

CHAMBER ACTION

1 The Commerce Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to property insurance; creating s.  
7 489.1285, F.S.; specifying certain consumer protection  
8 measures relating to roofing construction to be in effect  
9 following certain executive orders; specifying certain  
10 requirements to be complied with relating to roof repair  
11 or reroofing; amending s. 627.062, F.S.; limiting an  
12 insurer's recoupment of reimbursement premium; providing  
13 limitations; amending s. 627.0628, F.S.; limiting use of  
14 certain methodologies in determining hurricane loss  
15 factors for reimbursement premium rates in certain rate  
16 filings; creating s. 627.06281, F.S.; requiring certain  
17 insurers and organizations to develop, maintain, and  
18 update a public hurricane loss projection model; providing  
19 reporting requirements for insurers; protecting trade  
20 secret information; amending s. 627.0629, F.S.; tightening  
21 a limitation on rate filings based on computer models  
22 under certain circumstances; amending s. 627.351, F.S.;  
23 providing additional legislative intent relating to the

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24 | Citizens Property Insurance Corporation; specifying a  
25 | limitation on dwelling limits for personal lines policies;  
26 | requiring the corporation to offer wind-only policies in  
27 | certain areas for new personal residential risks;  
28 | providing requirements and limitations; requiring creation  
29 | of a Market Accountability Advisory Committee to assist  
30 | the corporation for certain purposes; providing for  
31 | appointment of committee members; providing for terms;  
32 | requiring reports to the corporation; revising  
33 | requirements for the plan of operation of the corporation;  
34 | requiring a plan for removing personal lines policies from  
35 | coverage by the corporation which includes the development  
36 | and implementation of a take-out bonus strategy; deleting  
37 | limitations on certain personal lines residential wind-  
38 | only policies; deleting an obsolete reporting requirement;  
39 | specifying nonapplication of certain policy requirements  
40 | in counties lacking reasonable degrees of competition for  
41 | certain policies under certain circumstances; requiring  
42 | the commission to adopt rules; deleting an obsolete rate  
43 | methodology panel reporting requirement provision;  
44 | requiring the corporation to require the securing of flood  
45 | insurance as a condition of coverage under certain  
46 | circumstances; providing requirements and limitations;  
47 | amending s. 627.411, F.S.; revising grounds for office  
48 | disapproval of certain forms; amending s. 627.7015, F.S.;  
49 | revising purpose and scope provisions relating to an  
50 | alternative procedure for resolution of disputed property  
51 | insurance claims; providing an additional criterion for

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52 | excusing an insured from being required to submit to  
 53 | certain loss appraisal processes; amending s. 627.702,  
 54 | F.S.; specifying intent; providing nonapplication of  
 55 | certain insurer liability requirements under certain  
 56 | circumstances; limiting an insurer's liability to certain  
 57 | loss covered by a covered peril; amending s. 627.706,  
 58 | F.S.; revising definitions relating to sinkholes;  
 59 | providing additional definitions; creating s. 627.7065,  
 60 | F.S.; providing legislative findings; requiring the  
 61 | Department of Financial Services and the Office of the  
 62 | Insurance Consumer Advocate to consult with the Florida  
 63 | Geological Survey and the Department of Environmental  
 64 | Protection to implement a statewide automated database of  
 65 | sinkholes and related activity; providing requirements for  
 66 | the form and content of the database; authorizing the  
 67 | Department of Financial Services to require insurers to  
 68 | provide certain information; providing for management of  
 69 | the database; requiring the department to investigate  
 70 | sinkhole activity reports and include findings and  
 71 | investigations in the database; requiring the Department  
 72 | of Environmental Protection to report on the database to  
 73 | the Governor, Legislature, and Chief Financial Officer;  
 74 | authorizing the Department of Financial Services to adopt  
 75 | implementing rules; amending s. 627.707, F.S.; revising  
 76 | standards for investigations of sinkhole claims by  
 77 | insurers; requiring an insurer to engage an engineer and  
 78 | professional geologist for certain purposes; requiring a  
 79 | report under certain circumstances; requiring an insurer

80 | to provide written notice to a policyholder disclosing  
81 | certain information; authorizing an insurer to deny a  
82 | claim under certain circumstances; authorizing a  
83 | policyholder to demand certain testing; providing  
84 | requirements; specifying required activities for insurers  
85 | if a sinkhole loss is verified; specifying payment  
86 | requirements for insurers; providing limitations;  
87 | requiring the insurer to pay fees of the engineer and  
88 | geologist; authorizing an insurer to engage a structural  
89 | engineer for certain purposes; creating s. 627.7072, F.S.;  
90 | specifying requirements for sinkhole testing by engineers  
91 | and geologists; creating s. 627.7073, F.S.; providing  
92 | reporting requirements for engineers and geologists after  
93 | testing for sinkholes; specifying a presumption of  
94 | correctness of certain findings; requiring an insurer  
95 | paying a sinkhole loss claim to file a report and  
96 | certification with the county property appraiser;  
97 | requiring the property appraiser to record the report and  
98 | certification; requiring the insurer to bear the cost of  
99 | filing and recording; requiring a seller of certain  
100 | property to make certain disclosures to property buyers  
101 | under certain circumstances; requiring the Auditor General  
102 | to perform an operational audit of the Citizens Property  
103 | Insurance Corporation; specifying audit requirements;  
104 | requiring a report; requiring the board of governors of  
105 | the Citizens Property Insurance Corporation to submit a  
106 | report to the Legislature relating to property and  
107 | casualty insurance; specifying report requirements;

108 providing for contingent effect; providing effective  
109 dates.

110  
111 Be It Enacted by the Legislature of the State of Florida:

112  
113 Section 1. Section 489.1285, Florida Statutes, is created  
114 to read:

115 489.1285 Consumer protections; contract limitations.--  
116 Subsequent to the issuance of an executive order by the Office  
117 of the Governor declaring the existence of a state of emergency  
118 as a result and consequence of a serious threat posed to the  
119 public health, safety, and property in this state, in which  
120 damage to property has occurred and for which property insurance  
121 claims have been filed, the following consumer protection  
122 measures shall be in effect:

123 (1) A contract for the repair or reroofing of a  
124 residential structure that has been agreed to in writing by the  
125 parties to the contract shall be a valid and binding agreement.  
126 A roofing contractor licensed pursuant to this chapter who is a  
127 party to a contract for the repair or reroofing of a residential  
128 structure shall be bound by the qualifications for licensure and  
129 the job scope specified in this chapter for a roofing contractor  
130 to provide timely and professional services.

131 (2) If a contract is agreed to for the repair of a roof or  
132 reroofing of a residential structure, which repair is necessary  
133 as a result of damage caused by an emergency situation  
134 designated by executive order, the damages must be confirmed by  
135 a third party who is independent from the parties to the

136 contract that the damages are a direct result of a designated  
 137 emergency situation. Third-party confirmation must be attested  
 138 to by an insurance adjuster, emergency management personnel,  
 139 local building official, or other similar authority.

140 (3)(a) A contract for services shall not be valid after 60  
 141 calendar days after the date the contract agreement was signed  
 142 by the parties to the contract. The contract may not provide for  
 143 an automatic extension of time for the provisions of the  
 144 contract. After the 60 days have expired, the contract shall be  
 145 null and void by operation of law.

