

By Senator Flores

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1 A bill to be entitled
2 An act relating to insurance; amending s. 215.555,
3 F.S.; deleting the cash build-up factor from the
4 formula used by the State Board of Administration in
5 determining reimbursement premiums to be paid into the
6 Florida Hurricane Catastrophe Fund; amending s.
7 626.7452, F.S.; requiring, rather than authorizing
8 under certain circumstances, managing general agents
9 to be examined as if they were the insurers on whose
10 behalf they act; amending s. 626.922, F.S.; specifying
11 the venue for civil actions concerning certain surplus
12 lines property insurance policies; amending s.
13 627.0613, F.S.; adding specified powers of the
14 consumer advocate appointed by the Chief Financial
15 Officer; amending s. 627.062, F.S.; providing an
16 exception from a specified rate factor that is
17 required to be considered by the Office of Insurance
18 Regulation in making a certain determination relating
19 to rate filings; conforming a provision to changes
20 made by the act; revising the limit of the overall
21 premium increase for residential property insurance
22 which results from costs in a certain filing;
23 authorizing the consumer advocate to request certain
24 administrative proceedings or expedited appellate
25 reviews; amending s. 627.351, F.S.; specifying that a
26 personal lines residential risk is not eligible for
27 coverage by the Citizens Property Insurance
28 Corporation if a certain offer of coverage is received
29 from an authorized insurer pursuant to the

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30 corporation's policyholder eligibility clearinghouse
31 program; providing that the risk remains eligible for
32 coverage with the corporation under certain
33 circumstances; requiring the corporation's plan of
34 operation to provide eligibility for coverage to a
35 personal lines residential policyholder of the
36 corporation under certain circumstances; providing
37 construction and applicability; requiring, under
38 certain circumstances, the corporation to file and the
39 office to approve a 0 percent recommended rate change
40 for the windstorm portion of a rate in a certain
41 rating territory; conforming a provision to changes
42 made by the act; amending s. 627.409, F.S.; providing
43 an exception, under certain circumstances, from a bar
44 from recovery under a residential property insurance
45 contract or policy for misrepresentations, omissions,
46 concealments of fact, or incorrect statements;
47 amending s. 627.7011, F.S.; requiring insurers of
48 certain homeowners' policies, under certain
49 circumstances, to pay replacement costs without
50 reservation or holdback of any depreciation in value;
51 amending s. 627.70132, F.S.; revising the timeframe
52 within which a certain notice of windstorm or
53 hurricane claim must be given to the insurer;
54 providing an effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Paragraph (b) of subsection (5) of section

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59 215.555, Florida Statutes, is amended to read:

60 215.555 Florida Hurricane Catastrophe Fund.—

61 (5) REIMBURSEMENT PREMIUMS.—

62 (b) The State Board of Administration shall select an
63 independent consultant to develop a formula for determining the
64 actuarially indicated premium to be paid to the fund. The
65 formula shall specify, for each zip code or other limited
66 geographical area, the amount of premium to be paid by an
67 insurer for each \$1,000 of insured value under covered policies
68 in that zip code or other area. In establishing premiums, the
69 board shall consider the coverage elected under paragraph (4) (b)
70 and any factors that tend to enhance the actuarial
71 sophistication of ratemaking for the fund, including
72 deductibles, type of construction, type of coverage provided,
73 relative concentration of risks, and other such factors deemed
74 by the board to be appropriate. ~~The formula must provide for a~~
75 ~~cash build-up factor. For the 2009-2010 contract year, the~~
76 ~~factor is 5 percent. For the 2010-2011 contract year, the factor~~
77 ~~is 10 percent. For the 2011-2012 contract year, the factor is 15~~
78 ~~percent. For the 2012-2013 contract year, the factor is 20~~
79 ~~percent. For the 2013-2014 contract year and thereafter, the~~
80 ~~factor is 25 percent.~~ The formula may provide for a procedure to
81 determine the premiums to be paid by new insurers that begin
82 writing covered policies after the beginning of a contract year,
83 taking into consideration when the insurer starts writing
84 covered policies, the potential exposure of the insurer, the
85 potential exposure of the fund, the administrative costs to the
86 insurer and to the fund, and any other factors deemed
87 appropriate by the board. The formula must be approved by

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88 unanimous vote of the board. The board may, at any time, revise
89 the formula pursuant to the procedure provided in this
90 paragraph.

