as limited apportionment companies under s. 627.351(6)(c) a contract or contract addendum that provides an additional amount of reimbursement coverage of up to \$10 million. The premium to be charged for this additional reimbursement coverage shall be 50 percent of the additional reimbursement coverage provided, which shall include one prepaid reinstatement. The minimum retention level that an eligible participating insurer must retain associated with this additional coverage layer is 30 percent of the insurer's surplus as of March 31, 2006. This coverage shall be in addition to all other coverage that may be provided under this section. The coverage provided by the fund under this subsection shall be in addition to the claims-paying capacity as defined in subparagraph (c)1., but only with respect to those insurers that select the additional coverage option and meet the requirements of this subsection. The claims-paying capacity with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium's proportionate share of the actual claims-paying capacity otherwise defined in subparagraph (c)1. and as provided for under the terms of the reimbursement contract. Coverage provided in the reimbursement contract for participating insurers will not be affected by the additional premiums paid by limited apportionment companies exercising the additional coverage option allowed in this subparagraph. This subparagraph expires on May 31, 2007.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of \$15 billion for that contract year adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2003, provided the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the cash balance of the fund as of December 31 as defined by rule which occurred over the prior calendar year.

2. In May before the start of the upcoming contract year and in October during the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity and the

projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall:

~~a.—First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have petitioned the Office of Insurance Regulation and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of \$10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds \$2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.~~

a.b. Next pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year; provided, entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph b. e.

b.e. Thereafter, establish the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are suffi-



cient to reimburse entities created pursuant to s. 627.351 based on reimbursable losses exceeding the amounts payable pursuant to subparagraph ~~a.~~ ~~b.~~ for the current contract year.

(5) REIMBURSEMENT PREMIUMS.—

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, ~~a factor providing for more rapid cash buildup in the fund until the fund capacity for a single hurricane season is fully funded,~~ and other such factors deemed by the board to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula shall include a factor of 25 percent of the fund's actuarially indicated premium in order to provide for more rapid cash buildup in the fund. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(e) If Citizens Property Insurance Corporation assumes or otherwise provides coverage for policies of an insurer placed in liquidation under chapter 631 pursuant to s. 627.351(6), the corporation may, pursuant to conditions mutually agreed to between the corporation and the State Board of Administration, obtain coverage for such policies under its contract with the fund or accept an assignment of the liquidated insurer's contract with the fund. If Citizens Property Insurance Corporation elects to cover these policies under the corporation's contract with the fund, it shall notify the board of its insured values with respect to such policies within a specified time mutually agreed to between the corporation and the board, after such assumption or other coverage transaction, and the fund shall treat such policies as having been in effect as of June 30 of that year. In the event of an assignment, the fund shall apply that contract to such policies and treat Citizens Property Insurance Corporation as if the corporation were the liquidated insurer for the remaining term of the contract, and the corporation shall have all rights and duties of the liquidated insurer beginning on the date it provides coverage for such policies, but the corporation is not subject to any preexisting rights, liabilities, or duties of the liquidated insurer. The assignment, including any unresolved issues between the liquidated insurer and Citizens Property Insurance Corporation under the contract, shall be provided for in the liquidation order or otherwise determined by the court. However, if a covered event occurs before the effective date of the assignment, the corporation may not obtain coverage for such policies under its contract with the

fund and shall accept an assignment of the liquidated insurer's contract as provided in this paragraph. This paragraph expires on June 1, 2007.

(6) REVENUE BONDS.—

(a) General provisions.—

1. Upon the occurrence of a hurricane and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under paragraph (c) or paragraph (d) for the issuance of revenue bonds for the benefit of the fund. The proceeds of such revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under subsection (5) and under paragraph (b) to secure such revenue bonds and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements under paragraph (7)(b) as the board deems necessary to evidence, secure, preserve, and protect such pledge. If reimbursement premiums received under subsection (5) or earnings on such premiums are used to pay debt service on revenue bonds, such premiums and earnings shall be used only after the use of the moneys derived from assessments under paragraph (b). The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds. The board may also enter into agreements under paragraph (c) or paragraph (d) for the purpose of issuing revenue bonds in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The Legislature finds and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane. ~~Revenue bonds may not be issued under this subsection until validated under chapter 75. The validation of at least the first obligations incurred pursuant to this subsection shall be appealed to the Supreme Court, to be handled on an expedited basis.~~

(b) Emergency assessments.—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and

that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written future premium collections and is subject to annual adjustments by the board ~~to reflect changes in premiums subject to assessments collected under this subparagraph~~ in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as ~~until~~ the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. With respect to each insurer collecting premiums that are subject to the assessment, the insurer shall collect the assessment at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or corporation as provided in the order issued by the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be

remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

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

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

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to

the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2007, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2007.

Section 2. Effective July 1, 2006, section 215.5586, Florida Statutes, is created to read:

215.5586 Florida Comprehensive Hurricane Damage Mitigation Program.—There is established within the Department of Financial Services the Florida Comprehensive Hurricane Damage Mitigation Program. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. The program shall be administered by an individual with prior executive experience in the private sector in the areas of insurance, business, or construction. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that shall include the following:

(1) WIND CERTIFICATION AND HURRICANE MITIGATION INSPECTIONS.—

(a) Free home-retrofit inspections of site-built, residential property, including single-family, two-family, three-family, or four-family residential units, shall be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The Department of Financial Services shall establish a request for proposals to solicit proposals from wind certification entities to provide at no cost to homeowners wind certification and hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the mitigation features.

3. Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

(b) To qualify for selection by the department as a provider of wind certification and hurricane mitigation inspections, the entity shall, at a minimum:

1. Use wind certification and hurricane mitigation inspectors who:
  - a. Have prior experience in residential construction or inspection and have received specialized training in hurricane mitigation procedures.
  - b. Have undergone drug testing and background checks.
  - c. Have been certified, in a manner satisfactory to the department, to conduct the inspections.

2. Provide a quality assurance program including a reinspection component.

(2) GRANTS.—Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) To be eligible for a grant, a residential property must:

1. Have been granted a homestead exemption under chapter 196.
2. Be a dwelling with an insured value of \$500,000 or less.
3. Have undergone an acceptable wind certification and hurricane mitigation inspection.

A residential property which is part of a multi-family residential unit may receive a grant only if all homeowners participate and the total number of units does not exceed four.

(b) All grants must be matched on a dollar-for-dollar basis for a total of \$10,000 for the mitigation project with the state's contribution not to exceed \$5,000.

(c) The program shall create a process in which mitigation contractors agree to participate and seek reimbursement from the state and homeowners select from a list of participating contractors. All mitigation must be based upon the securing of all required local permits and inspections. Mitigation projects are subject to random reinspection of up to at least 10 percent of all projects.

(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property.

(e) Grants may be used for the following improvements:

1. Roof deck attachment;
2. Secondary water barrier;
3. Roof covering;
4. Brace gable ends;

5. Reinforce roof-to-wall connections;
6. Opening protection; and
7. Exterior doors, including garage doors.

(f) Low-income homeowners, as defined in s. 420.0004(9), who otherwise meet the requirements of paragraphs (a) and (c) are eligible for a grant of up to \$5,000 and are not required to provide a matching amount to receive the grant. Such grants shall be used to retrofit single-family, site-built, owner-occupied, residential properties in order to make them less vulnerable to hurricane damage.

(3) EDUCATION AND CONSUMER AWARENESS.—Multimedia public education, awareness, and advertising efforts designed to specifically address mitigation techniques shall be employed, as well as a component to support ongoing consumer resources and referral services.

(4) ADVISORY COUNCIL.—There is created an advisory council to provide advice and assistance to the program administrator with regard to his or her administration of the program. The advisory council shall consist of:

(a) A representative of lending institutions, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Bankers Association.

(b) A representative of residential property insurers, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Insurance Council.

(c) A representative of home builders, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Home Builders Association.

(d) A faculty member of a state university, selected by the Financial Services Commission, who is an expert in hurricane-resistant construction methodologies and materials.

(e) Two members of the House of Representatives, selected by the Speaker of the House of Representatives.

(f) Two members of the Senate, selected by the President of the Senate.

(g) The Chief Executive Officer of the Federal Alliance for Safe Homes, Inc., or his or her designee.

(h) The senior officer of the Florida Hurricane Catastrophe Fund.

(i) The executive director of Citizens Property Insurance Corporation.

(j) The director of the Division of Emergency Management of the Department of Community Affairs.

Members appointed under paragraphs (a)-(d) shall serve at the pleasure of the Financial Services Commission. Members appointed under paragraphs (e) and (f) shall serve at the pleasure of the appointing officer. All other members shall serve voting ex officio. Members of the advisory council shall serve without compensation but may receive reimbursement as provided in s. 112.061 for per diem and travel expenses incurred in the performance of their official duties.

(5) FEDERAL FUNDING.—The department shall use its best efforts to obtain grants or funds from the federal government to supplement the financial resources of the program.

(6) RULES.—The Department of Financial Services shall adopt rules pursuant to ss. 120.536(1) and 120.54 governing the Florida Comprehensive Hurricane Damage Mitigation Program. The department shall also adopt rules establishing priorities for grants provided under this section based on objective criteria that gives priority to reducing the state's probable maximum loss from hurricanes. However, pursuant to this overall goal, the department may further establish priorities based on the insured value of the dwelling, whether or not the dwelling is insured by Citizens Property Insurance Corporation and whether or not the area under consideration has sufficient resources and the ability to perform the retrofitting required.

Section 3. Subsections (4) and (6) of section 215.559, Florida Statutes, are amended to read:

215.559 Hurricane Loss Mitigation Program.—

~~(4)(a) Forty percent of the total appropriation in paragraph (2)(a) shall be used to inspect and improve tie-downs for mobile homes. Within 30 days after the effective date of that appropriation, the department shall contract with a public higher educational institution in this state which has previous experience in administering the programs set forth in this subsection to serve as the administrative entity and fiscal agent pursuant to s. 216.346 for the purpose of administering the programs set forth in this subsection in accordance with established policy and procedures. The administrative entity working with the advisory council set up under subsection (6) shall develop a list of mobile home parks and counties that may be eligible to participate in the tie-down program.~~

(b)1. There is created the Manufactured Housing and Mobile Home Mitigation and Enhancement Program. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of



Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro-rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to Tallahassee Community College to be used as set forth in this subsection.