146 (b) Within 10 calendar days after the period of time for  
 147 expiration of the contract, the parties to the contract may  
 148 agree in writing, as a separate contract to the original  
 149 contract, to an additional period of 60 calendar days beyond the  
 150 time period specified in the original contract to complete the  
 151 roofing services. If the performance of services under the  
 152 contract by the roofing contractor have not been completed, the  
 153 contract shall be null and void with no further responsibilities  
 154 or duties on the part of the parties to the contract except as  
 155 provided in this paragraph and subsection (4).

156 (c) The subsequent contract may be extended beyond the  
 157 additional 60 days pursuant to a written agreement between the  
 158 parties and signed as an addendum or supplement to the contract.  
 159 The delay or extension of services may only be agreed to if the  
 160 delay in providing the contractual services is due to the  
 161 unavailability, beyond the control of the roofing contractor, of  
 162 roofing materials necessary for the completion of the repair or  
 163 reroofing of the residence. The contracted price of the services

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164 | may not be changed from the agreed to cost specified in the  
165 | subsequent contract.

166 | (4) Subsequent to the expiration of the contract or  
167 | contracts specified in subsection (3), the contractor shall  
168 | refund and pay in full, upon demand, any and all remuneration  
169 | received in the form of a prepayment, up-front fee, deposit, or  
170 | other consideration already paid to the contractor.

171 | (5) The provisions of this section apply to registered, as  
172 | well as certified, roofing contractors.

173 | Section 2. Subsection (5) of section 627.062, Florida  
174 | Statutes, is amended to read:

175 | 627.062 Rate standards.--

176 | (5) With respect to a rate filing involving coverage of  
177 | the type for which the insurer is required to pay a  
178 | reimbursement premium to the Florida Hurricane Catastrophe Fund,  
179 | the insurer may fully recoup in its property insurance premiums  
180 | any reimbursement premiums paid to the Florida Hurricane  
181 | Catastrophe Fund, together with reasonable costs of other  
182 | reinsurance, but may not recoup reinsurance costs that duplicate  
183 | coverage provided by the Florida Hurricane Catastrophe Fund. An  
184 | insurer may not recoup more than one year of reimbursement  
185 | premium at a time. Any under-recoupment from the prior year may  
186 | be added to the following year's reimbursement premium and any  
187 | over-recoupment shall be subtracted from the following year's  
188 | reimbursement premium.

189 | Section 3. Paragraph (c) of subsection (1) and paragraph  
190 | (c) of subsection (3) of section 627.0628, Florida Statutes, are  
191 | amended to read:

192           627.0628 Florida Commission on Hurricane Loss Projection  
193 Methodology.--

194           (1) LEGISLATIVE FINDINGS AND INTENT.--

195           (c) It is the intent of the Legislature to create the  
196 Florida Commission on Hurricane Loss Projection Methodology as a  
197 panel of experts to provide the most actuarially sophisticated  
198 guidelines and standards for projection of hurricane losses  
199 possible, given the current state of actuarial science. It is  
200 the further intent of the Legislature that such standards and  
201 guidelines must be used by the State Board of Administration in  
202 developing reimbursement premium rates for the Florida Hurricane  
203 Catastrophe Fund, and, subject to paragraph (3)(c), may be used  
204 by insurers in rate filings under s. 627.062 unless the way in  
205 which such standards and guidelines were applied by the insurer  
206 was erroneous, as shown by a preponderance of the evidence.

207           (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

208           (c) With respect to a rate filing under s. 627.062, an  
209 insurer may employ actuarial methods, principles, standards,  
210 models, or output ranges found by the commission to be accurate  
211 or reliable to determine hurricane loss factors for use in a  
212 rate filing under s. 627.062. Such, which findings and factors  
213 are admissible and relevant in consideration of a rate filing by  
214 the office or in any arbitration or administrative or judicial  
215 review only if the office and the consumer advocate appointed  
216 pursuant to s. 627.0613 have access to all of the assumptions  
217 and factors that were used in developing the actuarial methods,  
218 principles, standards, models, or output ranges and are not  
219 precluded from disclosing such information in a rate proceeding.



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220 Section 4. Section 627.06281, Florida Statutes, is created  
221 to read:

222 627.06281 Public hurricane loss projection model;  
223 reporting of data by insurers.--Within 30 days after a written  
224 request for loss data and associated exposure data by the office  
225 or a type I center within the State University System  
226 established to study mitigation, residential property insurers  
227 and licensed rating and advisory organizations that compile  
228 residential property insurance loss data shall provide loss data  
229 and associated exposure data for residential property insurance  
230 policies to the office or to a type I center within the State  
231 University System established to study mitigation, as directed  
232 by the office, for the purposes of developing, maintaining, and  
233 updating a public model for hurricane loss projections. The loss  
234 data and associated exposure data provided shall be in writing.  
235 Any loss data and associated exposure data provided pursuant to  
236 this section that constitutes a trade secret as defined in s.  
237 812.081, and as provided in s. 815.04(3), shall be subject to  
238 the provisions of s. 815.045.

239 Section 5. Subsection (7) of section 627.0629, Florida  
240 Statutes, is amended to read:

241 627.0629 Residential property insurance; rate filings.--

242 (7) Any rate filing that is based in whole or part on data  
243 from a computer model may not exceed 15 ~~25~~ percent unless there  
244 is a public hearing.

245 Section 6. Paragraphs (a), (c), (d), and (q) of subsection  
246 (6) of section 627.351, Florida Statutes, are amended to read:

247 627.351 Insurance risk apportionment plans.--

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248 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

249 (a)1. The Legislature finds that actual and threatened

250 catastrophic losses to property in this state from hurricanes

251 have caused insurers to be unwilling or unable to provide

252 property insurance coverage to the extent sought and needed. It

253 is in the public interest and a public purpose to assist in

254 assuring that property in the state is insured so as to

255 facilitate the remediation, reconstruction, and replacement of

256 damaged or destroyed property in order to reduce or avoid the

257 negative effects otherwise resulting to the public health,

258 safety, and welfare; to the economy of the state; and to the

259 revenues of the state and local governments needed to provide

260 for the public welfare. It is necessary, therefore, to provide

261 property insurance to applicants who are in good faith entitled

262 to procure insurance through the voluntary market but are unable

263 to do so. The Legislature intends by this subsection that

264 property insurance be provided and that it continues, as long as

265 necessary, through an entity organized to achieve efficiencies

266 and economies, while providing service to policyholders,

267 applicants, and agents that is no less than the quality

268 generally provided in the voluntary market, all toward the

269 achievement of the foregoing public purposes. Because it is

270 essential for the corporation to have the maximum financial

271 resources to pay claims following a catastrophic hurricane, it

272 is the intent of the Legislature that the income of the

273 corporation be exempt from federal income taxation and that

274 interest on the debt obligations issued by the corporation be

275 exempt from federal income taxation.

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276           2. The Residential Property and Casualty Joint  
 277 Underwriting Association originally created by this statute  
 278 shall be known, as of July 1, 2002, as the Citizens Property  
 279 Insurance Corporation. The corporation shall provide insurance  
 280 for residential and commercial property, for applicants who are  
 281 in good faith entitled, but are unable, to procure insurance  
 282 through the voluntary market. The corporation shall operate  
 283 pursuant to a plan of operation approved by order of the office.  
 284 The plan is subject to continuous review by the office. The  
 285 office may, by order, withdraw approval of all or part of a plan  
 286 if the office determines that conditions have changed since  
 287 approval was granted and that the purposes of the plan require  
 288 changes in the plan. For the purposes of this subsection,  
 289 residential coverage includes both personal lines residential  
 290 coverage, which consists of the type of coverage provided by  
 291 homeowner's, mobile home owner's, dwelling, tenant's,  
 292 condominium unit owner's, and similar policies, and commercial  
 293 lines residential coverage, which consists of the type of  
 294 coverage provided by condominium association, apartment  
 295 building, and similar policies.