91 Section 2. Section 626.7452, Florida Statutes, is amended
92 to read:

93 626.7452 Managing general agents; examination authority.—
94 The acts of the managing general agent are considered to be the
95 acts of the insurer on whose behalf it is acting. A managing
96 general agent must ~~may~~ be examined as if it were the insurer
97 ~~except in the case where the managing general agent solely~~
98 ~~represents a single domestic insurer.~~

99 Section 3. Section 626.922, Florida Statutes, is amended to
100 read:

101 626.922 Evidence of the insurance; changes; penalty; venue
102 for civil actions.—

103 (1) Upon placing a surplus lines coverage, the surplus
104 lines agent shall promptly issue and deliver to the insured
105 evidence of the insurance consisting either of the policy as
106 issued by the insurer or, if such policy is not then available,
107 a certificate, cover note, or other confirmation of insurance.
108 Such document shall be executed or countersigned by the surplus
109 lines agent and shall show the description and location of the
110 subject of the insurance; coverage, conditions, and term of the
111 insurance; the premium and rate charged and taxes collected from
112 the insured; and the name and address of the insured and
113 insurer. If the direct risk is assumed by more than one insurer,
114 the document shall state the name and address and proportion of
115 the entire direct risk assumed by each insurer. A surplus lines
116 agent may not delegate the duty to issue any such document to

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117 producing general lines agents without prior written authority
118 from the surplus lines insurer. A general lines agent may issue
119 any such document only if the agent has prior written authority
120 from the surplus lines agent. The surplus lines agent must
121 maintain copies of the authorization from the surplus lines
122 insurer and the delegation to the producing general lines agent.
123 The producing agent must maintain copies of the written
124 delegation from the surplus lines agent and copies of any
125 evidence of coverage or certificate of insurance which the
126 producing agent issues or delivers. Any evidence of coverage
127 issued by a producing agent pursuant to this section must
128 include the name and address of the authorizing surplus lines
129 agent.

130 (2) No surplus lines agent shall issue any such document,
131 or purport to insure or represent that insurance will be or has
132 been granted by any unauthorized insurer, unless he or she has
133 prior written authority from the insurer for the insurance, or
134 has received information from the insurer in the regular course
135 of business that such insurance has been granted, or an
136 insurance policy providing the insurance actually has been
137 issued by the insurer and delivered to the insured.

138 (3) If after the issuance and delivery of any such document
139 there is any change as to the identity of the insurers, or the
140 proportion of the direct risk assumed by the insurer as stated
141 in the original certificate, cover note, or confirmation, or in
142 any other material respect as to the insurance coverage
143 evidenced by such a document, the surplus lines agent shall
144 promptly issue and deliver to the insured a substitute
145 certificate, cover note, or confirmation, or an endorsement for

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146 the original such document, accurately showing the current
147 status of the coverage and the insurers responsible thereunder.
148 No such change shall result in a coverage or insurance contract
149 which would be in violation of this Surplus Lines Law if
150 originally issued on such basis.

151 (4) A copy of the policy or cover note or confirmation of
152 insurance shall be delivered to the insured within 60 days after
153 the effectuation of coverage.

154 (5) Any surplus lines agent who knowingly or negligently
155 issues a false certificate, cover note, or confirmation of
156 insurance, or false endorsement therefor, or who fails promptly
157 to notify the insured of any material change with respect to
158 such insurance by delivery to the insured of a substitute
159 certificate, cover note, or confirmation, or endorsement as
160 provided in subsection (3), shall, upon conviction, be subject
161 to the penalties provided by s. 624.15 or to any greater
162 applicable penalty otherwise provided by law.

163 (6) A civil action concerning a surplus lines property
164 insurance policy that covers property in this state must take
165 place in the circuit court of the county where the property is
166 located.

167 Section 4. Subsection (1) of section 627.0613, Florida
168 Statutes, is amended to read:

169 627.0613 Consumer advocate.—The Chief Financial Officer
170 must appoint a consumer advocate who must represent the general
171 public of the state before the department and the office. The
172 consumer advocate must report directly to the Chief Financial
173 Officer, but is not otherwise under the authority of the
174 department or of any employee of the department. The consumer

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175 advocate has such powers as are necessary to carry out the
176 duties of the office of consumer advocate, including, but not
177 limited to, the powers to:

178 (1) Initiate or recommend to the department or office, by
179 petition, the commencement of any proceeding or action; appear
180 or intervene in any proceeding or action before the department
181 or office; or appear or intervene in any proceeding before the
182 Division of Administrative Hearings relating to subject matter
183 under the jurisdiction of the department or office.

184 Section 5. Paragraphs (b) and (k) of subsection (2) and
185 subsection (6) of section 627.062, Florida Statutes, are amended
186 to read:

187 627.062 Rate standards.—

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

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

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

196 2. Past and prospective expenses, except that such expenses
197 of a residential property insurer may not include attorney fees
198 or costs paid by the insurer which were awarded on a claim
199 pursuant to s. 627.428 or a claim on which a settlement
200 agreement was executed between the insurer and the insured.