(6) Except for the programs set forth in subsection (4), the Department of Community Affairs shall develop the programs set forth in this section in consultation with an advisory council consisting of a representative designated by the Chief Financial Officer, a representative designated by the Florida Home Builders Association, a representative designated by the Florida Insurance Council, a representative designated by the Federation of Manufactured Home Owners, a representative designated by the Florida Association of Counties, and a representative designated by the Florida Manufactured Housing Association.

Section 4. Of the funds appropriated for the Florida Comprehensive Hurricane Damage Mitigation Program specified in s. 215.5586, Florida Stat-

utes, as created by this act, \$7.5 million shall be for the Manufactured Housing and Mobile Home Mitigation and Enhancement Program specified in s. 215.559(4)(b), Florida Statutes, as created by this act. The Department of Financial Services shall use these funds to contract with Tallahassee Community College to implement the Manufactured Housing and Mobile Home Mitigation and Enhancement Program.

Section 5. Section 215.5595, Florida Statutes, is created to read:

215.5595 Insurance Capital Build-Up Incentive Program.—

(1) Upon entering the 2006 hurricane season, the Legislature finds that:

(a) The losses in Florida from eight hurricanes in 2004 and 2005 have seriously strained the resources of both the voluntary insurance market and the public-sector mechanisms of Citizens Property Insurance Corporation and the Florida Hurricane Catastrophe Fund.

(b) Private reinsurance is much less available and at a significantly greater cost to residential property insurers as compared to 1 year ago, particularly for amounts below the insurer's retention or retained losses that must be paid before reimbursement is provided by the Florida Hurricane Catastrophe Fund.

(c) The Office of Insurance Regulation has reported that the insolvency of certain insurers may be imminent.

(d) Hurricane forecast experts predict that the 2006 hurricane season will be an active hurricane season and that the Atlantic and Gulf Coast regions face an active hurricane cycle of 10 to 20 years or longer.

(e) The number of cancellations or nonrenewals of residential property insurance policies is expected to increase and the number of new residential policies written in the voluntary market are likely to decrease, causing increased policy growth and exposure to the state insurer of last resort, Citizens Property Insurance Corporation, and threatening to increase the deficit of the corporation, currently estimated to be over \$1.7 billion. This deficit must be funded by assessments against insurers and policyholders, unless otherwise funded by the state.

(f) Policyholders are subject to increased premiums and assessments that are increasingly making such coverage unaffordable and that may force policyholders to sell their homes and even leave the state.

(g) The increased risk to the public sector and private sector poses a serious threat to the economy of this state, particularly the building and financing of residential structures, and existing mortgages may be placed in default.

(h) The losses from 2004 and 2005, combined with the expectation that the increase in hurricane activity will continue for the foreseeable future, have caused both insurers and reinsurers to limit the capital they are willing to commit to covering the hurricane risk in Florida; attracting new capital

to the Florida market is a critical priority; and providing a low-cost source of capital would enable insurers to write additional residential property insurance coverage and act to mitigate premium increases.

(i) Appropriating state funds to be used as surplus notes for residential property insurers, under conditions requiring the insurer to contribute additional private-sector capital and to write a minimum level of premiums for residential hurricane coverage, is a valid and important public purpose.

(2) The purpose of this section is to provide surplus notes to new or existing authorized residential property insurers under the Insurance Capital Build-Up Incentive Program administered by the State Board of Administration, under the following conditions:

(a) The amount of the surplus note for any insurer or insurer group may not exceed \$25 million or 20 percent of the total amount of funds available under the program, whichever is greater.

(b) The insurer must contribute an amount of new capital to its surplus which is at least equal to the amount of the surplus note and must apply to the board by July 1, 2006. If an insurer applies after July 1, 2006, but before June 1, 2007, the amount of the surplus note is limited to one-half of the new capital that the insurer contributes to its surplus. For purposes of this section, new capital must be in the form of cash or cash equivalents as specified in s. 625.012(1).

(c) The insurer's surplus, new capital, and the surplus note must total at least \$50 million.

(d) The insurer must commit to meeting a minimum writing ratio of net written premium to surplus of at least 2:1 for the term of the surplus note, which shall be determined by the Office of Insurance Regulation and certified quarterly to the board. For this purpose, the term "net written premium" means net written premium for residential property insurance in Florida, including the peril of wind, and "surplus" refers to the entire surplus of the insurer. If the required ratio is not maintained during the term of the surplus note, the board may increase the interest rate, accelerate the repayment of interest and principal, or shorten the term of the surplus note, subject to approval by the Commissioner of Insurance of payments by the insurer of principal and interest as provided in paragraph (f).

(e) If the requirements of this section are met, the board may approve an application by an insurer for a surplus note, unless the board determines that the financial condition of the insurer and its business plan for writing residential property insurance in Florida places an unreasonably high level of financial risk to the state of nonpayment in full of the interest and principal. The board shall consult with the Office of Insurance Regulation and may contract with independent financial and insurance consultants in making this determination.

(f) The surplus note must be repayable to the state with a term of 20 years. The surplus note shall accrue interest on the unpaid principal balance at a rate equivalent to the 10-year U.S. Treasury Bond rate, require the

payment only of interest during the first 3 years, and include such other terms as approved by the board. Payment of principal or interest by the insurer on the surplus note must be approved by the Commissioner of Insurance, who shall approve such payment unless the commissioner determines that such payment will substantially impair the financial condition of the insurer. If such a determination is made, the commissioner shall approve such payment that will not substantially impair the financial condition of the insurer.

(g) The total amount of funds available for the program is limited to the amount appropriated by the Legislature for this purpose. If the amount of surplus notes requested by insurers exceeds the amount of funds available, the board may prioritize insurers that are eligible and approved, regardless of the date of application, based on the financial strength of the insurer, the viability of its proposed business plan for writing additional residential property insurance in the state, and the effect on competition in the residential property insurance market.

(h) The board may allocate portions of the funds available for the program and establish dates for insurers to apply for surplus notes from such allocation which are earlier than the dates established in paragraph (b).

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

(a) "Board" means the State Board of Administration.

(b) "Program" means the Insurance Capital Build-Up Incentive Program established by this section.

(4) A surplus note provided to an insurer pursuant to this section is considered an asset of the insurer pursuant to s. 625.012.

(5) If an insurer that receives a surplus note pursuant to this section is rendered insolvent, the state is a class 3 creditor pursuant to s. 631.271 for the unpaid principal and interest on the surplus note.

(6) The board shall adopt rules prescribing the procedures, administration, and criteria for approving the issuance of surplus notes pursuant to this section, which may be adopted pursuant to the procedures for emergency rules of chapter 120. Otherwise, actions and determinations by the board pursuant to this section are exempt from chapter 120.

(7) The board shall invest and reinvest the funds appropriated for the program in accordance with s. 215.47 and consistent with board policy.

Section 6. Section 252.63, Florida Statutes, is created to read:

252.63 Commissioner of Insurance Regulation; powers in a state of emergency.—

(1) When the Governor declares a state of emergency pursuant to s. 252.36, the commissioner may issue one or more general orders applicable to all insurance companies, entities, and persons, as defined in s. 624.04,

that are subject to the Florida Insurance Code and that serve any portion of the area of the state under the state of emergency.

(2) An order issued by the commissioner under this section becomes effective upon issuance and continues for 120 days unless terminated sooner by the commissioner. The commissioner may extend an order for one additional period of 120 days if he or she determines that the emergency conditions that gave rise to the initial order still exist. By concurrent resolution, the Legislature may terminate any order issued under this section.

(3) The commissioner shall publish in the next available publication of the Florida Administrative Weekly a copy of the text of any order issued under this section, together with a statement describing the modification or suspension and explaining how the modification or suspension will facilitate recovery from the emergency.

Section 7. Section 626.8795, Florida Statutes, is created to read:

626.8795 Public adjusters; prohibition of conflict of interest.—A public adjuster may not participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee; may not engage in any other activities that may be reasonably construed as a conflict of interest, including soliciting or accepting any remuneration from, of any kind or nature, directly or indirectly; and may not have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with any claim that the public adjuster has a contract or an agreement to adjust.

Section 8. Subsection (1) of 627.0613, Florida Statutes, is amended to read:

627.0613 Consumer advocate.—The Chief Financial Officer must appoint a consumer advocate who must represent the general public of the state before the department and the office. The consumer advocate must report directly to the Chief Financial Officer, but is not otherwise under the authority of the department or of any employee of the department. The consumer advocate has such powers as are necessary to carry out the duties of the office of consumer advocate, including, but not limited to, the powers to:

(1) Recommend to the department or office, by petition, the commencement of any proceeding or action; appear in any proceeding or action before the department or office; or appear in any proceeding before the Division of Administrative Hearings or arbitration panel specified in s. 627.062(6) relating to subject matter under the jurisdiction of the department or office.

Section 9. For the 2006-2007 fiscal year, there is appropriated \$250,000 from the Insurance Regulatory Trust Fund to the Office of the Consumer Advocate within the Department of Financial Services for the purposes provided in section 627.0613, Florida Statutes.

Section 10. Subsections (1) and (2) of section 626.918, Florida Statutes, are amended to read:

## 626.918 Eligible surplus lines insurers.—

(1) ~~A No~~ surplus lines agent may not shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer, except as permitted under subsections (5) and (6).