296           3. It is the intent of the Legislature that policyholders,  
 297 applicants, and agents of the corporation receive service and  
 298 treatment of the highest possible level but never less than that  
 299 generally provided in the voluntary market. It also is intended  
 300 that the corporation be held to service standards no less than  
 301 those applied to insurers in the voluntary market by the office  
 302 with respect to responsiveness, timeliness, customer courtesy,

303 | and overall dealings with policyholders, applicants, or agents  
 304 | of the corporation.

305 | (c) The plan of operation of the corporation:

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

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

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

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

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

329 | e. Commercial lines nonresidential property insurance  
 330 | forms that cover the peril of wind only. The forms are

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331 applicable only to nonresidential properties located in areas  
332 eligible for coverage under the high-risk account referred to in  
333 sub-subparagraph (b)2.a.

334

335 The dwelling limits for any personal lines policy in both the  
336 personal lines account and the high-risk account may not exceed  
337 \$1 million. For new personal residential risks written by the  
338 corporation on or after May 7, 2005, in areas eligible for  
339 coverage in the high-risk account, the corporation shall offer,  
340 subject to reasonable underwriting guidelines, a wind only  
341 policy with building coverage valued at up to \$1 million. For  
342 such new personal residential risks covering properties valued  
343 at more than \$1 million, the corporation shall offer a wind-only  
344 policy of up to \$1 million of building coverage without any  
345 penalty or reduction in coverage for underinsurance or the  
346 purchase of other insurance, provided the insured property owner  
347 maintains insurance coverage for the value of the building in  
348 excess of \$1 million. Coverage for property other than the  
349 building and any attached structures shall be offered by the  
350 corporation in addition to the \$1 million limit of building  
351 coverage. For all existing high-risk account policies in effect  
352 on May 7, 2005, the corporation shall continue to offer coverage  
353 for the full value of the building and property without  
354 limitation.

355 2.a. Must provide that the corporation adopt a program in  
356 which the corporation and authorized insurers enter into quota  
357 share primary insurance agreements for hurricane coverage, as  
358 defined in s. 627.4025(2)(a), for eligible risks, and adopt

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359 | property insurance forms for eligible risks which cover the  
360 | peril of wind only. As used in this subsection, the term:

361 |       (I) "Quota share primary insurance" means an arrangement  
362 | in which the primary hurricane coverage of an eligible risk is  
363 | provided in specified percentages by the corporation and an  
364 | authorized insurer. The corporation and authorized insurer are  
365 | each solely responsible for a specified percentage of hurricane  
366 | coverage of an eligible risk as set forth in a quota share  
367 | primary insurance agreement between the corporation and an  
368 | authorized insurer and the insurance contract. The  
369 | responsibility of the corporation or authorized insurer to pay  
370 | its specified percentage of hurricane losses of an eligible  
371 | risk, as set forth in the quota share primary insurance  
372 | agreement, may not be altered by the inability of the other  
373 | party to the agreement to pay its specified percentage of  
374 | hurricane losses. Eligible risks that are provided hurricane  
375 | coverage through a quota share primary insurance arrangement  
376 | must be provided policy forms that set forth the obligations of  
377 | the corporation and authorized insurer under the arrangement,  
378 | clearly specify the percentages of quota share primary insurance  
379 | provided by the corporation and authorized insurer, and  
380 | conspicuously and clearly state that neither the authorized  
381 | insurer nor the corporation may be held responsible beyond its  
382 | specified percentage of coverage of hurricane losses.

383 |       (II) "Eligible risks" means personal lines residential and  
384 | commercial lines residential risks that meet the underwriting  
385 | criteria of the corporation and are located in areas that were

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386 eligible for coverage by the Florida Windstorm Underwriting  
387 Association on January 1, 2002.

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

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

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

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

410 f. For all eligible risks covered under quota share  
411 primary insurance agreements, the exposure and coverage levels  
412 for both the corporation and authorized insurers shall be  
413 reported by the corporation to the Florida Hurricane Catastrophe

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414 Fund. For all policies of eligible risks covered under quota  
415 share primary insurance agreements, the corporation and the  
416 authorized insurer shall maintain complete and accurate records  
417 for the purpose of exposure and loss reimbursement audits as  
418 required by Florida Hurricane Catastrophe Fund rules. The  
419 corporation and the authorized insurer shall each maintain  
420 duplicate copies of policy declaration pages and supporting  
421 claims documents.

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

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



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441           3. May provide that the corporation may employ or  
442 otherwise contract with individuals or other entities to provide  
443 administrative or professional services that may be appropriate  
444 to effectuate the plan. The corporation shall have the power to  
445 borrow funds, by issuing bonds or by incurring other  
446 indebtedness, and shall have other powers reasonably necessary  
447 to effectuate the requirements of this subsection. The  
448 corporation may, but is not required to, seek judicial  
449 validation of its bonds or other indebtedness under chapter 75.  
450 The corporation may issue bonds or incur other indebtedness, or  
451 have bonds issued on its behalf by a unit of local government  
452 pursuant to subparagraph (g)2., in the absence of a hurricane or  
453 other weather-related event, upon a determination by the  
454 corporation, subject to approval by the office, that such action  
455 would enable it to efficiently meet the financial obligations of  
456 the corporation and that such financings are reasonably  
457 necessary to effectuate the requirements of this subsection. The  
458 corporation is authorized to take all actions needed to  
459 facilitate tax-free status for any such bonds or indebtedness,  
460 including formation of trusts or other affiliated entities. The  
461 corporation shall have the authority to pledge assessments,  
462 projected recoveries from the Florida Hurricane Catastrophe  
463 Fund, other reinsurance recoverables, market equalization and  
464 other surcharges, and other funds available to the corporation  
465 as security for bonds or other indebtedness. In recognition of  
466 s. 10, Art. I of the State Constitution, prohibiting the  
467 impairment of obligations of contracts, it is the intent of the  
468 Legislature that no action be taken whose purpose is to impair

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469 any bond indenture or financing agreement or any revenue source  
470 committed by contract to such bond or other indebtedness.

471 4.a. Must require that the corporation operate subject to  
472 the supervision and approval of a board of governors consisting  
473 of 7 individuals who are residents of this state, from different  
474 geographical areas of this state, appointed by the Chief  
475 Financial Officer. The Chief Financial Officer shall designate  
476 one of the appointees as chair. All board members serve at the  
477 pleasure of the Chief Financial Officer. All board members,  
478 including the chair, must be appointed to serve for 3-year terms  
479 beginning annually on a date designated by the plan. Any board  
480 vacancy shall be filled for the unexpired term by the Chief  
481 Financial Officer. The Chief Financial Officer shall appoint a  
482 technical advisory group to provide information and advice to  
483 the board of governors in connection with the board's duties  
484 under this subsection. The executive director and senior  
485 managers of the corporation shall be engaged by the Chief  
486 Financial Officer and serve at the pleasure of the Chief  
487 Financial Officer. The executive director is responsible for  
488 employing other staff as the corporation may require, subject to  
489 review and concurrence by the office of the Chief Financial  
490 Officer.

