

Bill No. CS for SB 2364

Amendment No. \_\_\_\_ Barcode 300586

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Atwater moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 63, between lines 24 and 25,		
15			
16	insert:		
17	Section 70. Paragraph (d) of subsection (6) of		
18	section 627.351, Florida Statutes, is amended to read:		
19	627.351 Insurance risk apportionment plans.--		
20	(6) CITIZENS PROPERTY INSURANCE CORPORATION.--		
21	(d)1. It is the intent of the Legislature that the		
22	rates for coverage provided by the corporation be actuarially		
23	sound and not competitive with approved rates charged in the		
24	admitted voluntary market, so that the corporation functions		
25	as a residual market mechanism to provide insurance only when		
26	the insurance cannot be procured in the voluntary market.		
27	Rates shall include an appropriate catastrophe loading factor		
28	that reflects the actual catastrophic exposure of the		
29	corporation.		
30	2. For each county, the average rates of the		
31	corporation for each line of business for personal lines		

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

12           3. Rates for personal lines residential wind-only  
13 policies must be actuarially sound and not competitive with  
14 approved rates charged by authorized insurers. However, for  
15 personal lines residential wind-only policies issued or  
16 renewed between July 1, 2002, and June 30, 2003, the maximum  
17 premium increase must be no greater than 10 percent of the  
18 Florida Windstorm Underwriting Association premium for that  
19 policy in effect on June 30, 2002, as adjusted for coverage  
20 changes and seasonal occupancy surcharges. For personal lines  
21 residential wind-only policies issued or renewed between July  
22 1, 2003, and June 30, 2004, the corporation shall use its  
23 existing filed and approved wind-only rating and  
24 classification plans, provided, however, that the maximum  
25 premium increase must be no greater than 20 percent of the  
26 premium for that policy in effect on June 30, 2003, as  
27 adjusted for coverage changes and seasonal occupancy  
28 surcharges.

29           ~~The personal lines residential wind-only rates for the~~  
30 ~~corporation effective July 1, 2003, must be based on a rate~~  
31 ~~filing by the corporation which establishes rates which are~~

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1 ~~actuarially sound and not competitive with approved rates~~  
2 ~~charged by authorized insurers.~~ Corporation rate manuals shall  
3 include a rate surcharge for seasonal occupancy. To ensure  
4 that personal lines residential wind-only rates effective on  
5 or after July 1, 2004 ~~2003~~, are not competitive with approved  
6 rates charged by authorized insurers, the corporation, in  
7 conjunction with the office, shall develop a wind-only rate  
8 making methodology, which methodology shall be contained in a  
9 rate filing made by the corporation with the office by January  
10 1, 2004. If the office thereafter determines that the  
11 wind-only rates or rating factors filed by the corporation  
12 fail to comply with the wind-only rate making methodology  
13 provided for in this subsection, it shall so notify the  
14 corporation and require the corporation to amend its rates or  
15 rating factors to come into compliance within 90 days of  
16 notice from the office. The office shall report to the Speaker  
17 of the House of Representatives and the President of the  
18 Senate on the provisions of the wind-only rate making  
19 methodology by January 31, 2004 ~~the department, by March 1 of~~  
20 ~~each year, shall provide the corporation, for each county in~~  
21 ~~which there are geographical areas in which personal lines~~  
22 ~~residential wind-only policies may be issued, the average~~  
23 ~~rates charged by the insurer that had the highest average rate~~  
24 ~~in that county for wind coverage in that insurer's rating~~  
25 ~~territories which most closely approximate the geographical~~  
26 ~~area in that county in which personal lines residential~~  
27 ~~wind-only policies may be written by the corporation. The~~  
28 ~~average rates provided must be from an insurer among the 20~~  
29 ~~insurers with the greatest total direct written premium in the~~  
30 ~~state for personal lines residential property insurance for~~  
31 ~~the preceding year. With respect to mobile homes, the five~~

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1 ~~insurers with the greatest total written premium for that line~~  
 2 ~~of business in the preceding year shall be used. The~~  
 3 ~~corporation shall certify to the department that its average~~  
 4 ~~personal lines residential wind-only rates are no lower in~~  
 5 ~~each county than the average rates provided by the department.~~  
 6 ~~The department is authorized to adopt rules to establish~~  
 7 ~~reporting requirements to obtain the necessary wind-only rate~~  
 8 ~~information from insurers to implement this provision.~~

9           4. Rates for commercial lines coverage shall not be  
 10 subject to the requirements of subparagraph 2., but shall be  
 11 subject to all other requirements of this paragraph and s.  
 12 627.062.