(2) ~~An No~~ unauthorized insurer may not shall be or become an eligible surplus lines insurer unless made eligible by the office in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by the Florida Surplus Lines Service Office.;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed and must have been such an insurer for not less than the 3 years next preceding or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible surplus lines insurer as to the kind or kinds of insurance proposed for a period of not less than the 3 years next preceding. However, the office may waive the 3-year requirement if the insurer provides a product or service not readily available to the consumers of this state or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than \$25 million.;

(c) Before granting eligibility, the requesting surplus lines agent or the insurer shall furnish the office with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate (in the case of statements originally made in the currencies of other countries) then-current and shown in the statement, and with such additional information relative to the insurer as the office may request.;

(d)1.a. The insurer must have and maintain surplus as to policyholders of not less than \$15 million; in addition, an alien insurer must also have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the office to be reasonably adequate, in an amount not less than \$5.4 million. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625 provided, however, that in the case of an alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subparagraph 2., may be used to fund the trust.;

b.2. For those surplus lines insurers that were eligible on January 1, 1994, and that maintained their eligibility thereafter, the required surplus as to policyholders shall be:

- (I)a. On December 31, 1994, and until December 30, 1995, \$2.5 million.
- (II)b. On December 31, 1995, and until December 30, 1996, \$3.5 million.
- (III)c. On December 31, 1996, and until December 30, 1997, \$4.5 million.
- (IV)d. On December 31, 1997, and until December 30, 1998, \$5.5 million.
- (V)e. On December 31, 1998, and until December 30, 1999, \$6.5 million.
- (VI)f. On December 31, 1999, and until December 30, 2000, \$8 million.
- (VII)g. On December 31, 2000, and until December 30, 2001, \$9.5 million.
- (VIII)h. On December 31, 2001, and until December 30, 2002, \$11 million.
- (IX)i. On December 31, 2002, and until December 30, 2003, \$13 million.
- (X)j. On December 31, 2003, and thereafter, \$15 million.

c.3. The capital and surplus requirements as set forth in sub-subparagraph b. ~~subparagraph 2.~~ do not apply in the case of an insurance exchange created by the laws of individual states, where the exchange maintains capital and surplus pursuant to the requirements of that state, or maintains capital and surplus in an amount not less than \$50 million in the aggregate. For an insurance exchange which maintains funds in the amount of at least \$12 million for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus in an amount not less than \$3 million. If the insurance exchange does not maintain funds in the amount of at least \$12 million for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements set forth in sub-subparagraph b. ~~subparagraph 2.~~;

d.4. A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer as set forth in its holding company registration statement, as set forth in s. 628.801 and rules adopted thereunder, may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, subject to the requirement that the surplus lines insurer shall at all times be in compliance with the requirements of chapter 625.

The election shall be submitted to the office and shall be effective upon the office's being satisfied that the requirements of sub-subparagraph d. ~~subparagraph 4.~~ have been met. The initial date of election shall be the date of office approval. The election approval application shall be on a form adopted by commission rule. The office may approve an election form submitted pursuant to sub-subparagraph d. ~~subparagraph 4.~~ only if it was on file with the former Department of Insurance before February 28, 1998.;

2. For purposes of letters of credit under subparagraph 1., the term "qualified United States financial institution" means an institution that:

a. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state.

b. Is regulated, supervised, and examined by authorities of the United States or any state having regulatory authority over banks and trust companies.

c. Has been determined by the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the office.

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.;

(f) The insurer must be eligible, as for authority to transact insurance in this state, under s. 624.404(3); ~~and~~

(g) This subsection does not apply as to unauthorized insurers made eligible under s. 626.917 as to wet marine and aviation risks.

Section 11. Effective July 1, 2006, paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended, paragraph (j) is added to that subsection, and subsection (9) is added to that section, to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

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

1. Past and prospective loss experience within and without this state.
2. Past and prospective expenses.
3. The degree of competition among insurers for the risk insured.
4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules utilizing reasonable techniques of actuarial science and economics to specify the manner in which insurers shall calculate investment income attributable to such classes of insurance written in this state and the manner in which such investment income shall be used in the calculation of insurance rates. Such manner shall contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of



return; however, investment income from invested surplus shall not be considered.

5. The reasonableness of the judgment reflected in the filing.
6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.
7. The adequacy of loss reserves.
8. The cost of reinsurance.
9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.
10. Conflagration and catastrophe hazards, if applicable.
11. A reasonable margin for underwriting profit and contingencies. For that portion of the rate covering the risk of hurricanes and other catastrophic losses for which the insurer has not purchased reinsurance and has exposed its capital and surplus to such risk, the office must approve a rating factor that provides the insurer a reasonable rate of return that is commensurate with such risk.
12. The cost of medical services, if applicable.
13. Other relevant factors which impact upon the frequency or severity of claims or upon expenses.

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

(j) Effective July 1, 2007, notwithstanding any other provision of this section:

1. With respect to any residential property insurance subject to regulation under this section for any area for which the office determines a reasonable degree of competition exists, a rate filing, including, but not limited to, any rate changes, rating factors, territories, classification, discounts, and credits, with respect to any policy form, including endorsements issued with the form, that results in an overall average statewide premium increase or decrease of no more than 5 percent above or below the premium that would result from the insurer's rates then in effect shall not be subject to a determination by the office that the rate is excessive or unfairly discriminatory except as provided in subparagraph 3., or any other provision of law, provided all changes specified in the filing do not result in an overall premium increase of more than 10 percent for any one territory, for reasons related solely to the rate change. As used in this subparagraph, the term "insurer's rates then in effect" includes only rates that have been lawfully in effect under this section or rates that have been determined to be lawful through administrative proceedings or judicial proceedings.

2. An insurer may not make filings under this paragraph with respect to any policy form, including endorsements issued with the form, if the overall

premium changes resulting from such filings exceed the amounts specified in this paragraph in any 12-month period. An insurer may proceed under other provisions of this section or other provisions of law if the insurer seeks to exceed the premium or rate limitations of this paragraph.

3. This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a filing for the unlawful use of unfairly discriminatory rating factors that are prohibited by the laws of this state. An insurer electing to implement a rate change under this paragraph shall submit a filing to the office at least 40 days prior to the effective date of the rate change. The office shall have 30 days after the filing's submission to review the filing and determine if the rate is inadequate or uses unfairly discriminatory rating factors. Absent a finding by the office within such 30-day period that the rate is inadequate or that the insurer has used unfairly discriminatory rating factors, the filing is deemed approved. If the office finds during the 30-day period that the filing will result in inadequate premiums or otherwise endanger the insurer's solvency, the office shall suspend the rate decrease. If the insurer is implementing an overall rate increase, the results of which continue to produce an inadequate rate, such increase shall proceed pending additional action by the office to ensure the adequacy of the rate.

4. This paragraph does not apply to rate filings for any insurance other than residential property insurance.

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

Section 12. Paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) **ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—**

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062. Such findings and factors are admissible and relevant in consideration of a rate filing by the office or in any arbitration or administrative or judicial review only if the office and the consumer advocate appointed pursuant to s. 627.0613 have access to all of the assumptions and factors that were used in developing the actuarial methods, principles, standards, models, or output ranges, and are not precluded from disclosing such information in a rate proceeding. In any rate hearing under s. 120.57 or in any arbitration proceeding under s. 627.062(6), the hearing officer, judge, or arbitration panel may determine whether the office and the consumer advocate were provided with access to all of the

assumptions and factors that were used in developing the actuarial methods, principles, standards, models, or output ranges and to determine their admissibility.

Section 13. Section 627.06281, Florida Statutes, is amended to read:

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

(1) Within 30 days after a written request for loss data and associated exposure data by the office or a type I center within the State University System established to study mitigation, residential property insurers and licensed rating and advisory organizations that compile residential property insurance loss data shall provide loss data and associated exposure data for residential property insurance policies to the office or to a type I center within the State University System established to study mitigation, as directed by the office, for the purposes of developing, maintaining, and updating a public model for hurricane loss projections. The loss data and associated exposure data provided shall be in writing.

(2) The public model must be submitted to the Florida Commission on Hurricane Loss Projection Methodology for review under s. 627.0628 by March 1, 2007. The office may continue to use the model for its review of rate filings pursuant to ss. 627.062 and 627.351 until such time as the Florida Commission on Hurricane Loss Projection Methodology determines that the public model is not accurate or reliable pursuant to the same process and standards as the commission uses for the review of other hurricane loss projection models.

Section 14. Subsection (1) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(1) Effective June 1, 2002, a rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques shall include, but not be limited to, fixtures or construction techniques which enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, discounts, or other rate differentials for fixtures and construction techniques which meet the minimum requirements of the Florida Building Code must be included in the rate filing. All insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office. The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles

that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

Section 15. Effective July 1, 2006, subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a)1. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in assuring that property in the state is insured so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare; to the economy of the state; and to the revenues of the state and local governments needed to provide for the public welfare. It is necessary, therefore, to provide property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends by this subsection that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, while providing service to policyholders, applicants, and agents that is no less than the quality generally provided in the voluntary market, all toward the achievement of the foregoing public purposes. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

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

3. For the purposes of this subsection, the term “homestead property” means:

a. Property that has been granted a homestead exemption under chapter 196;

b. Property for which the owner has a current, written lease with a renter for a term of at least 7 months and for which the dwelling is insured by the corporation for \$200,000 or less;

c. An owner-occupied mobile home or manufactured home, as defined in s. 320.01, which is permanently affixed to real property, is owned by a Florida resident, and has been granted a homestead exemption under chapter 196 or, if the owner does not own the real property, the owner certifies that the mobile home or manufactured home is his or her principal place of residence.

d. Tenants coverage;

e. Commercial lines residential property; or

f. Any county, district, or municipal hospital; a hospital licensed by any not-for-profit corporation qualified under s. 501(c)(3) of the United States Internal Revenue Code; or a continuing care retirement community that is certified under chapter 651 and that receives an exemption from ad valorem taxes under chapter 196.

4. For the purposes of this subsection, the term “nonhomestead property” means property that is not homestead property.

5. Effective July 1, 2008, a personal lines residential structure that has a dwelling replacement cost of \$1 million or more, or a single condominium unit that has a combined dwelling and content replacement cost of \$1 million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on June 30, 2008, may continue to be covered by the corporation until the end of the policy term. However, such dwellings that are insured by the corporation and become ineligible for coverage due to the provisions of this subparagraph may reapply and obtain coverage in the high-risk account and be considered “nonhomestead property” if the property owner provides the corporation with a sworn affidavit from one or more insurance agents, on a form provided by the corporation, stating that the agents have made their best efforts to obtain coverage and that the property has been rejected for coverage by at least one authorized insurer and at least three surplus lines insurers. If such conditions are met, the dwelling may be insured by the corporation for up to 3 years, after which time the dwelling is ineligible for coverage. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation prior to being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

6. Effective March 1, 2007, nonhomestead property is not eligible for coverage by the corporation and is not eligible for renewal of such coverage unless the property owner provides the corporation with a sworn affidavit from one or more insurance agents, on a form provided by the corporation, stating that the agents have made their best efforts to obtain coverage and that the property has been rejected for coverage by at least one authorized insurer and at least three surplus lines insurers.