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  
494 relationship to the voluntary market insurers writing similar  
495 coverage. The members of the advisory committee shall consist of  
496 the following 11 persons, one of whom must be elected chair by

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497 the members of the committee: four representatives, one  
 498 appointed by the Florida Association of Insurance Agents, one by  
 499 the Florida Association of Insurance and Financial Advisors, one  
 500 by the Professional Insurance Agents of Florida, and one by the  
 501 Latin American Association of Insurance Agencies; three  
 502 representatives appointed by the insurers with the three highest  
 503 voluntary market share of residential property insurance  
 504 business in the state; one representative from the Office of  
 505 Insurance Regulation; one consumer appointed by the board who is  
 506 insured by the corporation at the time of appointment to the  
 507 committee; one representative appointed by the Florida  
 508 Association of Realtors; and one representative appointed by the  
 509 Florida Bankers Association. All members must serve for 3-year  
 510 terms and may serve for consecutive terms. The committee shall  
 511 report to the corporation at each board meeting on insurance  
 512 market issues which may include rates and rate competition with  
 513 the voluntary market; service, including policy issuance, claims  
 514 processing, and general responsiveness to policyholders,  
 515 applicants, and agents; and matters relating to depopulation.

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

518 a. Subject to the provisions of s. 627.3517, with respect  
 519 to personal lines residential risks, if the risk is offered  
 520 coverage from an authorized insurer at the insurer's approved  
 521 rate under either a standard policy including wind coverage or,  
 522 if consistent with the insurer's underwriting rules as filed  
 523 with the office, a basic policy including wind coverage, the  
 524 risk is not eligible for any policy issued by the corporation.

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525 If the risk is not able to obtain any such offer, the risk is  
526 eligible for either a standard policy including wind coverage or  
527 a basic policy including wind coverage issued by the  
528 corporation; however, if the risk could not be insured under a  
529 standard policy including wind coverage regardless of market  
530 conditions, the risk shall be eligible for a basic policy  
531 including wind coverage unless rejected under subparagraph 8.  
532 The corporation shall determine the type of policy to be  
533 provided on the basis of objective standards specified in the  
534 underwriting manual and based on generally accepted underwriting  
535 practices.

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

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

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

553  
554 If the producing agent is unwilling or unable to accept  
555 appointment, the new insurer shall pay the agent in accordance  
556 with sub-sub-sub-subparagraph (A).

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

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

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

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

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

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580 | eligible for a policy including wind coverage issued by the  
581 | corporation.

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

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

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

599 |  
600 | If the producing agent is unwilling or unable to accept  
601 | appointment, the new insurer shall pay the agent in accordance  
602 | with sub-sub-sub-subparagraph (A).

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

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

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

617  
 618 If the producing agent is unwilling or unable to accept  
 619 appointment, the new insurer shall pay the agent in accordance  
 620 with sub-sub-sub-subparagraph (A).

621 6. Must include rules for classifications of risks and  
 622 rates therefor.

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

631 8. Must provide objective criteria and procedures to be  
 632 uniformly applied for all applicants in determining whether an  
 633 individual risk is so hazardous as to be uninsurable. In making

634 | this determination and in establishing the criteria and  
635 | procedures, the following shall be considered:

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

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

641 |  
642 | The acceptance or rejection of a risk by the corporation shall  
643 | be construed as the private placement of insurance, and the  
644 | provisions of chapter 120 shall not apply.

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

649 |       10. Must provide that in the event of regular deficit  
650 | assessments under sub-subparagraph (b)3.a. or sub-subparagraph  
651 | (b)3.b., in the personal lines account, the commercial lines  
652 | residential account, or the high-risk account, the corporation  
653 | shall levy upon corporation policyholders in its next rate  
654 | filing, or by a separate rate filing solely for this purpose, a  
655 | market equalization surcharge arising from a regular assessment  
656 | in such account in a percentage equal to the total amount of  
657 | such regular assessments divided by the aggregate statewide  
658 | direct written premium for subject lines of business for the  
659 | prior calendar year. Market equalization surcharges under this  
660 | subparagraph are not considered premium and are not subject to  
661 | commissions, fees, or premium taxes; however, failure to pay a



662 market equalization surcharge shall be treated as failure to pay  
663 premium.

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

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

676 13. May establish, subject to approval by the office,  
677 different eligibility requirements and operational procedures  
678 for any line or type of coverage for any specified county or  
679 area if the board determines that such changes to the  
680 eligibility requirements and operational procedures are  
681 justified due to the voluntary market being sufficiently stable  
682 and competitive in such area or for such line or type of  
683 coverage and that consumers who, in good faith, are unable to  
684 obtain insurance through the voluntary market through ordinary  
685 methods would continue to have access to coverage from the  
686 corporation. When coverage is sought in connection with a real  
687 property transfer, such requirements and procedures shall not  
688 provide for an effective date of coverage later than the date of

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689 the closing of the transfer as established by the transferor,  
690 the transferee, and, if applicable, the lender.

691 14. Must provide that, with respect to the high-risk  
692 account, any assessable insurer with a surplus as to  
693 policyholders of \$25 million or less writing 25 percent or more  
694 of its total countrywide property insurance premiums in this  
695 state may petition the office, within the first 90 days of each  
696 calendar year, to qualify as a limited apportionment company. In  
697 no event shall a limited apportionment company be required to  
698 participate in the portion of any assessment, within the high-  
699 risk account, pursuant to sub-subparagraph (b)3.a. or sub-  
700 subparagraph (b)3.b. in the aggregate which exceeds \$50 million  
701 after payment of available high-risk account funds in any  
702 calendar year. However, a limited apportionment company shall  
703 collect from its policyholders any emergency assessment imposed  
704 under sub-subparagraph (b)3.d. The plan shall provide that, if  
705 the office determines that any regular assessment will result in  
706 an impairment of the surplus of a limited apportionment company,  
707 the office may direct that all or part of such assessment be  
708 deferred as provided in subparagraph (g)4. However, there shall  
709 be no limitation or deferment of an emergency assessment to be  
710 collected from policyholders under sub-subparagraph (b)3.d.

711 15. Must provide that the corporation appoint as its  
712 licensed agents only those agents who also hold an appointment  
713 as defined in s. 626.015(3) with an insurer who at the time of  
714 the agent's initial appointment by the corporation is authorized  
715 to write and is actually writing personal lines residential

716 | property coverage, commercial residential property coverage, or  
717 | commercial nonresidential property coverage within the state.

718 | 16. Must provide a plan for removing personal lines  
719 | policies from coverage by the corporation which includes the  
720 | development and implementation of a take-out bonus strategy  
721 | determining, at a minimum, the necessity and application of  
722 | financial and regulatory incentives.

723 | (d)1. It is the intent of the Legislature that the rates  
724 | for coverage provided by the corporation be actuarially sound  
725 | and not competitive with approved rates charged in the admitted  
726 | voluntary market, so that the corporation functions as a  
727 | residual market mechanism to provide insurance only when the  
728 | insurance cannot be procured in the voluntary market. Rates  
729 | shall include an appropriate catastrophe loading factor that  
730 | reflects the actual catastrophic exposure of the corporation.