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

203 4. Investment income reasonably expected by the insurer,

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204 consistent with the insurer's investment practices, from
205 investable premiums anticipated in the filing, plus any other
206 expected income from currently invested assets representing the
207 amount expected on unearned premium reserves and loss reserves.
208 The commission may adopt rules using reasonable techniques of
209 actuarial science and economics to specify the manner in which
210 insurers calculate investment income attributable to classes of
211 insurance written in this state and the manner in which
212 investment income is used to calculate insurance rates. Such
213 manner must contemplate allowances for an underwriting profit
214 factor and full consideration of investment income that produces
215 a reasonable rate of return; however, investment income from
216 invested surplus may not be considered.

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

219 6. Dividends, savings, or unabsorbed premium deposits
220 allowed or returned to policyholders, members, or subscribers in
221 this state.

222 7. The adequacy of loss reserves.

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

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

229 10. Conflagration and catastrophe hazards, if applicable.

230 11. Projected hurricane losses, if applicable, which must
231 be estimated using a model or method found to be acceptable or
232 reliable by the Florida Commission on Hurricane Loss Projection

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233 Methodology, and as further provided in s. 627.0628.

234 12. Projected flood losses for personal residential
235 property insurance, if applicable, which may be estimated using
236 a model or method, or a straight average of model results or
237 output ranges, independently found to be acceptable or reliable
238 by the Florida Commission on Hurricane Loss Projection
239 Methodology and as further provided in s. 627.0628.

240 13. A reasonable margin for underwriting profit and
241 contingencies.

242 14. The cost of medical services, if applicable.

243 15. Other relevant factors that affect the frequency or
244 severity of claims or expenses.

245 (k)1. A residential property insurer may make a separate
246 filing limited solely to an adjustment of its rates for
247 reinsurance, the cost of financing products used as a
248 replacement for reinsurance, and financing costs incurred in the
249 purchase of reinsurance, ~~and the actual cost paid due to the~~
250 ~~application of the cash build-up factor pursuant to s.~~
251 ~~215.555(5)(b)~~ if the insurer:

252 a. Elects to purchase financing products such as a
253 liquidity instrument or line of credit, in which case the cost
254 included in filing for the liquidity instrument or line of
255 credit may not result in a premium increase exceeding 3 percent
256 for any individual policyholder. All costs contained in the
257 filing may not result in an overall premium increase of more
258 than 10 ~~15~~ percent for any individual policyholder.

259 b. Includes in the filing a copy of all of its reinsurance,
260 liquidity instrument, or line of credit contracts; proof of the
261 billing or payment for the contracts; and the calculation upon

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262 which the proposed rate change is based demonstrating that the
263 costs meet the criteria of this section.

264 2. An insurer that purchases reinsurance or financing
265 products from an affiliated company may make a separate filing
266 only if the costs for such reinsurance or financing products are
267 charged at or below charges made for comparable coverage by
268 nonaffiliated reinsurers or financial entities making such
269 coverage or financing products available in this state.

270 3. An insurer may make only one filing per 12-month period
271 under this paragraph.

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

279
280 The provisions of this subsection do not apply to workers'
281 compensation, employer's liability insurance, and motor vehicle
282 insurance.

283 (6) (a) If an insurer or the consumer advocate appointed
284 under s. 627.0613 requests an administrative hearing pursuant to
285 s. 120.57 related to a rate filing under this section, the
286 director of the Division of Administrative Hearings shall
287 expedite the hearing and assign an administrative law judge who
288 shall commence the hearing within 30 days after the receipt of
289 the formal request and enter a recommended order within 30 days
290 after the hearing or within 30 days after receipt of the hearing

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291 transcript by the administrative law judge, whichever is later.
292 Each party shall have 10 days in which to submit written
293 exceptions to the recommended order. The office shall enter a
294 final order within 30 days after the entry of the recommended
295 order. The provisions of this paragraph may be waived upon
296 stipulation of all parties.

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

302 Section 6. Paragraphs (c) and (n) of subsection (6) of
303 section 627.351, Florida Statutes, are amended to read:

304 627.351 Insurance risk apportionment plans.—

305 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

306 (c) The corporation's plan of operation:

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

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

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

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320 standard policy.

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

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

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

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

339 g. Effective January 1, 2013, the corporation shall offer a
340 basic personal lines policy similar to an HO-8 policy with
341 dwelling repair based on common construction materials and
342 methods.