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

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

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

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

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

(III) A high-risk account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the

corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property. The office may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the office finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. When the financing obligations are no longer outstanding, in accordance with the terms of the corresponding financing documents, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with the requirement of this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or to obtain approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan to consolidate the three separate accounts into a single account. By February 1, 2007, the board shall submit a report to the Financial Services Commission, the President of the Senate, and the Speaker of the House of Representatives which includes an analysis of consolidating the accounts, the actions the board has taken to minimize the cost of carrying debt, and its recommendations for executing the most efficient plan.

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

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

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

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

3. With respect to a deficit in an account:

a. When the deficit incurred in a particular calendar year is not greater than 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (p) ~~(g)~~ and assessable insureds.

b. When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (p) ~~(g)~~ and on assessable insureds in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-paragraph d.

c. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (p) ~~(g)~~. Notwithstanding any other provision of this subsection, the aggregate amount of a regular assessment for a deficit incurred in a particular calendar year shall be reduced by the estimated amount to be received by the corporation from the Citizens policyholder surcharge under subparagraph (c)11. and the amount collected or estimated to be collected from the assessment on Citizens policyholders pursuant to sub-subparagraph i. Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. or sub-subparagraph b., the board shall levy, after verification by the office, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers



and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessments so collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and shall be held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and for all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, ~~policyholder market equalization~~ surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (p) ~~(g)~~, bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a., sub-subparagraph b., or subparagraph (p)1. ~~(g)1.~~ and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for

the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or other indebtedness.

f. As used in this subsection, the term “subject lines of business” means insurance written by assessable insurers or procured by assessable insureds on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverage on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1) other than insurance on mobile homes used as permanent dwellings.

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

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

i. If a deficit is incurred in any account, the board of governors shall levy an immediate assessment against the premium of each nonhomestead property policyholder in all accounts of the corporation, as a uniform percentage of the premium of the policy of up to 10 percent of such premium, which funds shall be used to offset the deficit. If this assessment is insufficient to eliminate the deficit, the board of governors shall levy an additional assessment against all policyholders of the corporation, which shall be collected at the time of issuance or renewal of a policy, as a uniform percentage of the premium for the policy of up to 10 percent of such premium, which funds shall be used to further offset the deficit.

j. The board of governors shall maintain separate accounting records that consolidate data for nonhomestead properties, including, but not limited to, number of policies, insured values, premiums written, and losses. The board of governors shall annually report to the office and the Legislature a summary of such data.

(c) The plan of operation of the corporation:

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

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent

to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

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

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

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

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

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

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

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

(II) “Eligible risks” means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation

and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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

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

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

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

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

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

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

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

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of 8 individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board, ~~effective August 1, 2005~~. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board, ~~as recommended by the Chief Financial Officer~~, and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board and the Chief Financial Officer.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its cus-

tomer and agent service levels in relationship to the voluntary market insurers writing similar coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

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

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

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

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

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

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

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

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

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

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

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

b. With respect to commercial lines residential risks, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation.

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

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

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

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

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

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

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

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

6. Must provide by July 1, 2007, that an application for coverage for a new policy is subject to a waiting period of 10 days before coverage is effective, during which time the corporation shall make such application available for review by general lines agents and authorized property and casualty insurers. The board may approve exceptions that allow for coverage to be effective before the end of the 10-day waiting period, for coverage issued in conjunction with a real estate closing, and for such other exceptions as the board determines are necessary to prevent lapses in coverage.

~~7.6.~~ Must include rules for classifications of risks and rates therefor.

~~8.7.~~ Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

~~9.8.~~ Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

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

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

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



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

11.10. Must provide that in the event of regular deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., in the personal lines account, the commercial lines residential account, or the high-risk account, the corporation shall levy upon corporation policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a Citizens policyholder market equalization surcharge arising from a regular assessment in such account in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for subject lines of business for the prior calendar year. For purposes of calculating the Citizens policyholder surcharge to be levied under this subparagraph, the total amount of the regular assessment to which this surcharge is related shall be determined as set forth in subparagraph (b)3., without deducting the estimated Citizens policyholder surcharge. Citizens policyholder Market equalization surcharges under this subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

12.11. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation.

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

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

15.14. Must provide that, with respect to the high-risk account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular

assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the high-risk account in 2006 or thereafter may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds pursuant to s. 627.3512, but the regular assessment must be paid in full within 12 months after being levied by the corporation. In no event shall a limited apportionment company be required to participate in the portion of any assessment, within the high-risk account, pursuant to sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which exceeds \$50 million after payment of available high-risk account funds in any calendar year. However, A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (g)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

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

17. Must provide, by July 1, 2007, a premium payment plan option to its policyholders which allows for quarterly and semiannual payment of premiums.

18. Must provide, effective June 1, 2007, that the corporation contract with each insurer providing the non-wind coverage for risks insured by the corporation in the high-risk account, requiring that the insurer provide claims-adjusting services for the wind coverage provided by the corporation for such risks. An insurer is required to enter into this contract as a condition of providing non-wind coverage for a risk that is insured by the corporation in the high-risk account unless the board finds, after a hearing, that the insurer is not capable of providing adjusting services at an acceptable level of quality to corporation policyholders. The terms and conditions of such contracts must be substantially the same as the contracts that the corporation executed with insurers under the "adjust-your-own" program in 2006, except as may be mutually agreed to by the parties and except for such changes that the board determines are necessary to ensure that claims are adjusted appropriately. The corporation shall provide a process for neutral arbitration of any dispute between the corporation and the insurer regarding the terms of the contract. The corporation shall review and monitor the performance of insurers under these contracts.

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

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

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

3. Senior managers and members of the board of governors are subject to the provisions of part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. Senior managers and board members are also required to file such disclosures with the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each newly appointed and existing appointed member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the senior managers and members of the board of governors that are subject to the public disclosure requirements under s. 112.3145.

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

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

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

(e) Purchases that equal or exceed \$2,500, but are less than \$25,000, shall be made by receipt of written quotes, written record of telephone quotes, or informal bids, whenever practical. The procurement of goods or services valued at or over \$25,000 shall be subject to competitive solicitation, except in situations where the goods or services are provided by a sole source or are deemed an emergency purchase; the services are exempted from competitive solicitation requirements under s. 287.057(5)(f); or the procurement of services is subject to s. 627.3513. Justification for the sole-sourcing

or emergency procurement must be documented. Contracts for goods or services valued at or over \$100,000 are subject to approval by the board.

(f) The board shall determine whether it is more cost-effective and in the best interests of the corporation to use legal services provided by in-house attorneys employed by the corporation rather than contracting with outside counsel. In making such determination, the board shall document its findings and shall consider: the expertise needed; whether time commitments exceed in-house staff resources; whether local representation is needed; the travel, lodging and other costs associated with in-house representation; and such other factors that the board determines are relevant.

(g) The corporation may not retain a lobbyist to represent it before the legislative branch or executive branch. However, full-time employees of the corporation may register as lobbyists and represent the corporation before the legislative branch or executive branch.

(h)1. The Office of the Internal Auditor is established within the corporation to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency to the policyholders and to the taxpayers of this state. The internal auditor shall be appointed by the board of governors, shall report to and be under the general supervision of the board of governors, and is not subject to supervision by any employee of the corporation. Administrative staff and support shall be provided by the corporation. The internal auditor shall be appointed without regard to political affiliation. It is the duty and responsibility of the internal auditor to:

a. Provide direction for, supervise, conduct, and coordinate audits, investigations, and management reviews relating to the programs and operations of the corporation.

b. Conduct, supervise, or coordinate other activities carried out or financed by the corporation for the purpose of promoting efficiency in the administration of, or preventing and detecting fraud, abuse, and mismanagement in, its programs and operations.

c. Submit final audit reports, reviews, or investigative reports to the board of governors, the executive director, the members of the Financial Services Commission, and the President of the Senate and the Speaker of the House of Representatives.

d. Keep the board of governors informed concerning fraud, abuses, and internal control deficiencies relating to programs and operations administered or financed by the corporation, recommend corrective action, and report on the progress made in implementing corrective action.

e. Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the internal auditor has reasonable grounds to believe there has been a violation of criminal law.

2. On or before February 15, the internal auditor shall prepare an annual report evaluating the effectiveness of the internal controls of the corporation

and providing recommendations for corrective action, if necessary, and summarizing the audits, reviews, and investigations conducted by the office during the preceding fiscal year. The final report shall be furnished to the board of governors and the executive director, the President of the Senate, the Speaker of the House of Representatives, and the Financial Services Commission.

(i) All records of the corporation, except as otherwise provided by law, are subject to the record retention requirements of s. 119.021.

(j)1. The corporation shall establish and maintain a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or it may contract with others to investigate possible fraudulent claims for services or repairs against policies held by the corporation pursuant to s. 626.9891. The corporation must comply with reporting requirements of s. 626.9891. An employee of the corporation shall notify the Division of Insurance Fraud within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

2. The corporation shall establish a unit or division responsible for receiving and responding to consumer complaints, which unit or division is the sole responsibility of a senior manager of the corporation.

(k) The office shall conduct a comprehensive market conduct examination of the corporation every 2 years to determine compliance with its plan of operation and internal operations procedures. The first market conduct examination report shall be submitted to the President of the Senate and the Speaker of the House of Representatives no later than February 1, 2009. Subsequent reports shall be submitted on or before February 1 every 2 years thereafter.

(l) The Auditor General shall conduct an operational audit of the corporations every 3 years to evaluate management's performance in administering laws, policies, and procedures governing the operations of the corporation in an efficient and effective manner. The scope of the review shall include, but is not limited to, evaluating claims handling, customer service, take-out programs and bonuses, financing arrangements, procurement of goods and services, internal controls, and the internal audit function. The initial audit must be completed by February 1, 2009.