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

743           3. Rates for personal lines residential wind-only policies  
 744 must be actuarially sound and not competitive with approved  
 745 rates charged by authorized insurers. ~~However, for personal~~  
 746 ~~lines residential wind-only policies issued or renewed between~~  
 747 ~~July 1, 2002, and June 30, 2003, the maximum premium increase~~  
 748 ~~must be no greater than 10 percent of the Florida Windstorm~~  
 749 ~~Underwriting Association premium for that policy in effect on~~  
 750 ~~June 30, 2002, as adjusted for coverage changes and seasonal~~  
 751 ~~occupancy surcharges. For personal lines residential wind-only~~  
 752 ~~policies issued or renewed between July 1, 2003, and June 30,~~  
 753 ~~2004, the corporation shall use its existing filed and approved~~  
 754 ~~wind-only rating and classification plans, provided, however,~~  
 755 ~~that the maximum premium increase must be no greater than 20~~  
 756 ~~percent of the premium for that policy in effect on June 30,~~  
 757 ~~2003, as adjusted for coverage changes and seasonal occupancy~~  
 758 ~~surcharges.~~ Corporation rate manuals shall include a rate  
 759 surcharge for seasonal occupancy. To ensure that personal lines  
 760 residential wind-only rates ~~effective on or after July 1, 2004,~~  
 761 are not competitive with approved rates charged by authorized  
 762 insurers, the corporation, in conjunction with the office, shall  
 763 develop a wind-only ratemaking methodology, which methodology  
 764 shall be contained in each ~~a~~ rate filing made by the corporation  
 765 with the office ~~by January 1, 2004.~~ If the office thereafter  
 766 determines that the wind-only rates or rating factors filed by  
 767 the corporation fail to comply with the wind-only ratemaking  
 768 methodology provided for in this subsection, it shall so notify  
 769 the corporation and require the corporation to amend its rates  
 770 or rating factors to come into compliance within 90 days of

771 notice from the office. ~~The office shall report to the Speaker~~  
 772 ~~of the House of Representatives and the President of the Senate~~  
 773 ~~on the provisions of the wind-only ratemaking methodology by~~  
 774 ~~January 31, 2004.~~

775 4. The provisions of subparagraph 2. do not apply to  
 776 coverage provided by the corporation in any county for which the  
 777 office determines that a reasonable degree of competition does  
 778 not exist for personal lines residential policies. The  
 779 provisions of subparagraph 3. do not apply to coverage provided  
 780 by the corporation in any county for which the office determines  
 781 that a reasonable degree of competition does not exist for  
 782 personal lines residential policies in the area of that county  
 783 which is eligible for wind-only coverage. In such counties, the  
 784 rates for personal lines residential coverage shall be  
 785 actuarially sound and not excessive, inadequate, or unfairly  
 786 discriminatory and are subject to the other provisions of the  
 787 paragraph and s. 627.062. The commission shall adopt rules  
 788 establishing the criteria for determining whether a reasonable  
 789 degree of competition exists for personal lines residential  
 790 policies. Beginning October 1, 2005, and each 6 months  
 791 thereafter, the office shall determine and identify those  
 792 counties for which a reasonable degree of competition does not  
 793 exist for purposes of subparagraphs 2. and 3., respectively.

794 5.4. Rates for commercial lines coverage shall not be  
 795 subject to the requirements of subparagraph 2., but shall be  
 796 subject to all other requirements of this paragraph and s.  
 797 627.062.

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798        ~~6.5.~~ Nothing in this paragraph shall require or allow the  
799 corporation to adopt a rate that is inadequate under s. 627.062.

800        ~~7.6.~~ The corporation shall certify to the office at least  
801 twice annually that its personal lines rates comply with the  
802 requirements of this paragraph ~~subparagraphs 1. and 2.~~ If any  
803 adjustment in the rates or rating factors of the corporation is  
804 necessary to ensure such compliance, the corporation shall make  
805 and implement such adjustments and file its revised rates and  
806 rating factors with the office. If the office thereafter  
807 determines that the revised rates and rating factors fail to  
808 comply with the provisions of this paragraph ~~subparagraphs 1.~~  
809 ~~and 2.~~, it shall notify the corporation and require the  
810 corporation to amend its rates or rating factors in conjunction  
811 with its next rate filing. The office must notify the  
812 corporation by electronic means of any rate filing it approves  
813 for any insurer among the insurers referred to in subparagraph  
814 2.

815        ~~8.7.~~ In addition to the rates otherwise determined  
816 pursuant to this paragraph, the corporation shall impose and  
817 collect an amount equal to the premium tax provided for in s.  
818 624.509 to augment the financial resources of the corporation.

819        ~~9.8.a.~~ To assist the corporation in developing additional  
820 ratemaking methods to assure compliance with this paragraph  
821 ~~subparagraphs 1. and 4.~~, the corporation shall appoint a rate  
822 methodology panel consisting of one person recommended by the  
823 Florida Association of Insurance Agents, one person recommended  
824 by the Professional Insurance Agents of Florida, one person  
825 recommended by the Florida Association of Insurance and

826 Financial Advisors, one person recommended by the insurer with  
 827 the highest voluntary market share of residential property  
 828 insurance business in the state, one person recommended by the  
 829 insurer with the second-highest voluntary market share of  
 830 residential property insurance business in the state, one person  
 831 recommended by an insurer writing commercial residential  
 832 property insurance in this state, one person recommended by the  
 833 Office of Insurance Regulation, and one board member designated  
 834 by the board chairman, who shall serve as chairman of the panel.

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

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

850 ~~d. The plan must include a provision that producer~~  
 851 ~~commissions paid by the corporation shall not be calculated in~~  
 852 ~~such a manner as to include any rate equalization surcharge.~~  
 853 ~~However, without regard to the plan to be developed or its~~

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854 ~~implementation, producer commissions paid by the corporation for~~  
 855 ~~each account, other than the quota share primary program, shall~~  
 856 ~~remain fixed as to percentage, effective rate, calculation, and~~  
 857 ~~payment method until January 1, 2004.~~

858 10.9. ~~By January 1, 2004,~~ The corporation shall develop a  
 859 notice to policyholders or applicants that the rates of Citizens  
 860 Property Insurance Corporation are intended to be higher than  
 861 the rates of any admitted carrier except when the provisions of  
 862 subparagraph 4. apply and providing other information the  
 863 corporation deems necessary to assist consumers in finding other  
 864 voluntary admitted insurers willing to insure their property.

865 (q) The corporation shall ~~not~~ require the securing of  
 866 flood insurance as a condition of coverage if the property risk  
 867 of the insured or applicant is located in a Special Flood Hazard  
 868 Area as defined by the Federal Emergency Management Agency for  
 869 the National Flood Insurance Program. ~~executes a form approved~~  
 870 ~~by the office affirming that~~ Flood insurance is not provided by  
 871 the corporation and ~~that if flood insurance is not secured by~~  
 872 ~~the applicant or insured in addition to coverage by the~~  
 873 ~~corporation,~~ the risk will not be covered for flood damage. A  
 874 corporation policyholder that does electing ~~to~~ secure flood  
 875 insurance and makes a claim ~~executing a form as provided herein~~  
 876 ~~making a claim~~ for water damage against the corporation shall  
 877 have the burden of proving the damage was not caused by  
 878 flooding. Notwithstanding other provisions of this subsection,  
 879 the corporation may deny coverage or refuse to issue or renew a  
 880 policy to an applicant or insured who refuses to purchase flood



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881 insurance as required by this subsection ~~to execute the form~~  
882 ~~described herein.~~

883 Section 7. Subsection (1) of section 627.411, Florida  
884 Statutes, is amended to read:

885 627.411 Grounds for disapproval.--

886 (1) The office shall disapprove any form filed under s.  
887 627.410, or withdraw any previous approval thereof, only if the  
888 form:

889 (a) Is in any respect in violation of, or does not comply  
890 with, this code.