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

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

350 (I) "Quota share primary insurance" means an arrangement in
351 which the primary hurricane coverage of an eligible risk is
352 provided in specified percentages by the corporation and an
353 authorized insurer. The corporation and authorized insurer are
354 each solely responsible for a specified percentage of hurricane
355 coverage of an eligible risk as set forth in a quota share
356 primary insurance agreement between the corporation and an
357 authorized insurer and the insurance contract. The
358 responsibility of the corporation or authorized insurer to pay
359 its specified percentage of hurricane losses of an eligible
360 risk, as set forth in the agreement, may not be altered by the
361 inability of the other party to pay its specified percentage of
362 losses. Eligible risks that are provided hurricane coverage
363 through a quota share primary insurance arrangement must be
364 provided policy forms that set forth the obligations of the
365 corporation and authorized insurer under the arrangement,
366 clearly specify the percentages of quota share primary insurance
367 provided by the corporation and authorized insurer, and
368 conspicuously and clearly state that the authorized insurer and
369 the corporation may not be held responsible beyond their
370 specified percentage of coverage of hurricane losses.

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

376 b. The corporation may enter into quota share primary
377 insurance agreements with authorized insurers at corporation

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378 coverage levels of 90 percent and 50 percent.

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

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

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

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

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

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

426 3. May provide that the corporation may employ or otherwise
427 contract with individuals or other entities to provide
428 administrative or professional services that may be appropriate
429 to effectuate the plan. The corporation may borrow funds by
430 issuing bonds or by incurring other indebtedness, and shall have
431 other powers reasonably necessary to effectuate the requirements
432 of this subsection, including, without limitation, the power to
433 issue bonds and incur other indebtedness in order to refinance
434 outstanding bonds or other indebtedness. The corporation may
435 seek judicial validation of its bonds or other indebtedness

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436 under chapter 75. The corporation may issue bonds or incur other
437 indebtedness, or have bonds issued on its behalf by a unit of
438 local government pursuant to subparagraph (q)2. in the absence
439 of a hurricane or other weather-related event, upon a
440 determination by the corporation, subject to approval by the
441 office, that such action would enable it to efficiently meet the
442 financial obligations of the corporation and that such
443 financings are reasonably necessary to effectuate the
444 requirements of this subsection. The corporation may take all
445 actions needed to facilitate tax-free status for such bonds or
446 indebtedness, including formation of trusts or other affiliated
447 entities. The corporation may pledge assessments, projected
448 recoveries from the Florida Hurricane Catastrophe Fund, other
449 reinsurance recoverables, policyholder surcharges and other
450 surcharges, and other funds available to the corporation as
451 security for bonds or other indebtedness. In recognition of s.
452 10, Art. I of the State Constitution, prohibiting the impairment
453 of obligations of contracts, it is the intent of the Legislature
454 that no action be taken whose purpose is to impair any bond
455 indenture or financing agreement or any revenue source committed
456 by contract to such bond or other indebtedness.

457 4. Must require that the corporation operate subject to the
458 supervision and approval of a board of governors consisting of
459 nine individuals who are residents of this state and who are
460 from different geographical areas of the state, one of whom is
461 appointed by the Governor and serves solely to advocate on
462 behalf of the consumer. The appointment of a consumer
463 representative by the Governor is deemed to be within the scope
464 of the exemption provided in s. 112.313(7) (b) and is in addition

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465 to the appointments authorized under sub-subparagraph a.

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

491 b. The board shall create a Market Accountability Advisory
492 Committee to assist the corporation in developing awareness of
493 its rates and its customer and agent service levels in

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494 relationship to the voluntary market insurers writing similar
495 coverage.

496 (I) The members of the advisory committee consist of the
497 following 11 persons, one of whom must be elected chair by the
498 members of the committee: four representatives, one appointed by
499 the Florida Association of Insurance Agents, one by the Florida
500 Association of Insurance and Financial Advisors, one by the
501 Professional Insurance Agents of Florida, and one by the Latin
502 American Association of Insurance Agencies; three
503 representatives appointed by the insurers with the three highest
504 voluntary market share of residential property insurance
505 business in the state; one representative from the Office of
506 Insurance Regulation; one consumer appointed by the board who is
507 insured by the corporation at the time of appointment to the
508 committee; one representative appointed by the Florida
509 Association of Realtors; and one representative appointed by the
510 Florida Bankers Association. All members shall be appointed to
511 3-year terms and may serve for consecutive terms.