13           5. Nothing in this paragraph shall require or allow  
 14 the corporation to adopt a rate that is inadequate under s.  
 15 627.062.

16           6. The corporation shall certify to the office at  
 17 least twice annually that its personal lines rates comply with  
 18 the requirements of subparagraphs 1. and 2. If any adjustment  
 19 in the rates or rating factors of the corporation is necessary  
 20 to ensure such compliance, the corporation shall make and  
 21 implement such adjustments and file its revised rates and  
 22 rating factors with the office. If the office thereafter  
 23 determines that the revised rates and rating factors fail to  
 24 comply with the provisions of subparagraphs 1. and 2, it shall  
 25 notify the corporation and require the corporation to amend  
 26 its rates or rating factors in conjunction with its next rate  
 27 filing. The office must notify the corporation by electronic  
 28 means of any rate filing it approves for any insurer among the  
 29 insurers referred to in subparagraph 2 make a rate filing at  
 30 least once a year, but no more often than quarterly.

31           7. In addition to the rates otherwise determined

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1 pursuant to this paragraph, the corporation shall impose and  
2 collect an amount equal to the premium tax provided for in s.  
3 624.509 to augment the financial resources of the corporation.

4 8.a To assist the corporation in developing additional  
5 ratemaking methods to assure compliance with subparagraphs 1.  
6 and 4., the corporation shall appoint a rate methodology panel  
7 consisting of one person recommended by the Florida  
8 Association of Insurance Agents, one person recommended by the  
9 Professional Insurance Agents of Florida, one person  
10 recommended by the Florida Association of Insurance and  
11 Financial Advisors, one person recommended by the insurer with  
12 the highest voluntary market share of residential property  
13 insurance business in the state, one person recommended by the  
14 insurer with the second-highest voluntary market share of  
15 residential property insurance business in the state, one  
16 person recommended by an insurer writing commercial  
17 residential property insurance in this state, one person  
18 recommended by the Office of Insurance Regulation, and one  
19 board member designated by the board chairman, who shall serve  
20 as chairman of the panel.

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

28 c. Within 30 days after such report, the corporation  
29 shall present to the President of the Senate, the Speaker of  
30 the House of Representatives, the minority party leaders of  
31 each house of the Legislature, and the chairs of the standing

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1 committees of each house of the Legislature having  
2 jurisdiction of insurance issues, a plan for implementing the  
3 additional ratemaking methods and an outline of any  
4 legislation needed to facilitate use of the new methods.

5 d. The plan must include a provision that producer  
6 commissions paid by the corporation shall not be calculated in  
7 such a manner as to include any rate-equalization surcharge.  
8 However, without regard to the plan to be developed or its  
9 implementation, producer commissions paid by the corporation  
10 for each account, other than the quota share primary program,  
11 shall remain fixed as to percentage, effective rate,  
12 calculation, and payment method, as these were in effect on  
13 January 1, 2003.

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

21 Section 71. Section 624.105, Florida Statutes, is  
22 created to read:

23 624.105 Waiver of customer liability.--Any regulated  
24 company as defined in s. 350.111, any electric utility as  
25 defined in s. 366.02(2), any utility as defined in s.  
26 367.021(12) or s.367.022(2) and (7), and any provider of  
27 communications services as defined in s. 202.11(3) may charge  
28 for and include an optional waiver of liability provision in  
29 their customer contracts under which the entity agrees to  
30 waive all or a portion of the customer s liability for  
31 service from the entity for a defined period in the event of

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1 the customer s call to active military service, death,  
2 disability, involuntary unemployment, qualification for family  
3 leave, or similar qualifying event or condition. Such  
4 provisions may not be effective in the customer s contract  
5 with the entity unless affirmatively elected by the customer.  
6 No such provision shall constitute insurance so long as the  
7 provision is a contract between the entity and its customer.