891 (b) Contains or incorporates by reference, where such  
892 incorporation is otherwise permissible, any inconsistent,  
893 ambiguous, or misleading clauses, or exceptions and conditions  
894 which deceptively affect the risk purported to be assumed in the  
895 general coverage of the contract.

896 (c) Has any title, heading, or other indication of its  
897 provisions which is misleading.

898 (d) Is printed or otherwise reproduced in such manner as  
899 to render any material provision of the form substantially  
900 illegible.

901 (e) Is for property insurance and contains provisions that  
902 are unfair or inequitable or contrary to the public policy of  
903 this state or that encourage misrepresentation.

904 (f)~~(e)~~ Is for health insurance, and:

905 1. Provides benefits that are unreasonable in relation to  
906 the premium charged.÷

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907           2. Contains provisions that are unfair or inequitable or  
908 contrary to the public policy of this state or that encourage  
909 misrepresentation.~~+~~

910           3. Contains provisions that apply rating practices that  
911 result in unfair discrimination pursuant to s. 626.9541(1)(g)2.

912           (g)~~(f)~~ Excludes coverage for human immunodeficiency virus  
913 infection or acquired immune deficiency syndrome or contains  
914 limitations in the benefits payable, or in the terms or  
915 conditions of such contract, for human immunodeficiency virus  
916 infection or acquired immune deficiency syndrome which are  
917 different than those which apply to any other sickness or  
918 medical condition.

919           Section 8. Subsections (1) and (7) of section 627.7015,  
920 Florida Statutes, are amended to read:

921           627.7015 Alternative procedure for resolution of disputed  
922 property insurance claims.--

923           (1) PURPOSE AND SCOPE.--This section sets forth a  
924 nonadversarial alternative dispute resolution procedure for a  
925 mediated claim resolution conference prompted by the need for  
926 effective, fair, and timely handling of property insurance  
927 claims. There is a particular need for an informal,  
928 nonthreatening forum for helping parties who elect this  
929 procedure to resolve their claims disputes because most  
930 homeowner's and commercial residential insurance policies  
931 obligate insureds to participate in a potentially expensive and  
932 time-consuming adversarial appraisal process prior to  
933 litigation. The procedure set forth in this section is designed  
934 to bring the parties together for a mediated claims settlement

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935 conference without any of the trappings or drawbacks of an  
 936 adversarial process. Before resorting to these procedures,  
 937 insureds and insurers are encouraged to resolve claims as  
 938 quickly and fairly as possible. This section is available with  
 939 respect to claims under personal lines and commercial  
 940 residential policies for all claimants and insurers prior to  
 941 commencing the appraisal process, or commencing litigation. If  
 942 requested by the insured, participation by legal counsel shall  
 943 be permitted. Mediation under this section is also available to  
 944 litigants referred to the department by a county court or  
 945 circuit court. This section does not apply to commercial  
 946 coverages, to private passenger motor vehicle insurance  
 947 coverages, or to disputes relating to liability coverages in  
 948 policies of property insurance.

949 (7) If the insurer fails to comply with subsection (2) by  
 950 failing to notify a first-party claimant of its right to  
 951 participate in the mediation program under this section or if  
 952 the insurer requests the mediation, and the mediation results  
 953 are rejected by either party, the insured shall not be required  
 954 to submit to or participate in any contractual loss appraisal  
 955 process of the property loss damage as a precondition to legal  
 956 action for breach of contract against the insurer for its  
 957 failure to pay the policyholder's claims covered by the policy.

958 Section 9. Effective upon this act becoming a law,  
 959 subsection (1) of section 627.702, Florida Statutes, is amended  
 960 to read:

961 627.702 Valued policy law.--

962           (1)(a) In the event of the total loss of any building,  
 963 structure, mobile home as defined in s. 320.01(2), or  
 964 manufactured building as defined in s. 553.36(12), located in  
 965 this state and insured by any insurer as to a covered peril, in  
 966 the absence of any change increasing the risk without the  
 967 insurer's consent and in the absence of fraudulent or criminal  
 968 fault on the part of the insured or one acting in her or his  
 969 behalf, the insurer's liability, ~~if any,~~ under the policy for  
 970 such total loss, if caused by a covered peril, shall be in the  
 971 amount of money for which such property was so insured as  
 972 specified in the policy and for which a premium has been charged  
 973 and paid.

974           (b) The intent of this subsection is not to deprive an  
 975 insurer of any proper defense under the policy, to create new or  
 976 additional coverage under the policy, or to require an insurer  
 977 to pay for a loss caused by a peril other than the covered  
 978 peril. In furtherance of such legislative intent, when a loss  
 979 was caused in part by a covered peril and in part by a  
 980 noncovered peril, paragraph (a) does not apply. In such  
 981 circumstances, the insurer's liability under this section shall  
 982 be limited to the amount of the loss caused by the covered  
 983 peril.

984           Section 10. Section 627.706, Florida Statutes, is amended  
 985 to read:

986           627.706 Sinkhole insurance; definitions.--

987           (1) Every insurer authorized to transact property  
 988 insurance in this state shall make available coverage for  
 989 insurable sinkhole losses on any structure, including contents

990 of personal property contained therein, to the extent provided  
991 in the form to which the sinkhole coverage attaches.

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

995 (a) "Sinkhole" means a landform created by subsidence of  
996 soil, sediment, or rock as underlying strata are dissolved by  
997 ground water. A sinkhole may form by collapse into subterranean  
998 voids created by dissolution of limestone or dolostone or by  
999 subsidence as these strata are dissolved.

1000 (b) "Sinkhole loss" means structural damage to a the  
1001 building caused by sinkhole activity. Contents coverage shall  
1002 apply only if there is structural damage to the building caused  
1003 by sinkhole activity.

1004 (c)(3) "Sinkhole activity loss" means actual physical  
1005 damage to the property covered arising out of or caused by  
1006 sudden settlement or systematic weakening collapse of the earth  
1007 supporting such property only when such settlement or systematic  
1008 weakening collapse results from movement or raveling of soils,  
1009 sediments, or rock materials into subterranean voids created by  
1010 the effect action of water on a limestone or similar rock  
1011 formation.

1012 (d) "Engineer" means a person, as defined in s. 471.005,  
1013 who has a bachelor's degree or higher in engineering with a  
1014 specialty in the geotechnical engineering field. An engineer  
1015 must have geotechnical experience and expertise in the  
1016 identification of sinkhole activity as well as other potential  
1017 causes of damage to the structure.

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1018        (e) "Professional geologist" means a person, as defined by  
 1019 s. 492.102, who has a bachelor's degree or higher in geology or  
 1020 a related earth science with expertise in the geology of this  
 1021 state. A professional geologist must have geological experience  
 1022 and expertise in the identification of sinkhole activity as well  
 1023 as other potential causes of damage to the structure.

1024        (3)(4) Every insurer authorized to transact property  
 1025 insurance in this state shall make a proper filing with the  
 1026 office for the purpose of extending the appropriate forms of  
 1027 property insurance to include coverage for ~~insurable~~ sinkhole  
 1028 losses.