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

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

520 a. Subject to s. 627.3517, with respect to personal lines
521 residential risks, if the risk is offered coverage from an
522 authorized insurer at the insurer's approved rate under a

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523 standard policy including wind coverage or, if consistent with
524 the insurer's underwriting rules as filed with the office, a
525 basic policy including wind coverage, for a new application to
526 the corporation for coverage, the risk is not eligible for any
527 policy issued by the corporation unless the premium for coverage
528 from the authorized insurer is more than 15 percent greater than
529 the premium for comparable coverage from the corporation.
530 Whenever an offer of coverage for a personal lines residential
531 risk is received for a policyholder of the corporation at
532 renewal from an authorized insurer pursuant to s. 627.3518, if
533 the offer is equal to or less than the corporation's renewal
534 premium for comparable coverage, the risk is not eligible for
535 coverage with the corporation. If the risk is not able to obtain
536 such offer, the risk is eligible for a standard policy including
537 wind coverage or a basic policy including wind coverage issued
538 by the corporation; however, if the risk could not be insured
539 under a standard policy including wind coverage regardless of
540 market conditions, the risk is eligible for a basic policy
541 including wind coverage unless rejected under subparagraph 8.
542 Whenever an offer of coverage for a personal lines residential
543 risk is received from an insurer for a policyholder of the
544 corporation, the risk remains eligible for coverage with the
545 corporation. ~~However,~~ A policyholder removed from the
546 corporation through an assumption agreement remains eligible for
547 coverage from the corporation until the end of the assumption
548 period. The corporation shall determine the type of policy to be
549 provided on the basis of objective standards specified in the
550 underwriting manual and based on generally accepted underwriting
551 practices.

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552 (I) If the risk accepts an offer of coverage through the
553 market assistance plan or through a mechanism established by the
554 corporation other than a plan established by s. 627.3518, before
555 a policy is issued to the risk by the corporation or during the
556 first 30 days of coverage by the corporation, and the producing
557 agent who submitted the application to the plan or to the
558 corporation is not currently appointed by the insurer, the
559 insurer shall:

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

565 (B) Offer to allow the producing agent of record of the
566 policy to continue servicing the policy for at least 1 year and
567 offer to pay the agent the greater of the insurer's or the
568 corporation's usual and customary commission for the type of
569 policy written.

570
571 If the producing agent is unwilling or unable to accept
572 appointment, the new insurer shall pay the agent in accordance
573 with sub-sub-sub-subparagraph (A).

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

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

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581 equal to the usual and customary commission of the corporation;
582 or

583 (B) Offer to allow the producing agent of record to
584 continue servicing the policy for at least 1 year and offer to
585 pay the agent the greater of the insurer's or the corporation's
586 usual and customary commission for the type of policy written.

587
588 If the producing agent is unwilling or unable to accept
589 appointment, the new insurer shall pay the agent in accordance
590 with sub-sub-sub-subparagraph (A).

591 b. With respect to commercial lines residential risks, for
592 a new application to the corporation for coverage, if the risk
593 is offered coverage under a policy including wind coverage from
594 an authorized insurer at its approved rate, the risk is not
595 eligible for a policy issued by the corporation unless the
596 premium for coverage from the authorized insurer is more than 15
597 percent greater than the premium for comparable coverage from
598 the corporation. Whenever an offer of coverage for a commercial
599 lines residential risk is received for a policyholder of the
600 corporation at renewal from an authorized insurer, if the offer
601 is equal to or less than the corporation's renewal premium for
602 comparable coverage, the risk is not eligible for coverage with
603 the corporation. If the risk is not able to obtain any such
604 offer, the risk is eligible for a policy including wind coverage
605 issued by the corporation. However, a policyholder removed from
606 the corporation through an assumption agreement remains eligible
607 for coverage from the corporation until the end of the
608 assumption period.

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

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610 market assistance plan or through a mechanism established by the
611 corporation other than a plan established by s. 627.3518, before
612 a policy is issued to the risk by the corporation or during the
613 first 30 days of coverage by the corporation, and the producing
614 agent who submitted the application to the plan or the
615 corporation is not currently appointed by the insurer, the
616 insurer shall:

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

622 (B) Offer to allow the producing agent of record of the
623 policy to continue servicing the policy for at least 1 year and
624 offer to pay the agent the greater of the insurer's or the
625 corporation's usual and customary commission for the type of
626 policy written.

627
628 If the producing agent is unwilling or unable to accept
629 appointment, the new insurer shall pay the agent in accordance
630 with sub-sub-sub-subparagraph (A).

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

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

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639 or

640 (B) Offer to allow the producing agent of record to
641 continue servicing the policy for at least 1 year and offer to
642 pay the agent the greater of the insurer's or the corporation's
643 usual and customary commission for the type of policy written.