8 Section 72. Section 717.1071, Florida Statutes, is  
9 created to read:

10 717.1071 Lost owners of unclaimed demutualization,  
11 rehabilitation, or related reorganization proceeds.--

12 (1) Property distributable in the course of a  
13 demutualization, rehabilitation, or related reorganization of  
14 an insurance company is deemed abandoned 2 years after the  
15 date the property is first distributable if, at the time of  
16 the first distribution, the last known address of the owner on  
17 the books and records of the holder is known to be incorrect  
18 or the distribution or statements are returned by the post  
19 office as undeliverable; and the owner has not communicated in  
20 writing with the holder or its agent regarding the interest or  
21 otherwise communicated with the holder regarding the interest  
22 as evidenced by a memorandum or other record on file with the  
23 holder or its agent.

24 (2) Property distributable in the course of  
25 demutualization, rehabilitation, or related reorganization of  
26 a mutual insurance company that is not subject to subsection  
27 (1) shall be reportable as otherwise provided by this chapter.

28 (3) Property subject to this section shall be reported  
29 and delivered no later than May 1 as of the preceding December  
30 31, however the initial report under this section shall be  
31 filed no later than November 1, 2003, as of December 31, 2002.

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1           Section 73. Subsection (8) of section 624.430, Florida  
2 Statutes, is redesignated as subsection (9), and a new  
3 subsection (8) is added to that section, to read:

4           624.430 Withdrawal of insurer or discontinuance of  
5 writing certain kinds or lines of insurance.--

6           (8) Notwithstanding subsection (7), any insurer  
7 desiring to surrender its certificate of authority, withdraw  
8 from this state, or discontinue the writing of any one or  
9 multiple kinds or lines of insurance in this state is expected  
10 to have availed itself of all reasonably available  
11 reinsurance. Reasonably available reinsurance shall include  
12 unrealized reinsurance, which is defined as reinsurance  
13 recoverable on known losses incurred and due under valid  
14 reinsurance contracts that have not been identified in the  
15 normal course of business and have not been reported in  
16 financial statements filed with the Office of Insurer  
17 Regulation. Within 90 days after surrendering its certificate  
18 of authority, withdrawing from this state, or discontinuing  
19 the writing of any one or multiple kinds or lines of insurance  
20 in this state, the insurer shall certify to the Director of  
21 the Office of Insurer Regulation that the insurer has engaged  
22 an independent third party to search for unrealized  
23 reinsurance, and that the insurer has made all relevant books  
24 and records available to such third party. The compensation to  
25 such third party may be a percentage of unrealized reinsurance  
26 identified and collected.

27           Section 74. Subsection (11) of section 626.7451,  
28 Florida Statutes, is amended to read:

29           626.7451 Managing general agents; required contract  
30 provisions.--No person acting in the capacity of a managing  
31 general agent shall place business with an insurer unless



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1 | there is in force a written contract between the parties which  
2 | sets forth the responsibility for a particular function,  
3 | specifies the division of responsibilities, and contains the  
4 | following minimum provisions:

5 |       (11) A licensed managing general agent, when placing  
6 | business with an insurer under this code, may charge a  
7 | per-policy fee not to exceed ~~\$40~~\$25. In no instance shall the  
8 | aggregate of per-policy fees for a placement of business  
9 | authorized under this section, when combined with any other  
10 | per-policy fee charged by the insurer, result in per-policy  
11 | fees which exceed the aggregate amount of ~~\$40~~\$25. The  
12 | per-policy fee shall be a component of the insurer's rate  
13 | filing and shall be fully earned. A managing general agent  
14 | that collects a per-policy fee shall remit a minimum of \$5 per  
15 | policy to the insurer for the funding of a Special  
16 | Investigations Unit dedicated to the prevention of insurance  
17 | fraud; \$2 per policy to the Division of Insurance Fraud of the  
18 | Department of Financial Services, which shall be dedicated to  
19 | the prevention and detection of motor vehicle insurance fraud;  
20 | \$2 per policy to be remitted to the Department of Legal  
21 | Affairs which shall remit such funds to the state attorneys in  
22 | each judicial circuit, in proportion to the population of each  
23 | judicial circuit, which shall be dedicated to the prosecution  
24 | of motor vehicle insurance fraud; and \$1 per policy to the  
25 | Office of Statewide Prosecution, which shall be dedicated to  
26 | the prosecution of motor vehicle insurance fraud. Any insurer  
27 | that writes directly without a managing general agent and that  
28 | charges a per-policy fee shall charge an additional policy fee  
29 | at a minimum of \$5 per policy to fund its Special  
30 | Investigations Unit dedicated to the prevention of insurance  
31 | fraud; \$2 per policy to the Division of Insurance Fraud of the