1029        Section 11. Section 627.7065, Florida Statutes, is created  
 1030 to read:

1031        627.7065 Database of information relating to sinkholes;  
 1032 the Department of Financial Services and the Department of  
 1033 Environmental Protection.--

1034        (1) The Legislature finds that there has been a dramatic  
 1035 increase in the number of sinkholes and insurance claims for  
 1036 sinkhole damage in the state during the past 10 years.  
 1037 Accordingly, the Legislature recognizes the need to track  
 1038 current and past sinkhole activity and to make the information  
 1039 available for prevention and remediation activities. The  
 1040 Legislature further finds that the Florida Geological Survey of  
 1041 the Department of Environmental Protection has created a partial  
 1042 database of some sinkholes identified in Florida, although the  
 1043 database is not reflective of all sinkholes or insurance claims  
 1044 for sinkhole damage. The Legislature determines that creating a  
 1045 complete electronic database of sinkhole activity serves an

1046 important purpose in protecting the public and in studying  
 1047 property claims activities in the insurance industry.

1048 (2) The Department of Financial Services, including the  
 1049 employee of the Division of Consumer Services designated as the  
 1050 primary contact for consumers on issues relating to sinkholes,  
 1051 and the Office of the Insurance Consumer Advocate shall consult  
 1052 with the Florida Geological Survey and the Department of  
 1053 Environmental Protection to implement a statewide automated  
 1054 database of sinkholes and related activity identified in the  
 1055 state.

1056 (3) Representatives of the Department of Financial  
 1057 Services, with the agreement of the Department of Environmental  
 1058 Protection, shall determine the form and content of the  
 1059 database. The content may include standards for reporting and  
 1060 investigating sinkholes for inclusion in the database and  
 1061 requirements for insurers to report to the departments the  
 1062 receipt of claims involving sinkhole loss and other similar  
 1063 activities. The Department of Financial Services may require  
 1064 insurers to report present and past data of sinkhole claims. The  
 1065 database also may include information of damage due to ground  
 1066 settling and other subsidence activity.

1067 (4) The Department of Financial Services may manage the  
 1068 database or may contract for its management and maintenance. The  
 1069 Department of Environmental Protection shall investigate reports  
 1070 of sinkhole activity and include its findings and investigations  
 1071 in the database.

1072 (5) The Department of Environmental Protection, in  
 1073 consultation with the Department of Financial Services, shall

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1074 present a report of activities relating to the sinkhole  
 1075 database, including recommendations regarding the database and  
 1076 similar matters, to the Governor, the Speaker of the House of  
 1077 Representatives, the President of the Senate, and the Chief  
 1078 Financial Officer by December 31, 2005. The report may consider  
 1079 the need for the Legislature to create an entity to study the  
 1080 increase in sinkhole activity in the state and other similar  
 1081 issues relating to sinkhole damage, including recommendations  
 1082 and costs for staffing the entity. The report may include other  
 1083 information, as appropriate.

1084 (6) The Department of Financial Services, in consultation  
 1085 with the Department of Environmental Protection, may adopt rules  
 1086 to implement the provisions of this section.

1087 Section 12. Section 627.707, Florida Statutes, is amended  
 1088 to read:

1089 627.707 ~~Minimum~~ Standards for investigation of sinkhole  
 1090 claims by insurers; nonrenewals.--

1091 ~~(1)~~ Upon receipt of a claim for a sinkhole loss, an  
 1092 insurer must meet the following ~~minimum~~ standards in  
 1093 investigating a claim:

1094 ~~(1)(a) Upon receipt of a claim for a sinkhole loss,~~ The  
 1095 insurer must make an inspection of the insured's premises to  
 1096 determine if there has been physical damage to the structure  
 1097 which may ~~might~~ be the result of sinkhole activity.

1098 ~~(b) If, upon the investigation pursuant to paragraph (a),~~  
 1099 ~~the insurer discovers damage to a structure which is consistent~~  
 1100 ~~with sinkhole activity or if the structure is located in close~~  
 1101 ~~proximity to a structure in which sinkhole damage has been~~



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1102 ~~verified, then prior to denying a claim, the insurer must obtain~~  
 1103 ~~a written certification from an individual qualified to~~  
 1104 ~~determine the existence of sinkhole activity, stating that the~~  
 1105 ~~cause of the claim is not sinkhole activity, and that the~~  
 1106 ~~analysis conducted was of sufficient scope to eliminate sinkhole~~  
 1107 ~~activity as the cause of damage within a reasonable professional~~  
 1108 ~~probability. The written certification must also specify the~~  
 1109 ~~professional discipline and professional licensure or~~  
 1110 ~~registration under which the analysis was conducted.~~

1111 (2) Following the insurer's initial inspection, the  
 1112 insurer shall engage an engineer and a professional geologist to  
 1113 conduct testing as provided in s. 627.7072 to determine the  
 1114 cause of the loss within a reasonable professional probability  
 1115 and issue a report as provided in s. 627.7073, if:

1116 (a) The insurer is unable to identify a valid cause of the  
 1117 damage or discovers damage to the structure which is consistent  
 1118 with sinkhole loss; or

1119 (b) The policyholder demands testing in accordance with  
 1120 this section or s. 627.7072.

1121 (3) Following the initial inspection of the insured  
 1122 premises, the insurer shall provide written notice to the  
 1123 policyholder disclosing the following information:

1124 (a) What the insurer has determined to be the cause of  
 1125 damage, if the insurer has made such a determination.

1126 (b) A statement of the circumstances under which the  
 1127 insurer is required to engage an engineer and a professional  
 1128 geologist to verify or eliminate sinkhole loss and to make

1129 recommendations regarding land and building stabilization and  
 1130 foundation repair.

1131 (c) A statement regarding the right of the policyholder to  
 1132 request testing by an engineer and a professional geologist and  
 1133 the circumstances under which the policyholder may demand  
 1134 certain testing.

1135 (4) If the insurer determines that there is no sinkhole  
 1136 loss, the insurer may deny the claim. If the insurer denies the  
 1137 claim, without performing testing under s. 627.7072, the  
 1138 policyholder may demand testing by the insured under s.  
 1139 627.7072. The policyholder's demand for testing must be  
 1140 communicated to the insurer in writing after the policyholder's  
 1141 receipt of the insurer's denial of the claim.

1142 (5)(a) Subject to paragraph (b), if a sinkhole loss is  
 1143 verified, the insurer shall pay to stabilize the land and  
 1144 building and repair the foundation in accordance with the  
 1145 recommendations of the engineer and the professional geologist  
 1146 as provided under s. 627.7073, and in consultation with the  
 1147 policyholder, subject to the coverage and terms of the policy.  
 1148 The insurer shall pay for other repairs to the structure and  
 1149 contents in accordance with the terms of the policy.

1150 (b) The insurer may limit its payment to the actual cash  
 1151 value of the sinkhole loss until such time as expenses related  
 1152 to land and building stabilization and foundation repairs are  
 1153 incurred.

1154 (6) Except as provided in subsection (7), the fees and  
 1155 costs of the engineer or the professional geologist shall be  
 1156 paid by the insurer.