(m)(d)1.a. It is the intent of the Legislature that the Rates for coverage provided by the corporation shall be actuarially sound and not competitive with approved rates charged in the admitted voluntary market, so that the corporation functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. Rates shall include an appropriate catastrophe loading factor that reflects the actual catastrophic exposure of the corporation. For policies in the personal lines account and the commercial lines account issued or renewed on or after March 1, 2007, a rate is deemed inadequate if the rate, including investment income, is not sufficient to provide for the procurement of coverage under the Florida Hurricane Catastrophe Fund and private reinsurance costs,

whether or not reinsurance is procured, and to pay all claims and expenses reasonably expected to result from a 100-year probable maximum loss event without resort to any regular or emergency assessments, long-term debt, state revenues, or other funding sources. For policies in the high-risk account issued or renewed on or after March 1, 2007, a rate is deemed inadequate if the rate, including investment income, is not sufficient to provide for the procurement of coverage under the Florida Hurricane Catastrophe Fund and private reinsurance costs, whether or not reinsurance is procured, and to pay all claims and expenses reasonably expected to result from a 70-year probable maximum loss event with resort to any regular or emergency assessments, long-term debt, state revenues, or other funding sources. For policies in the high-risk account issued or renewed in 2008 and 2009, the rate must be based upon an 85-year and 100-year probable maximum loss event, respectively.

b. It is the intent of the Legislature to reaffirm the requirement of rate adequacy in the residual market. Recognizing that rates may comply with the intent expressed in sub-subparagraph a. and yet be inadequate and recognizing the public need to limit subsidies within the residual market, it is the further intent of the Legislature to establish statutory standards for rate adequacy. Such standards are intended to supplement the standard specified in s. 627.062(2)(e)3., providing that rates are inadequate if they are clearly insufficient to sustain projected losses and expenses in the class of business to which they apply.

2. For each county, the average rates of the corporation for each line of business for personal lines residential policies excluding rates for wind-only policies shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state for that line of business in the preceding year, except that with respect to mobile home coverages, the average rates of the corporation shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 5 insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year.

3. Rates for personal lines residential wind-only policies must be actuarially sound and not competitive with approved rates charged by authorized insurers. If the filing under this subparagraph is made at least 90 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, such filing shall be considered a file and use filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings shall not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. Corporation rate manuals shall include a rate

surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates are not competitive with approved rates charged by authorized insurers, the corporation, in conjunction with the office, shall develop a wind-only ratemaking methodology, which methodology shall be contained in each rate filing made by the corporation with the office. If the office determines that the wind-only rates or rating factors filed by the corporation fail to comply with the wind-only ratemaking methodology provided for in this subsection, it shall so notify the corporation and require the corporation to amend its rates or rating factors to come into compliance within 90 days of notice from the office.

4. The requirements of paragraph (m) that rates not be competitive with approved rates charged by authorized insurers do not apply in a county or area for which the office determines that no authorized insurer is offering coverage. The corporation shall amend its rates or rating factors for the affected county or area in conjunction with its next rate filing after such determination is made.

5.4. For the purposes of establishing a pilot program to evaluate issues relating to the availability and affordability of insurance in an area where historically there has been little market competition, the provisions of subparagraph 2. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies. The provisions of subparagraph 3. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county which is eligible for wind-only coverage. In this county, the rates for personal lines residential coverage shall be actuarially sound and not excessive, inadequate, or unfairly discriminatory and are subject to the other provisions of the paragraph and s. 627.062. The commission shall adopt rules establishing the criteria for determining whether a reasonable degree of competition exists for personal lines residential policies in Monroe County. By March 1, 2006, the office shall submit a report to the Legislature providing an evaluation of the implementation of the pilot program affecting Monroe County.

6.5. Rates for commercial lines coverage shall not be subject to the requirements of subparagraph 2., but shall be subject to all other requirements of this paragraph and s. 627.062.

7.6. Nothing in this paragraph shall require or allow the corporation to adopt a rate that is inadequate under s. 627.062.

8.7. The corporation shall certify to the office at least twice annually that its personal lines rates comply with the requirements of subparagraphs 1., ~~and 2., and 3.~~ If any adjustment in the rates or rating factors of the corporation is necessary to ensure such compliance, the corporation shall make and implement such adjustments and file its revised rates and rating factors with the office. If the office thereafter determines that the revised rates and rating factors fail to comply with the provisions of subparagraphs 1., ~~and 2., and 3.,~~ it shall notify the corporation and require the corporation to amend its rates or rating factors in conjunction with its next rate filing. The office

must notify the corporation by electronic means of any rate filing it approves for any insurer among the insurers referred to in subparagraph 2.

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

~~9.a.—To assist the corporation in developing additional ratemaking methods to assure compliance with subparagraphs 1. and 4., the corporation shall appoint a rate methodology panel consisting of one person recommended by the Florida Association of Insurance Agents, one person recommended by the Professional Insurance Agents of Florida, one person recommended by the Florida Association of Insurance and Financial Advisors, one person recommended by the insurer with the highest voluntary market share of residential property insurance business in the state, one person recommended by the insurer with the second-highest voluntary market share of residential property insurance business in the state, one person recommended by an insurer writing commercial residential property insurance in this state, one person recommended by the Office of Insurance Regulation, and one board member designated by the board chairman, who shall serve as chairman of the panel.~~

~~b.—By January 1, 2004, the rate methodology panel shall provide a report to the corporation of its findings and recommendations for the use of additional ratemaking methods and procedures, including the use of a rate equalization surcharge in an amount sufficient to assure that the total cost of coverage for policyholders or applicants to the corporation is sufficient to comply with subparagraph 1.~~

~~c.—Within 30 days after such report, the corporation shall present to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having jurisdiction of insurance issues, a plan for implementing the additional ratemaking methods and an outline of any legislation needed to facilitate use of the new methods.~~

~~d.—The plan must include a provision that producer commissions paid by the corporation shall not be calculated in such a manner as to include any rate equalization surcharge. However, without regard to the plan to be developed or its implementation, producer commissions paid by the corporation for each account, other than the quota share primary program, shall remain fixed as to percentage, effective rate, calculation, and payment method until January 1, 2004.~~

10. By January 1, 2004, The corporation shall develop a notice to policyholders or applicants that the rates of Citizens Property Insurance Corporation are intended to be higher than the rates of any admitted carrier and providing other information the corporation deems necessary to assist consumers in finding other voluntary admitted insurers willing to insure their property.



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

(n)(e) If coverage in an account is deactivated pursuant to paragraph (f), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from admitted carriers at their filed rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

~~(o)~~(f)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated in an account on the basis that the conditions giving rise to its activation no longer exist.

~~(p)~~(g)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each assessable insurer, including, if prudent, filing suit to collect such assessment. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause

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

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the office shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the office determines that the purchase would endanger or impair the solvency of the insurer.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide

a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

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

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

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

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

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

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

(q)(h) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage pursuant to part VIII of chapter 626.

(r)(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee members, or the office or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

1. Any of the foregoing persons or entities for any willful tort;
2. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;
3. The corporation with respect to issuance or payment of debt; or
4. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation under this subsection.

(s)(j) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this subsection, paying claims for Florida citizens insured by the corporation, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "state bonds" within the meaning of s. 215.58(8). The corporation is not subject to the procurement provisions of chapter 287, and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the office, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments pledged by the Florida Insurance Guaranty Association to secure bonds issued or other indebtedness incurred to pay covered claims arising from insurer insolvencies caused by, or proximately related to, hurricane losses. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any debt obligations ~~bonds~~ issued by the corporation, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax imposed by

chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

~~(t)~~<sup>(k)</sup> Upon a determination by the office that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and shall be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

~~(u)~~<sup>(4)</sup>1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association shall become policies of the corporation. All obligations, rights, assets and liabilities of the Residential Property and Casualty Joint Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

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

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Resi-

dential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

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

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation shall in no way affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the Florida Hurricane Catastrophe Fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the high-risk account of the corporation. Notwithstanding any other provision of law, the coverage provided by the Florida Hurricane Catastrophe Fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the high-risk account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all Florida Hurricane Catastrophe Fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

(v)~~(m)~~ Notwithstanding any other provision of law:

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

2. No such proceeding shall relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges under subparagraph (c)10., or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, market equalization or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

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

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

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

~~(w)~~1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law will be redacted.

When an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering



assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(b)-(d), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

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

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

2. Beginning February 1, 2010 ~~2007~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 25 percent from the benchmark, the board shall reduce the boundaries of the high-risk area eligible for wind-only coverages under this subsection in a manner calculated to reduce such probable maximum loss to an amount at least 25 percent below the benchmark.

3. Beginning February 1, 2015 ~~2012~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attribut-

able to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

(y)(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(z)(q) The corporation shall not require the securing of flood insurance as a condition of coverage if the insured or applicant executes a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured in addition to coverage by the corporation, the risk will not be covered for flood damage. A corporation policyholder electing not to secure flood insurance and executing a form as provided herein making a claim for water damage against the corporation shall have the burden of proving the damage was not

caused by flooding. Notwithstanding other provisions of this subsection, the corporation may deny coverage to an applicant or insured who refuses to execute the form described herein.

~~(aa)~~(~~r~~) A salaried employee of the corporation who performs policy administration services subsequent to the effectuation of a corporation policy is not required to be licensed as an agent under the provisions of s. 626.112.

(bb) By February 1, 2007, the corporation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the corporation shall consult with the Office of Insurance Regulation, the Department of Financial Services, and any other party the corporation determines appropriate. The report must include all findings and recommendations on the feasibility of requiring authorized insurers that issue and service personal and commercial residential policies and commercial nonresidential policies that provide coverage for basic property perils except for the peril of wind to issue and service for a fee personal and commercial residential policies and commercial nonresidential policies providing coverage for the peril of wind issued by the corporation. The report must include:

1. The expense savings to the corporation of issuing and servicing such policies as determined by a cost-benefit analysis.