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1 Department of Financial Services, which shall be dedicated to  
2 the prevention and detection of motor vehicle insurance fraud;  
3 \$2 per policy to be remitted to the Department of Legal  
4 Affairs which shall remit such funds to the state attorneys in  
5 each judicial circuit, in proportion to the population of each  
6 judicial circuit, which shall be dedicated to the prosecution  
7 of motor vehicle insurance fraud; and \$1 per policy to the  
8 Office of Statewide Prosecution, which shall be dedicated to  
9 the prosecution of motor vehicle insurance fraud.

10           For the purposes of this section and ss. 626.7453 and  
11 626.7454, the term "controlling person" or "controlling" has  
12 the meaning set forth in s. 625.012(5)(b)1., and the term  
13 "controlled person" or "controlled" has the meaning set forth  
14 in s. 625.012(5)(b)2.

15           Section 75. Section 624.4623, Florida Statutes, is  
16 created to read:

17           624.4623 Independent Educational Institution  
18 Self-Insurance Funds--

19           (1) Notwithstanding any other provision of law, any  
20 two or more independent nonprofit colleges or universities  
21 accredited by the Commission on Colleges of the Southern  
22 Association of Colleges and Schools or independent, nonprofit,  
23 accredited secondary educational institutions, located in and  
24 chartered by the state of Florida, may form a self-insurance  
25 fund for the purpose of pooling and spreading liabilities of  
26 its group members in any property or casualty risk or surety  
27 insurance or securing the payment of benefits under chapter  
28 440, provided the independent educational institution  
29 self-insurance fund that is created must:

30           (a) Have annual normal premiums in excess of \$5  
31 million;

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1       (b) Maintain a continuing program of excess insurance  
2 coverage and reserve evaluation to protect the financial  
3 stability of the fund in an amount and manner determined by a  
4 qualified and independent actuary;

5       (c) Submit annually an audited fiscal year-end  
6 financial statement by an independent certified public  
7 accountant within 6 months after the end of the fiscal year to  
8 the office; and

9       (d) Have a governing body which is comprised entirely  
10 of independent educational institution officials.

11       (2) An independent educational institution  
12 self-insurance fund that meets the requirements of this  
13 section is not subject to s. 624.4621 and is not required to  
14 file any report with the department under s. 440.38(2)(b)  
15 which is uniquely required of group self-insurer funds  
16 qualified under s. 624.4621. If any of the requirements of  
17 this section are not met, the independent educational  
18 self-insurance fund is subject to the requirements of s.  
19 624.4621.

20       Section 76. Present subsections (6), (7), (8), (9),  
21 and (10) of section 624.81, Florida Statutes, are redesignated  
22 as subsections (7), (8), (9), (10), and (11), respectively,  
23 and a new subsection (6) is added to that section, to read:

24       624.81 Notice to comply with written requirements of  
25 department; noncompliance.--

26       (6) Any insurer subject to administrative supervision  
27 is expected to avail itself of all reasonably available  
28 reinsurance. Reasonably available reinsurance shall include  
29 unrealized reinsurance, which is defined as reinsurance  
30 recoverable on known losses incurred and due under valid  
31 reinsurance contracts that have not been identified in the

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1 normal course of business and have not been reported in  
2 financial statements filed with the Office of Insurance  
3 Regulation. Within 90 days of being placed under  
4 administrative supervision, the insurer shall certify to the  
5 Director of the Office of Insurance Regulation that the  
6 insurer has engaged an independent third party to search for  
7 unrealized reinsurance, and that the insurer has made all  
8 relevant books and records available to the third party. The  
9 compensation to the third party may be a percentage of  
10 unrealized reinsurance identified and collected.