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1157        (7)(e) If the insurer obtains, pursuant to s. 627.7073  
 1158 ~~paragraph (b)~~, written certification that there is no sinkhole  
 1159 loss or that the cause of the damage claim was not sinkhole  
 1160 activity, and if the policyholder has submitted the sinkhole  
 1161 claim without good faith grounds for submitting such claim, the  
 1162 policyholder shall reimburse the insurer for 50 percent of the  
 1163 actual costs cost of the analyses and services provided analysis  
 1164 under ss. 627.7072 and 627.7073 ~~paragraph (b)~~; however, a  
 1165 policyholder is not required to reimburse an insurer more than  
 1166 \$2,500 with respect to any claim. A policyholder is required to  
 1167 pay reimbursement under this subsection ~~paragraph~~ only if the  
 1168 insurer, prior to ordering the analysis under s. 627.7072  
 1169 ~~paragraph (b)~~, informs the policyholder in writing of the  
 1170 policyholder's potential liability for reimbursement and gives  
 1171 the policyholder the opportunity to withdraw the claim.

1172        (8)(2) No insurer shall nonrenew any policy of property  
 1173 insurance on the basis of filing of claims for partial loss  
 1174 caused by sinkhole damage or clay shrinkage as long as the total  
 1175 of such payments does not exceed the current policy limits of  
 1176 coverage for property damage, and provided the insured has  
 1177 repaired the structure in accordance with the engineering  
 1178 recommendations upon which any payment or policy proceeds were  
 1179 based.

1180        (9) The insurer may engage a structural engineer to make  
 1181 recommendations as to the repair of the structure.

1182        Section 13. Section 627.7072, Florida Statutes, is created  
 1183 to read:

1184        627.7072 Testing standards for sinkholes.--

1185       (1) The engineer and professional geologist shall perform  
 1186 such tests as sufficient, in their professional opinion, to  
 1187 determine the presence or absence of sinkhole loss or other  
 1188 cause of damage within reasonable professional probability and  
 1189 to make recommendations regarding necessary building  
 1190 stabilization and foundation repair.

1191       (2) Testing shall be conducted in compliance with the  
 1192 Florida Geological Survey Special Publication No. 57 (2005).

1193       Section 14. Section 627.7073, Florida Statutes, is created  
 1194 to read:

1195       627.7073 Sinkhole reports.--

1196       (1) Upon completion of testing as provided in s. 627.7072,  
 1197 the engineer and professional geologist shall issue a report and  
 1198 certification to the insurer and the policyholder as provided in  
 1199 this section.

1200       (a) Sinkhole loss is verified if, based upon tests  
 1201 performed in accordance with s. 627.7072, an engineer and a  
 1202 professional geologist issue a written report and certification  
 1203 stating:

1204       1. That the cause of the actual physical and structural  
 1205 damage is sinkhole activity within a reasonable professional  
 1206 probability.

1207       2. That the analyses conducted were of sufficient scope to  
 1208 identify sinkhole activity as the cause of damage within a  
 1209 reasonable professional probability.

1210       3. A description of the tests performed.

1211       4. A recommendation of methods for stabilizing the land  
 1212 and building and for making repairs to the foundation.

1213 (b) If sinkhole activity is eliminated as the cause of  
 1214 damage to the structure, the engineer and professional geologist  
 1215 shall issue a written report and certification to the  
 1216 policyholder and the insurer stating:

1217 1. That the cause of the damage is not sinkhole activity  
 1218 within a reasonable professional probability.

1219 2. That the analyses and tests conducted were of  
 1220 sufficient scope to eliminate sinkhole activity as the cause of  
 1221 damage within a reasonable professional probability.

1222 3. A statement of the cause of the damage within a  
 1223 reasonable professional probability.

1224 4. A description of the tests performed.

1225 (c) The respective findings, opinions, and recommendations  
 1226 of the engineer and professional geologist as to the  
 1227 verification of a sinkhole loss, land and building  
 1228 stabilization, foundation repair, and elimination of sinkhole  
 1229 loss shall be presumed correct.

1230 (2) Any insurer that has paid a claim for a sinkhole loss  
 1231 shall file a copy of the report and certification, prepared  
 1232 pursuant to subsection (1), with the county property appraiser  
 1233 who shall record the report and certification with the parcel  
 1234 number. The insurer shall bear the cost of filing and recording  
 1235 the report and certification. There shall be no cause of action  
 1236 or liability against an insurer for compliance with this  
 1237 section. The seller of real property upon which a sinkhole claim  
 1238 has been made shall disclose to the buyer of such property that  
 1239 a claim has been paid and whether or not the full amount of the  
 1240 proceeds were used to repair the sinkhole damage.

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1241           Section 15. The Auditor General shall perform an  
 1242 operational audit, as defined in s. 11.45(1), Florida Statutes,  
 1243 of the Citizens Property Insurance Corporation created under s.  
 1244 627.351(6), Florida Statutes. The scope of the audit shall also  
 1245 include:

1246           (1) An analysis of the corporation's infrastructure,  
 1247 customer service, claims handling, accessibility of policyholder  
 1248 information to the agent of record, take-out programs, take-out  
 1249 bonuses, and financing arrangements.

1250           (2) An evaluation of costs associated with the  
 1251 administration and servicing of the policies issued by the  
 1252 corporation to determine alternatives by which costs can be  
 1253 reduced, customer service improved, and claims handling  
 1254 improved.

1255  
 1256 The audit shall contain policy alternatives for the Legislature  
 1257 to consider. The Auditor General shall submit a report to the  
 1258 Governor, the President of the Senate, and the Speaker of the  
 1259 House of Representatives no later than February 1, 2006.

1260           Section 16. The board of governors of the Citizens  
 1261 Property Insurance Corporation created under section 627.351(6),  
 1262 Florida Statutes, shall, by February 1, 2006, submit a report to  
 1263 the President of the Senate, the Speaker of the House of  
 1264 Representatives, the minority party leaders of the Senate and  
 1265 the House of Representatives, and the chairs of the standing  
 1266 committees of the Senate and the House of Representatives having  
 1267 jurisdiction over matters relating to property and casualty

1268 insurance. The report shall include the board's findings and  
 1269 recommendations on the following issues:

1270 (1) The number of policies and the aggregate premium of  
 1271 the Citizens Property Insurance Corporation, before and after  
 1272 enactment of this act, and projections for future policy and  
 1273 premium growth.

1274 (2) Increases or decreases in availability of residential  
 1275 property coverage in the voluntary market and the effectiveness  
 1276 of this act in improving the availability of residential  
 1277 property coverage in the voluntary market in the state.

1278 (3) The board's efforts to depopulate the corporation and  
 1279 the willingness of insurers in the voluntary market to avail  
 1280 themselves of depopulation incentives.

1281 (4) Further actions that could be taken by the Legislature  
 1282 to improve availability of residential property coverage in the  
 1283 voluntary and residual markets.

1284 (5) Actions that the board has taken to restructure the  
 1285 corporation and recommendations for legislative action to  
 1286 restructure the corporation, including, but not limited to,  
 1287 actions relating to claims handling and customer service.

1288 (6) Projected surpluses or deficits and possible means of  
 1289 providing funding to ensure the continued solvency of the  
 1290 corporation.

1291 (7) The corporation's efforts to procure catastrophe  
 1292 reinsurance to cover its projected 100-year probable maximum  
 1293 loss with specification as to what best efforts were made by the  
 1294 corporation to procure such reinsurance.

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1295        (8) Such other issues as the board determines are worthy  
 1296 of the Legislature's consideration.

1297        Section 17. Sections 3 and 4 of this act shall take effect  
 1298 on the same date that House Bill 1939 or similar legislation  
 1299 takes effect, if such legislation is adopted in the same  
 1300 legislative session or an extension thereof and becomes a law.

1301        Section 18. Except as otherwise provided herein, this act  
 1302 shall take effect July 1, 2005.