644

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

648 c. For purposes of determining comparable coverage under
649 sub-subparagraphs a. and b., the comparison must be based on
650 those forms and coverages that are reasonably comparable. The
651 corporation may rely on a determination of comparable coverage
652 and premium made by the producing agent who submits the
653 application to the corporation, made in the agent's capacity as
654 the corporation's agent. A comparison may be made solely of the
655 premium with respect to the main building or structure only on
656 the following basis: the same coverage A or other building
657 limits; the same percentage hurricane deductible that applies on
658 an annual basis or that applies to each hurricane for commercial
659 residential property; the same percentage of ordinance and law
660 coverage, if the same limit is offered by both the corporation
661 and the authorized insurer; the same mitigation credits, to the
662 extent the same types of credits are offered both by the
663 corporation and the authorized insurer; the same method for loss
664 payment, such as replacement cost or actual cash value, if the
665 same method is offered both by the corporation and the
666 authorized insurer in accordance with underwriting rules; and
667 any other form or coverage that is reasonably comparable as

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668 determined by the board. If an application is submitted to the
669 corporation for wind-only coverage in the coastal account, the
670 premium for the corporation's wind-only policy plus the premium
671 for the ex-wind policy that is offered by an authorized insurer
672 to the applicant must be compared to the premium for multiperil
673 coverage offered by an authorized insurer, subject to the
674 standards for comparison specified in this subparagraph. If the
675 corporation or the applicant requests from the authorized
676 insurer a breakdown of the premium of the offer by types of
677 coverage so that a comparison may be made by the corporation or
678 its agent and the authorized insurer refuses or is unable to
679 provide such information, the corporation may treat the offer as
680 not being an offer of coverage from an authorized insurer at the
681 insurer's approved rate.

682 6. Must include rules for classifications of risks and
683 rates.

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

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

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

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

702

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

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

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

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

723 12. May establish, subject to approval by the office,
724 different eligibility requirements and operational procedures
725 for any line or type of coverage for any specified county or

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726 area if the board determines that such changes are justified due
727 to the voluntary market being sufficiently stable and
728 competitive in such area or for such line or type of coverage
729 and that consumers who, in good faith, are unable to obtain
730 insurance through the voluntary market through ordinary methods
731 continue to have access to coverage from the corporation. If
732 coverage is sought in connection with a real property transfer,
733 the requirements and procedures may not provide an effective
734 date of coverage later than the date of the closing of the
735 transfer as established by the transferor, the transferee, and,
736 if applicable, the lender.

737 13. Must provide that, with respect to the coastal account,
738 any assessable insurer with a surplus as to policyholders of \$25
739 million or less writing 25 percent or more of its total
740 countrywide property insurance premiums in this state may
741 petition the office, within the first 90 days of each calendar
742 year, to qualify as a limited apportionment company. A regular
743 assessment levied by the corporation on a limited apportionment
744 company for a deficit incurred by the corporation for the
745 coastal account may be paid to the corporation on a monthly
746 basis as the assessments are collected by the limited
747 apportionment company from its insureds, but a limited
748 apportionment company must begin collecting the regular
749 assessments not later than 90 days after the regular assessments
750 are levied by the corporation, and the regular assessments must
751 be paid in full within 15 months after being levied by the
752 corporation. A limited apportionment company shall collect from
753 its policyholders any emergency assessment imposed under sub-
754 subparagraph (b)3.d. The plan must provide that, if the office

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755 determines that any regular assessment will result in an
756 impairment of the surplus of a limited apportionment company,
757 the office may direct that all or part of such assessment be
758 deferred as provided in subparagraph (q)4. However, an emergency
759 assessment to be collected from policyholders under sub-
760 subparagraph (b)3.d. may not be limited or deferred.

761 14. Must provide that the corporation appoint as its
762 licensed agents only those agents who throughout such
763 appointments also hold an appointment as defined in s.
764 626.015(3) by an insurer who is authorized to write and is
765 actually writing or renewing personal lines residential property
766 coverage, commercial residential property coverage, or
767 commercial nonresidential property coverage within the state.

768 15. Must provide a premium payment plan option to its
769 policyholders which, at a minimum, allows for quarterly and
770 semiannual payment of premiums. A monthly payment plan may, but
771 is not required to, be offered.

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

775 17. Must provide coverage for manufactured or mobile home
776 dwellings. Such coverage must also include the following
777 attached structures:

778 a. Screened enclosures that are aluminum framed or screened
779 enclosures that are not covered by the same or substantially the
780 same materials as those of the primary dwelling;

781 b. Carports that are aluminum or carports that are not
782 covered by the same or substantially the same materials as those
783 of the primary dwelling; and

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784 c. Patios that have a roof covering that is constructed of
785 materials that are not the same or substantially the same
786 materials as those of the primary dwelling.

787
788 The corporation shall make available a policy for mobile homes
789 or manufactured homes for a minimum insured value of at least
790 \$3,000.

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

793 19. May require commercial property to meet specified
794 hurricane mitigation construction features as a condition of
795 eligibility for coverage.