11       ~~(7)(6)~~ If the department and the insurer are unable to  
12 agree on the provisions of the plan, the department may  
13 require the insurer to take such corrective action as may be  
14 reasonably necessary to remove the causes and conditions  
15 giving rise to the need for administrative supervision.

16       ~~(8)(7)~~ The insurer shall have 60 days, or a longer  
17 period of time as designated by the department but not to  
18 exceed 120 days, after the date of the written agreement or  
19 the receipt of the department's plan within which to comply  
20 with the requirements of the department. At the conclusion of  
21 the initial period of supervision, the department may extend  
22 the supervision in increments of 60 days or longer, not to  
23 exceed 120 days, if conditions justifying supervision exist.  
24 Each extension of supervision shall provide the insurer with a  
25 point of entry pursuant to chapter 120.

26       ~~(9)(8)~~ The initiation or pendency of administrative  
27 proceedings arising from actions taken under this section  
28 shall not preclude the department from initiating judicial  
29 proceedings to place an insurer in conservation,  
30 rehabilitation, or liquidation or initiating other delinquency  
31 proceedings however designated under the laws of this state.

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1       ~~(10)(9)~~ If it is determined that the conditions giving  
2 rise to administrative supervision have been remedied so that  
3 the continuance of its business is no longer hazardous to the  
4 public or to its insureds, the department shall release the  
5 insurer from supervision.

6       ~~(11)(10)~~ The department may adopt rules to define  
7 standards of hazardous financial condition and corrective  
8 action substantially similar to that indicated in the National  
9 Association of Insurance Commissioners' 1997 "Model Regulation  
10 to Define Standards and Commissioner's Authority for Companies  
11 Deemed to be in Hazardous Financial Condition," which are  
12 necessary to implement the provisions of this part.

13  
14 (Redesignate subsequent sections.)

15  
16

17 ===== T I T L E    A M E N D M E N T =====

18 And the title is amended as follows:

19       On page 4, line 29, after the semicolon,

20

21 insert:

22       amending s. 627.351, F.S.; providing  
23       requirements for the corporation relating to  
24       personal lines residential wind-only policies;  
25       requiring the corporation to develop a  
26       wind-only rate making methodology; requiring a  
27       report; requiring the Citizens Property  
28       Insurance Corporation to certify at certain  
29       intervals that its rates comply with  
30       requirements to be set a certain levels  
31       relative to other insurers; authorizing the

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1 Office of Insurance Regulation to review and  
2 act upon such certification; requiring the  
3 corporation to appoint a rate methodology panel  
4 to make recommendations for the use of  
5 additional ratemaking methods, including the  
6 use of a rate equalization surcharge to assure  
7 that the cost of coverage is sufficient to  
8 comply with state law; requiring the  
9 corporation to provide a related report to the  
10 Legislature and a plan for implementing the  
11 additional ratemaking methods; specifying how  
12 the plan shall apply to agent commissions;  
13 requiring the corporation to develop a notice  
14 to policyholders; creating s. 624.105, F.S.;  
15 providing for waiver of customer liability for  
16 certain fees by providers of utility and  
17 telecommunications services under certain  
18 circumstances; creating s. 717.1071, F.S.;  
19 providing procedures, requirements, and  
20 limitations on lost owners of certain unclaimed  
21 insurance entity activity proceeds; amending s.  
22 624.430, F.S.; requiring certain insurers to  
23 obtain reasonably available reinsurance under  
24 certain circumstances; providing procedures and  
25 criteria; amending s. 626.7451, F.S.; providing  
26 a per-policy fee to be remitted to the  
27 insurer's Special Investigations Unit, the  
28 Division of Insurance Fraud of the Department  
29 of Financial Services, the state attorneys  
30 under the Department of Legal Affairs; and the  
31 Office of Statewide Prosecution for purposes of

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1 preventing, detecting, and prosecuting motor  
2 vehicle insurance fraud; creating s. 624.4623,  
3 F.S.; authorizing two or more independent  
4 colleges or universities to form a  
5 self-insurance fund; providing specific  
6 requirements; amending s. 624.81, F.S.;  
7 requiring insurers that are under  
8 administrative supervision to avail themselves  
9 of all reasonably available reinsurance;  
10 providing for a third party to search for  
11 reinsurance; providing for reimbursing the  
12 third party;

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