2. The expenses and liability to authorized insurers associated with issuing and servicing such policies.

3. The effect on service to policyholders of the corporation relating to issuing and servicing such policies.

4. The effect on the producing agent of the corporation of issuing and servicing such policies.

5. Recommendations as to the amount of the fee which should be paid to authorized insurers for issuing and servicing such policies.

6. The effect that issuing and servicing such policies will have on the corporation's number of policies, total insured value, and probable maximum loss.

(cc) There shall be no liability on the part of, and no cause of action of any nature shall arise against, producing agents of record of the corporation or employees of such agents for insolvency of any take-out insurer.

(dd)1. For policies subject to nonrenewal as a result of the risk being no longer eligible for coverage due to being valued at \$1 million or more, the corporation shall, directly or through the market assistance plan, make information from confidential underwriting and claims files of policyholders available only to licensed general lines agents who register with the corporation to receive such information according to the following procedures:

2. By August 1, 2006, the corporation shall provide such policyholders who are not eligible for renewal the opportunity to request in writing, within 30 days after the notification is sent, that information from their confidential underwriting and claims files not be released to licensed general lines agents registered pursuant to this paragraph.

3. By August 1, 2006, the corporation shall make available to licensed general lines agents the registration procedures to be used to obtain confidential information from underwriting and claims files for such policies not eligible for renewal. As a condition of registration, the corporation shall require the licensed general lines agent to attest that the agent has the experience and relationships with authorized or surplus lines carriers to attempt to offer replacement coverage for such policies.

4. By September 1, 2006, the corporation shall make available through a secured website to licensed general lines agents registered pursuant to this paragraph application, rating, loss history, mitigation, and policy type information relating to such policies not eligible for renewal and for which the policyholder has not requested the corporation withhold such information. The registered licensed general lines agent may use such information to contact and assist the policyholder in securing replacement policies and the agent may disclose to the policyholder that such information was obtained from the corporation.

Section 16. The amendments made by this act to s. 627.351(6), Florida Statutes, which change the method for calculating and determining the assessments and surcharges that must be levied or collected to fund deficits in Citizens Property Insurance Corporation apply to a deficit incurred by the corporation for calendar year 2006 and thereafter.

Section 17. Effective July 1, 2006, paragraph (a) of subsection (5) of section 627.3511, Florida Statutes, is amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(5) APPLICABILITY.—

(a) The take-out bonus provided by subsection (2) and the exemption from assessment provided by paragraph (3)(a) apply only if the corporation policy is replaced by either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage; however, with respect to risks located in areas where coverage through the high-risk account of the corporation is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for ~~four~~ two additional 1-year terms, unless canceled or not renewed by the policyholder insurer for a lawful reason other than reduction of hurricane exposure. If an insurer assumes the corporation's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates on substantially similar terms for ~~four~~ two additional 1-year terms, unless canceled or not renewed by the policyholder insurer for

~~a lawful reason other than reduction of hurricane exposure.~~ For each replacement policy canceled or nonrenewed by the insurer for any reason during the ~~5-year~~ 3-year coverage period required by this paragraph, the insurer must remove from the corporation one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition to these requirements, the corporation must place the bonus moneys in escrow for a period of ~~5~~ 3 years; such moneys may be released from escrow only to pay claims. If the policy is canceled or nonrenewed before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. A take-out bonus provided by subsection (2) or subsection (6) shall not be considered premium income for purposes of taxes and assessments under the Florida Insurance Code and shall remain the property of the corporation, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow, and after it is released from escrow it shall be considered an asset of the insurer and credited to the insurer's capital and surplus.

Section 18. Subsection (1) of section 627.3512, Florida Statutes, is amended to read:

627.3512 Recoupment of residual market deficit assessments.—

(1) An insurer or insurer group may recoup any assessments that have been paid during or after 1995 by the insurer or insurer group to defray deficits of an insurance risk apportionment plan or assigned risk plan under ss. 627.311 and 627.351, net of any earnings returned to the insurer or insurer group by the association or plan for any year after 1993. A limited apportionment company as defined in s. 627.351(6)(c) may recoup any regular assessment that has been levied by, or paid to, Citizens Property Insurance Corporation. The recoupment shall be made by applying a separate assessment factor on policies of the same line or type as were considered by the residual markets in determining the assessment liability of the insurer or insurer group. An insurer or insurer group shall calculate a separate assessment factor for personal lines and commercial lines. The separate assessment factor shall provide for full recoupment of the assessments over a period of 1 year, unless the insurer or insurer group, at its option, elects to recoup the assessments over a longer period. The assessment factor expires upon collection of the full amount allowed to be recouped. Amounts recouped under this section are not subject to premium taxes, fees, or commissions.

Section 19. Effective July 1, 2006, section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—

(1) Except as provided in subsection (2), no provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or

otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

(2) This section does not apply during the first 10 days after a new application for coverage has been submitted to Citizens Property Insurance Corporation under s. 627.351(6), whether or not coverage is bound during this period.

Section 20. Section 627.3519, Florida Statutes, is created to read:

627.3519 Annual report of aggregate net probable maximum losses, financing options, and potential assessments.—No later than February 1 of each year, the Financial Services Commission shall provide to the Legislature a report of the aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation. The report must include the respective 50-year, 100-year, and 250-year probable maximum losses of the fund and the corporation; analysis of all reasonable financing strategies for each such probable maximum loss, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each of the probable maximum losses. The commission shall require the fund and the corporation to provide the commission with such data and analysis as the commission considers necessary to prepare the report.

Section 21. Paragraph (b) of subsection (3) of section 627.4035, Florida Statutes, is amended to read:

627.4035 Cash payment of premiums; claims.—

(3) All payments of claims made in this state under any contract of insurance shall be paid:

(b) If authorized in writing by the recipient or the recipient's representative, by debit card or any other form of electronic transfer. Any fees or costs

to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer remains liable for the payment of the claim.

Section 22. Section 627.6121, Florida Statutes, is created to read:

627.6121 Payment of claims for dual interest property.—For policies issued or renewed on or after October 1, 2006, a property insurer shall transmit claims payments directly to the primary policyholder by check or other allowable payment method, payable to the primary policyholder only, without requiring a dual endorsement from any mortgageholder or lienholder, for amounts payable under the policy for personal property and contents, additional living expenses, and other covered items that are not subject to a recorded security interest that is noted in the dual interest provision of the policy.

Section 23. Subsection (2) of section 627.7011, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

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

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

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

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

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

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

Section 24. Section 627.7019, Florida Statutes, is created to read:

627.7019 Standardization of requirements applicable to insurers after natural disasters.—

(1) The commission shall adopt by rule, pursuant to s. 120.54(1)-(3), standardized requirements that may be applied to insurers as a consequence of a hurricane or other natural disaster. The rules shall address the following areas:

(a) Claims reporting requirements.

(b) Grace periods for payment of premiums and performance of other duties by insureds.

(c) Temporary postponement of cancellations and nonrenewals.

(2) The rules adopted under this section shall require the office to issue an order within 72 hours after the occurrence of a hurricane or other natural disaster specifying, by line of insurance, which of the standardized requirements apply, the geographic areas in which they apply, the time at which applicability commences, and the time at which applicability terminates.

(3) Any emergency rule adopted under s. 120.54(4) which is in conflict with any provision of the rules adopted under this section must be by unanimous vote of the commission.

Section 25. Effective October 1, 2006, subsection (1) and paragraph (d) of subsection (2) of section 627.706, Florida Statutes, are amended to read:

627.706 Sinkhole insurance; definitions.—

(1) Every insurer authorized to transact property insurance in this state shall make available coverage for insurable sinkhole losses on any structure, including contents of personal property contained therein, to the extent provided in the form to which the sinkhole coverage attaches. A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for sinkhole losses:

(d) “Professional engineer” means a person, as defined in s. 471.005, who has a bachelor’s degree or higher in engineering with a specialty in the geotechnical engineering field. A professional An engineer must have geotechnical experience and expertise in the identification of sinkhole activity as well as other potential causes of damage to the structure.

Section 26. Subsections (2), (3), (5), (6), and (9) of section 627.707, Florida Statutes, are amended to read:



627.707 Standards for investigation of sinkhole claims by insurers; non-renewals.—Upon receipt of a claim for a sinkhole loss, an insurer must meet the following standards in investigating a claim:

(2) Following the insurer's initial inspection, the insurer shall engage a professional ~~an~~ engineer or a professional geologist to conduct testing as provided in s. 627.7072 to determine the cause of the loss within a reasonable professional probability and issue a report as provided in s. 627.7073, if:

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

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

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

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

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

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

(5)(a) Subject to paragraph (b), if a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the professional engineer as provided under s. 627.7073, and in consultation with the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy.

(b) The insurer may limit its payment to the actual cash value of the sinkhole loss, not including underpinning or grouting or any other repair technique performed below the existing foundation of the building, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs. After the policyholder enters into the contract, the insurer shall pay the amounts necessary to begin and perform such repairs as the work is performed and the expenses are incurred. The insurer may not require the policyholder to advance payment for such repairs. If repair covered by a personal lines residential property insurance policy has begun and the professional engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must either complete the professional engineer's recommended re-

pair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.

(c) Upon the insurer's obtaining the written approval of the policyholder and any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed.

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

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

Section 27. Section 627.7072, Florida Statutes, is amended to read:

627.7072 Testing standards for sinkholes.—

(1) The professional engineer and professional geologist shall perform such tests as sufficient, in their professional opinion, to determine the presence or absence of sinkhole loss or other cause of damage within reasonable professional probability and for the professional engineer to make recommendations regarding necessary building stabilization and foundation repair.

~~(2) Testing by a professional geologist shall be conducted in compliance with the Florida Geological Survey Special Publication No. 57 (2005).~~

Section 28. Subsections (1) and (2) of section 627.7073, Florida Statutes, are amended to read:

627.7073 Sinkhole reports.—

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

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

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

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

3. A description of the tests performed.

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

(b) If sinkhole activity is eliminated as the cause of damage to the structure, the professional engineer or and professional geologist shall issue a written report and certification to the policyholder and the insurer stating:

1. That the cause of the damage is not sinkhole activity within a reasonable professional probability.
2. That the analyses and tests conducted were of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability.
3. A statement of the cause of the damage within a reasonable professional probability.
4. A description of the tests performed.