796 20. Must provide that new or renewal policies issued by the
797 corporation on or after January 1, 2012, which cover sinkhole
798 loss do not include coverage for any loss to appurtenant
799 structures, driveways, sidewalks, decks, or patios that are
800 directly or indirectly caused by sinkhole activity. The
801 corporation shall exclude such coverage using a notice of
802 coverage change, which may be included with the policy renewal,
803 and not by issuance of a notice of nonrenewal of the excluded
804 coverage upon renewal of the current policy.

805 21. As of January 1, 2012, must require that the agent
806 obtain from an applicant for coverage from the corporation an
807 acknowledgment signed by the applicant, which includes, at a
808 minimum, the following statement:

809
810 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
811 AND ASSESSMENT LIABILITY:

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813 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
814 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
815 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
816 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
817 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
818 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
819 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
820 LEGISLATURE.

821 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER
822 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,
823 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO
824 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN
825 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE
826 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES
827 ARE REGULATED AND APPROVED BY THE STATE.

828 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
829 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
830 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
831 FLORIDA LEGISLATURE.

832 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
833 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
834 STATE OF FLORIDA.

835
836 a. The corporation shall maintain, in electronic format or
837 otherwise, a copy of the applicant's signed acknowledgment and
838 provide a copy of the statement to the policyholder as part of
839 the first renewal after the effective date of this subparagraph.

840 b. The signed acknowledgment form creates a conclusive
841 presumption that the policyholder understood and accepted his or

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842 her potential surcharge and assessment liability as a
843 policyholder of the corporation.

844 22. Must provide that a personal lines residential
845 policyholder of the corporation remains eligible for coverage
846 from the corporation by not accepting an offer of coverage from
847 an authorized insurer, including offers made pursuant to an
848 assumption agreement or takeout agreement. An offer is not
849 accepted if the corporation policyholder or agent of record
850 expressly declines or does not respond to the offer. This
851 subparagraph does not apply to an offer made pursuant to s.
852 627.3518.

853 (n)1. Rates for coverage provided by the corporation must
854 be actuarially sound and subject to s. 627.062, except as
855 otherwise provided in this paragraph. The corporation shall file
856 its recommended rates with the office at least annually. The
857 corporation shall provide any additional information regarding
858 the rates which the office requires. The office shall consider
859 the recommendations of the board and issue a final order
860 establishing the rates for the corporation within 45 days after
861 the recommended rates are filed. The corporation may not pursue
862 an administrative challenge or judicial review of the final
863 order of the office.

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

868 3.a. After the public hurricane loss-projection model under
869 s. 627.06281 has been found to be accurate and reliable by the
870 Florida Commission on Hurricane Loss Projection Methodology, the

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871 model shall be considered when establishing the windstorm
872 portion of the corporation's rates. The corporation may use the
873 public model results in combination with the results of private
874 models to calculate rates for the windstorm portion of the
875 corporation's rates. This ~~sub-subparagraph~~ ~~subparagraph~~ does not
876 require or allow the corporation to adopt rates lower than the
877 rates otherwise required or allowed by this paragraph.

878 b. Notwithstanding sub-subparagraph a., in a rating
879 territory located in a county that the office determines does
880 not have a reasonable degree of competition, the corporation
881 shall file and the office shall approve a recommended rate
882 change of 0 percent for the windstorm portion of a rate in that
883 territory if, within that territory:

884 (I) At least one of the windstorm models used by the
885 corporation indicates an increase in the windstorm portion of
886 the rate and a different such model indicates a decrease in the
887 windstorm portion of the rate; and

888 (II) The combination of models used by the corporation
889 under sub-subparagraph a. to calculate the rate indicates an
890 increase for the windstorm portion of the rate.

891 4. The rate filings for the corporation which were approved
892 by the office and took effect January 1, 2007, are rescinded,
893 except for those rates that were lowered. As soon as possible,
894 the corporation shall begin using the lower rates that were in
895 effect on December 31, 2006, and provide refunds to
896 policyholders who paid higher rates as a result of that rate
897 filing. The rates in effect on December 31, 2006, remain in
898 effect for the 2007 and 2008 calendar years except for any rate
899 change that results in a lower rate. The next rate change that

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900 may increase rates shall take effect pursuant to a new rate
901 filing recommended by the corporation and established by the
902 office, subject to this paragraph.

903 5. Beginning on July 15, 2009, and annually thereafter, the
904 corporation must make a recommended actuarially sound rate
905 filing for each personal and commercial line of business it
906 writes, to be effective no earlier than January 1, 2010.

907 6. Beginning on or after January 1, 2010, and
908 notwithstanding the board's recommended rates and the office's
909 final order regarding the corporation's filed rates under
910 subparagraph 1., the corporation shall annually implement a rate
911 increase which, except for sinkhole coverage, does not exceed 10
912 percent for any single policy issued by the corporation,
913 excluding coverage changes and surcharges.