(c) The respective findings, opinions, and recommendations of the professional engineer or and professional geologist as to the cause of distress to the property verification or elimination of a sinkhole loss and the findings, opinions, and recommendations of the professional engineer as to land and building stabilization and foundation repair shall be presumed correct.

(2)(a) Any insurer that has paid a claim for a sinkhole loss shall file a copy of the report and certification, prepared pursuant to subsection (1), including the legal description of the real property and the name of the property owner, with the county clerk of court property appraiser, who shall record the report and certification with the parcel number. The insurer shall bear the cost of filing and recording the report and certification. There shall be no cause of action or liability against an insurer for compliance with this section. The recording of the report and certification does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;
2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or
3. Create any cause of action or liability against any title insurer that insures the title to the real property.

(b) The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer shall disclose to the buyer of such property that a claim has been paid and whether or not the full amount of the proceeds were used to repair the sinkhole damage.

Section 29. Effective October 1, 2006, section 627.7074, Florida Statutes, is created to read:

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

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

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

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

(2)(a) The department shall certify and maintain a list of persons who are neutral evaluators.

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

(3) Following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to paragraph (2)(b).

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

(5) Neutral evaluation shall be conducted as an informal process in which formal rules of evidence and procedure need not be observed. A party to neutral evaluation is not required to attend neutral evaluation if a representative of the party attends and has the authority to make a binding decision on behalf of the party. All parties shall participate in the evaluation in good faith.

(6) The insurer shall pay the costs associated with the neutral evaluation.

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The parties shall mutually select a neutral evaluator from the list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 10 business days, the department shall appoint a neutral evaluator from the department list. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator. Within 5 business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The

conference may be held by telephone, if feasible and desirable. The neutral evaluation conference shall be held within 45 days after the receipt of the request by the department.

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

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

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

(11) Any court proceeding related to the subject matter of the neutral evaluation shall be stayed pending completion of the neutral evaluation.

(12) For matters that are not resolved by the parties at the conclusion of the neutral evaluation, the neutral evaluator shall prepare a report stating that in his or her opinion the sinkhole loss has been verified or eliminated and, if verified, the need for and estimated costs of stabilizing the land and any covered structures or buildings and other appropriate remediation or structural repairs. The evaluator's report shall be sent to all parties in attendance at the neutral evaluation and to the department.

(13) The recommendation of the neutral evaluator is not binding on any party, and the parties retain access to court. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim or to the cause of action giving rise to the claim.

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

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

a. The insurer is not liable for extra-contractual damages related to a claim for a sinkhole loss but only as related to the issues determined by the neutral evaluation process. This section does not affect or impair claims for

extra contractual damages unrelated to the issues determined by the neutral evaluation process contained in this section; and

b. The insurer is not liable for attorney's fees under s. 627.428 or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator.

Section 30. Subsection (5) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(5) Any person having a claim against an insolvent insurer as defined in ~~s. 631.54(6)~~ ~~s. 631.54(5)~~ under the provisions of this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to any person in settlement of a claim arising under the provisions of this section, the association is not subrogated or entitled to any recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

Section 31. Paragraph (f) is added to subsection (2) of section 631.181, Florida Statutes, to read:

631.181 Filing and proof of claim.—

(2)

(f) The signed statement required by this section shall not be required on claims for which adequate claims file documentation exists within the records of the insolvent insurer. Claims for payment of unearned premium shall not be required to use the signed statement required by this section if the receiver certifies to the guaranty fund that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder of the insurer and such information is remitted to the guaranty fund by the receiver in electronic or other mutually agreed-upon format.

Section 32. Subsection (3) of section 631.54, Florida Statutes, is amended, present subsections (5), (6), (7), and (8) of that section are renumbered as subsections (6), (7), (8), and (9), respectively, and a new subsection (5) is added to that section to read:

631.54 Definitions.—As used in this part:

(3) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other than individuals, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of

business is located at the time of the insured event. “Covered claim” shall not include:

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

(b) Any claim that would otherwise be a covered claim under this part that has been rejected by any other state guaranty fund on the grounds that an insured’s net worth is greater than that allowed under that state’s guaranty law. Member insurers shall have no right of subrogation, contribution, indemnification, or otherwise, sought directly or indirectly through a third party, against the insured of any insolvent member.

(5) “Homeowner’s insurance” means personal lines residential property insurance coverage that consists of the type of coverage provided under homeowner’s, dwelling, and similar policies for repair or replacement of the insured structure and contents, which policies are written directly to the individual homeowner. Residential coverage for personal lines as set forth in this section includes policies that provide coverage for particular perils such as windstorm and hurricane coverage but excludes all coverage for mobile homes, renter’s insurance, or tenant’s coverage. The term “homeowner’s insurance” excludes commercial residential policies covering condominium associations or homeowners’ associations, which associations have a responsibility to provide insurance coverage on residential units within the association, and also excludes coverage for the common elements of a homeowners’ association.

Section 33. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(1) There is created a nonprofit corporation to be known as the “Florida Insurance Guaranty Association, Incorporated.” All insurers defined as member insurers in ~~s. 631.54(7)~~ s. 631.54(6) shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer shall agree to reimburse the association for all claim payments the association makes on said insurer’s behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 34. Paragraph (a) of subsection (1), paragraph (d) of subsection (2), and paragraph (a) of subsection (3) of section 631.57, Florida Statutes, are amended, and paragraph (e) is added to subsection (3) of that section, to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes only the amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional \$200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

~~3.a.2. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except with respect to policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, the obligation shall include that amount of each covered property insurance claim which is less than \$100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.~~

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

~~4.3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.~~

(2) The association may:

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. Additionally, the association may enter into such contracts with a municipality, a county, or a legal entity created pursuant to s. 163.01(7)(g) as are necessary in order for the municipality, county, or legal entity to issue bonds under s. 631.695. In connection with the issuance of any such bonds and the entering into of any such necessary



contracts, the association may agree to such terms and conditions as the association deems necessary and proper.

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims, ~~and also to pay the reasonable costs to administer the same, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued,~~ the office, upon certification of the board of directors, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c).

b. Any emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred to in sub-subparagraph a., upon certification as to the need for such assessments by the board of directors, in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding, in such amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such

bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

e. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) shall include emergency assessments imposed under this paragraph.

2. In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.

3. An annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

4. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and

shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

Section 35. Section 631.695, Florida Statutes, is created to read:

631.695 Revenue bond issuance through counties or municipalities.—

(1) The Legislature finds:

(a) The potential for widespread and massive damage to persons and property caused by hurricanes making landfall in this state can generate insurance claims of such a number as to render numerous insurers operating within this state insolvent and therefore unable to satisfy covered claims.

(b) The inability of insureds within this state to receive payment of covered claims or to timely receive such payment creates financial and other hardships for such insureds and places undue burdens on the state, the affected units of local government, and the community at large.

(c) In addition, the failure of insurers to pay covered claims or to timely pay such claims due to the insolvency of such insurers can undermine the public's confidence in insurers operating within this state, thereby adversely affecting the stability of the insurance industry in this state.

(d) The state has previously taken action to address these problems by adopting the Florida Insurance Guaranty Association Act, which, among other things, provides a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.

(e) In the wake of the unprecedented destruction caused by various hurricanes that have made landfall in this state, the resultant covered claims, and the number of insurers rendered insolvent thereby, make it evident that alternative programs must be developed to allow the Florida Insurance Guaranty Association to more expeditiously and effectively provide for the payment of covered claims.

(f) It is therefore determined to be in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of the residents of this state and for the protection and preservation of the economic stability of insurers operating in this state, and it is declared to be an essential public purpose, to permit certain municipalities and counties to take such actions as will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this state by expediting the handling and payment of covered claims.

(g) To achieve the foregoing purposes, it is proper to authorize municipalities and counties of this state substantially affected by the landfall of a hurricane to issue bonds to assist the Florida Insurance Guaranty Association in expediting the handling and payment of covered claims of insolvent insurers.

(h) In order to avoid the needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, it is in the best interests of the residents of this state to authorize municipalities and counties severely affected by a hurricane to provide for the payment of covered claims beyond their territorial limits in the implementation of such programs.

(i) It is a paramount public purpose for municipalities and counties substantially affected by the landfall of a hurricane to be able to issue bonds for the purposes described in this section. Such issuance shall provide assistance to residents of those municipalities and counties as well as to other residents of this state.

(2) The governing body of any municipality or county, the residents of which have been substantially affected by a hurricane, may issue bonds to fund an assistance program in conjunction with, and with the consent of, the Florida Insurance Guaranty Association for the purpose of paying claimants' or policyholders' covered claims, as defined in s. 631.54, arising through the insolvency of an insurer, which insolvency is determined by the Florida Insurance Guaranty Association to have been a result of a hurricane, regardless of whether the claimants or policyholders are residents of such municipality or county or the property to which the claim relates is located within or outside the territorial jurisdiction of the municipality or county. The power of a municipality or county to issue bonds, as described in this section, is in addition to any powers granted by law and may not be abrogated or restricted by any provisions in such municipality's or county's charter. A municipality or county issuing bonds for this purpose shall enter into such contracts with the Florida Insurance Guaranty Association or any entity acting on behalf of the Florida Insurance Guaranty Association as are necessary to implement the assistance program. Any bonds issued by a municipality or county or a combination thereof under this subsection shall be payable from and secured by moneys received by or on behalf of the municipality or county from assessments levied under s. 631.57(3)(a) and assigned and pledged to or on behalf of the municipality or county for the benefit of the holders of the bonds in connection with the assistance program. The funds, credit, property, and taxing power of the state or any municipality or county shall not be pledged for the payment of such bonds.

(3) Bonds may be validated by the municipality or county pursuant to chapter 75. The proceeds of the bonds may be used to pay covered claims of insolvent insurers; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, costs of obtaining credit enhancement or liquidity support, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the association may determine. The term of the bonds may not exceed 30 years.

(4) The state covenants with holders of bonds of the assistance program that the state will not take any action that will have a material adverse

effect on the holders and will not repeal or abrogate the power of the board of directors of the association to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of the bonds as long as any of the bonds remain outstanding, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of the bonds.

(5) The accomplishment of the authorized purposes of such municipality or county under this section is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. The municipality or county, in performing essential governmental functions in accomplishing its purposes, is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by the county or municipality for such purposes or upon any revenues at any time received by the county or municipality. The bonds, notes, and other obligations of the municipality or county and the transfer of and income from such bonds, notes, and other obligations, including any profits made on the sale of such bonds, notes, and other obligations, are exempt from taxation of any kind by the state or by any political subdivision or other agency or instrumentality of the state. The exemption granted in this subsection is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(6) Two or more municipalities or counties, the residents of which have been substantially affected by a hurricane, may create a legal entity pursuant to s. 163.01(7)(g) to exercise the powers described in this section as well as those powers granted in s. 163.01(7)(g). References in this section to a municipality or county includes such legal entity.

(7) The association shall issue an annual report on the status of the use of bond proceeds as related to insolvencies caused by hurricanes. The report must contain the number and amount of claims paid. The association shall also include an analysis of the revenue generated from the assessment levied under s. 631.57(3)(a) to pay such bonds. The association shall submit a copy of the report to the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer within 90 days after the end of each calendar year in which bonds were outstanding.

Section 36. No provision of s. 631.57 or s. 631.695, Florida Statutes, shall be repealed until such time as the principal, redemption premium, if any, and interest on all bonds issued under s. 631.695, Florida Statutes, payable and secured from assessments levied under s. 631.57(3)(a), Florida Statutes, have been paid in full or adequate provision for such payment has been made in accordance with the bond resolution or trust indenture pursuant to which the bonds were issued.

Section 37. Subsection (2) of section 877.02, Florida Statutes, is amended to read:

877.02 Solicitation of legal services or retainers therefor; penalty.—

(2) It shall be unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police department, wrecker service or garage, prison or court, ~~or~~ for a person authorized to furnish bail bonds, investigators, photographers, insurance or public adjusters, or for a general or other contractor as defined in s. 489.105 or other business providing sinkhole remediation services, to communicate directly or indirectly with any attorney or person acting on said attorney's behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

Section 38. By January 1, 2007, the Office of Insurance Regulation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the office shall consult with the Department of Highway Safety and Motor Vehicles, the Department of Community Affairs, the Florida Building Commission, the Florida Home Builders Association, representatives of the mobile and manufactured home industry, representatives of the property and casualty insurance industry, and any other party the office determines is appropriate. The report shall include findings and recommendations on the insurability of attached or free standing structures to residential homes, mobile, or manufactured homes, such as carports or pool enclosures; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; the impact on homeowners of not having insurance coverage for such structures; the ability of mitigation measures relating to such structures to reduce risk and loss; and such other related information as the office determines is appropriate for the Legislature to consider.

Section 39. (1) The Office of Insurance Regulation, in consultation with the Department of Community Affairs, the Department of Financial Services, the Federal Alliance for Safe Homes, the Florida Insurance Council, the Florida Home Builders Association, the Florida Manufactured Housing Association, the Risk and Insurance Department of Florida State University, and the Institute for Business and Homes Safety, shall study and develop a program that will provide an objective rating system that will allow homeowners to evaluate the relative ability of Florida properties to withstand the wind load from a sustained severe tropical storm or hurricane.

(2) The rating system will be designed in a manner that is easy to understand for the property owner, based on proven readily verifiable mitigation techniques and devices, and able to be implemented based on a visual inspection program. The Department of Financial Services shall implement a pilot program for use in the Florida Comprehensive Hurricane Damage Mitigation Program.

(3) The Department shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March

31, 2007, detailing the nature and construction of the rating scale, its effectiveness based on implementation in a pilot program, and an operational plan for statewide implementation of the rating scale.

Section 40. (1) By September 1, 2006, the Office of Insurance Regulation shall calculate a presumed factor to reflect the impact to rates of the changes made by the provisions of this act related to insurance claims for sinkhole losses and by sections 17, 18, 19, 20, and 21 of chapter 2005-111, Laws of Florida.

(2) In determining the presumed factor, the office shall use generally accepted actuarial techniques and standards in determining the expected impact on losses, expenses, and investment income of the insurer.

(3) The office may contract with an appropriate vendor to determine the presumed factor.

(4) Each residential property insurer shall, at its next rate filing after October 1, 2006, reflect a rate change that takes into account the presumed factor determined under subsection (1).

(5) The sum of \$250,000 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation for the 2006-2007 fiscal year for the purpose of implementing this section.

Section 41. The sums of \$115,322 in recurring funds and \$10,486 in nonrecurring funds are appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for the 2006-2007 fiscal year for the purpose of implementing the provisions this act related to the neutral evaluation process for insurance claims, and two full-time equivalent positions with \$59,435 in associated salary rate are authorized.

Section 42. (1) For the 2006-2007 fiscal year, the sum of \$250 million is appropriated on a nonrecurring basis from the General Revenue Fund to the Insurance Regulatory Trust Fund in the Department of Financial Services for purposes of the Florida Comprehensive Hurricane Damage Mitigation Program specified in s. 215.5586, Florida Statutes, as created by this act. The department shall establish a separate account within the trust fund for accounting purposes.

(2) The sum of \$250 million is appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for the purposes set forth in subsection (1). The department may expend up to 1 percent of the funds appropriated to administer the program. Beginning October 15, 2007, and quarterly thereafter, the Chief Financial Officer shall provide a report to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission containing information regarding expenditures made for the purposes set forth in subsection (1).

(3) Notwithstanding the provisions of s. 216.301, Florida Statutes, to the contrary, the unexpended balance of appropriations authorized in subsections (1) and (2) shall not revert until June 30, 2009.

Section 43. The sum of \$250 million is appropriated from the General Revenue Fund on a nonrecurring basis to the State Board of Administration for purposes of the Insurance Capital Build-Up Incentive Program established pursuant to s. 215.5595, Florida Statutes, as created by this act. Costs and fees incurred by the board in administering this program, including fees for investment services, shall be paid from funds appropriated by the Legislature for this program, but are limited to 1 percent of the amount appropriated. Notwithstanding the provisions of s. 216.301, Florida Statutes, to the contrary, the unexpended balance of this appropriation shall not revert until June 30, 2007.

Section 44. (1) For the 2006-2007 fiscal year, the sum of \$715 million is appropriated to the Department of Financial Services from nonrecurring funds in the General Revenue Fund. Such funds shall be transferred to Citizens Property Insurance Corporation established pursuant to s. 627.351(6), Florida Statutes. The appropriation shall be allocated to each of the personal lines and commercial lines accounts so as to eliminate the deficit for the 2005 calendar year in each of those two accounts, and the remaining moneys shall be applied to reduce the portion of the deficit in the high-risk account that would have been paid from the proceeds of regular assessments except for the appropriation. The moneys allocated to each account from the appropriation shall be considered as proceeds of regular assessments for purposes of the financing documents of Citizens Property Insurance Corporation.

(2) Citizens Property Insurance Corporation shall include in the notice of assessment to each assessable insurer the amount by which the assessment has been reduced due to the appropriation in paragraph (1).

(3) Each insurer that recoups an assessment from its policyholders as allowed by law for the regular assessment by Citizens Property Insurance Corporation for its 2005 deficit shall include on the premium notice or on a separate document included with the premium notice sent to policyholders, in 12-point type, the following statement with the appropriate dollar amount shown:

“The \$.... SURCHARGE IN YOUR PREMIUM FOR THE ASSESSMENT BY CITIZENS PROPERTY INSURANCE CORPORATION HAS BEEN REDUCED BY \$.... DUE TO AN APPROPRIATION BY THE FLORIDA LEGISLATURE.”

(4) The corporation shall amortize over a 10-year period any emergency assessments resulting from the 2005 Plan Year deficit.

(5) A violation of this section by an insurer is a violation of the Insurance Code and the insurer is subject to the penalties provided in ss. 624.418 and 624.4211, Florida Statutes.

(6) For the purposes of this section, the terms “assessable insurer,” “corporation,” “deficit,” and “regular assessment,” have the same meaning as provided in s. 627.351(6), Florida Statutes.



Section 45. Effective January 1, 2007, subsection (9) is added to section 627.701, Florida Statutes, to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(9) With respect to hurricane coverage provided in a policy of residential coverage, when the policyholder has taken appropriate hurricane mitigation measures regarding the residence covered under the policy, the insurer may provide the insured the option of selecting an appropriate reduction in the policy's hurricane deductible in lieu of selecting the appropriate discount credit or other rate differential as provided in s. 627.0629. If made available by the insurer, the insurer must provide the policyholder with notice of the options available under this subsection on a form approved by the office.

Section 46. Effective July 1, 2006, subsection (3) of s. 215.559, Florida Statutes, is repealed.

Section 47. Subsection (1) and paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, are amended to read:

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

(1) Except as provided in subsection (2):

(a) An insurer issuing a policy providing coverage for workers' compensation and employer's liability insurance, property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728, shall give the named insured at least 45 days' advance written notice of nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice shall state the reason or reasons as to why the policy is not to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium prior to the expiration date of the policy to be renewed.

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days prior to the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor

an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

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

After the policy has been in effect for 90 days, no such policy shall be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. ~~The provisions of~~ This subsection ~~does shall~~ not apply to individually rated risks having a policy term of less than 90 days.

(c) If an insurer fails to provide the 45-day or 20-day written notice required under this section, the coverage provided to the named insured shall remain in effect until 45 days after the notice is given or until the effective date of replacement coverage obtained by the named insured, whichever occurs first. The premium for the coverage shall remain the same during any such extension period except that, in the event of failure to provide notice of nonrenewal, if the rate filing then in effect would have resulted in a premium reduction, the premium during such extension of coverage shall be calculated based upon the later rate filing.

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

(b) The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 90 days prior to the effective date of the nonrenewal, cancellation, or termination. The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph, the term "nonpayment of premium"

means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full.

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

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

Section 48. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor May 16, 2006.

Filed in Office Secretary of State May 16, 2006.