914 ~~7. The corporation may also implement an increase to~~
915 ~~reflect the effect on the corporation of the cash buildup factor~~
916 ~~pursuant to s. 215.555(5)(b).~~

917 7.8. The corporation's implementation of rates as
918 prescribed in subparagraph 6. shall cease for any line of
919 business written by the corporation upon the corporation's
920 implementation of actuarially sound rates. Thereafter, the
921 corporation shall annually make a recommended actuarially sound
922 rate filing for each commercial and personal line of business
923 the corporation writes.

924 Section 7. Subsection (1) of section 627.409, Florida
925 Statutes, is amended, and subsection (4) is added to that
926 section, to read:

927 627.409 Representations in applications; warranties.—

928 (1) Any statement or description made by or on behalf of an

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929 insured or annuitant in an application for an insurance policy
930 or annuity contract, or in negotiations for a policy or
931 contract, is a representation and not a warranty. Except as
932 provided in subsection (3) or subsection (4), a
933 misrepresentation, omission, concealment of fact, or incorrect
934 statement may prevent recovery under the contract or policy only
935 if any of the following apply:

936 (a) The misrepresentation, omission, concealment, or
937 statement is fraudulent or is material to the acceptance of the
938 risk or to the hazard assumed by the insurer.

939 (b) If the true facts had been known to the insurer
940 pursuant to a policy requirement or other requirement, the
941 insurer in good faith would not have issued the policy or
942 contract, would not have issued it at the same premium rate,
943 would not have issued a policy or contract in as large an
944 amount, or would not have provided coverage with respect to the
945 hazard resulting in the loss.

946 (4) For residential property insurance, if a policy or
947 contract has been in effect for more than 120 days, a violation
948 of subsection (1) does not prevent recovery under the contract
949 or policy.

950 Section 8. Subsection (3) of section 627.7011, Florida
951 Statutes, is amended to read:

952 627.7011 Homeowners' policies; offer of replacement cost
953 coverage and law and ordinance coverage.—

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

956 (a) For a dwelling, the insurer must initially pay at least
957 the actual cash value of the insured loss, less any applicable

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958 deductible. The insurer shall pay any remaining amounts
959 necessary to perform such repairs as work is performed and
960 expenses are incurred. For losses occurring in a county that is
961 subject to a state of emergency declared pursuant to chapter
962 252, the insurer must pay the replacement cost without
963 reservation or holdback of any depreciation in value. If a total
964 loss of a dwelling occurs, the insurer shall pay the replacement
965 cost coverage without reservation or holdback of any
966 depreciation in value, pursuant to s. 627.702.

967 (b) For personal property:

968 1. The insurer must offer coverage under which the insurer
969 is obligated to pay the replacement cost without reservation or
970 holdback for any depreciation in value, whether or not the
971 insured replaces the property.

972 2. The insurer may also offer coverage under which the
973 insurer may limit the initial payment to the actual cash value
974 of the personal property to be replaced, require the insured to
975 provide receipts for the purchase of the property financed by
976 the initial payment, use such receipts to make the next payment
977 requested by the insured for the replacement of insured
978 property, and continue this process until the insured remits all
979 receipts up to the policy limits for replacement costs. For
980 losses occurring in a county that is subject to a state of
981 emergency declared pursuant to chapter 252, the insurer must pay
982 the replacement cost without reservation or holdback of any
983 depreciation in value. The insurer must provide clear notice of
984 this process before the policy is bound. A policyholder must be
985 provided an actuarially reasonable premium credit or discount
986 for this coverage. The insurer may not require the policyholder

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987 to advance payment for the replaced property.

988 Section 9. Section 627.70132, Florida Statutes, is amended
989 to read:

990 627.70132 Notice of windstorm or hurricane claim.—A claim,
991 supplemental claim, or reopened claim under an insurance policy
992 that provides property insurance, as defined in s. 624.604, for
993 loss or damage caused by the peril of windstorm or hurricane is
994 barred unless notice of the claim, supplemental claim, or
995 reopened claim was given to the insurer in accordance with the
996 terms of the policy within 5 ~~3~~ years after the hurricane first
997 made landfall or the windstorm caused the covered damage. For
998 purposes of this section, the term "supplemental claim" or
999 "reopened claim" means any additional claim for recovery from
1000 the insurer for losses from the same hurricane or windstorm
1001 which the insurer has previously adjusted pursuant to the
1002 initial claim. This section does not affect any applicable
1003 limitation on civil actions provided in s. 95.11 for claims,
1004 supplemental claims, or reopened claims timely filed under this
1005 section.

1006 Section 10. This act shall take effect July 1, 2017.