

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 transferring, renumbering, and amending ss. 350.061,
4 350.0611, 350.0612, 350.0613, and 350.0614, F.S.;
5 authorizing the Public Counsel to represent the general
6 public before the Office of Insurance Regulation;
7 including certain proceedings related to rules and rate
8 filings for residential property insurance; authorizing
9 the Public Counsel to have access to files of the office,
10 to seek review of orders of the office, to issue reports,
11 recommendations, and proposed orders to the office;
12 specifying where the Public Counsel shall maintain his or
13 her office; authorizing the Joint Legislative Auditing
14 Committee to authorize the Public Counsel to employ
15 certain types of employees; requiring the Office of
16 Insurance Regulation to provide copies of certain filings
17 to the Public Counsel; amending s. 112.3145, F.S.;
18 conforming a cross-reference; amending s. 215.559, F.S.;
19 revising the distribution of funds in the Hurricane Loss
20 Mitigation Program; revising provisions relating to a low-
21 interest loan program; amending s. 408.40, F.S.;
22 conforming a cross-reference; amending s. 624.319, F.S.;
23 authorizing the Public Counsel to have access to certain
24 confidential information held by the Department of
25 Financial Services or the Office of Insurance Regulation;
26 amending s. 627.062, F.S.; deleting provisions that allow
27 an insurer to require arbitration of a rate filing for
28 property and casualty insurance; amending s. 627.0629,

29 F.S.; requiring underwriting rules for homeowners'
30 insurance to be filed with and approved by the Office of
31 Insurance Regulation; providing for filing and approval
32 provisions; amending s. 627.0651, F.S.; abolishing "use
33 and file" rate filings; deleting reference to the filing
34 of specified underwriting rules for homeowners' insurance;
35 amending s. 627.311, F.S.; abolishing "use and file" rate
36 filings; amending s. 627.351, F.S.; deleting a provision
37 authorizing a windstorm underwriting association to
38 require arbitration of a rate filing; amending s.
39 627.4025, F.S.; redefining the term "hurricane coverage"
40 to include coverage for damage from wind-driven water;
41 amending s. 627.4133, F.S.; prohibiting an insurer from
42 canceling or nonrenewing a residential property insurance
43 policy for certain reasons; amending s. 627.4145, F.S.;
44 increasing the minimum score on the reading ease test for
45 insurance policies; creating s. 627.41494, F.S.; providing
46 for consumer participation in review of insurance rate
47 changes; providing for public inspection of rate filings;
48 providing for adoption of rules by the Financial Services
49 Commission; requiring insurers to pay costs of consumer
50 advocacy groups under certain circumstances; amending s.
51 627.701, F.S.; revising the hurricane deductibles that
52 insurers must offer for personal lines residential
53 property insurance policies; creating s. 627.70105, F.S.;
54 requiring payment of living expenses required due to
55 uninhabitability of insured property within a specified
56 time; providing an appropriation; providing effective

57 | dates.

58 |

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

60 |

61 | Section 1. This act may be cited as the "Homeowners'
 62 | Defense Act."

63 | Section 2. Section 350.061, Florida Statutes, is
 64 | transferred, renumbered as section 11.402, Florida Statutes, and
 65 | subsection (1) of that section is amended to read:

66 | 11.402 ~~350.061~~ Public Counsel; appointment; oath;
 67 | restrictions on Public Counsel and his or her employees.--

68 | (1) The Committee on Public Service Commission Oversight
 69 | shall appoint a Public Counsel by majority vote of the members
 70 | of the committee to represent the general public of Florida
 71 | before the Florida Public Service Commission and the Office of
 72 | Insurance Regulation. The Public Counsel shall be an attorney
 73 | admitted to practice before the Florida Supreme Court and shall
 74 | serve at the pleasure of the Committee on Public Service
 75 | Commission Oversight, subject to biennial reconfirmation by the
 76 | committee. The Public Counsel shall perform his or her duties
 77 | independently. Vacancies in the office shall be filled in the
 78 | same manner as the original appointment.

79 | Section 3. Section 350.0611, Florida Statutes, is
 80 | transferred, renumbered as section 11.403, Florida Statutes, and
 81 | amended to read:

82 | 11.403 ~~350.0611~~ Public Counsel; duties and powers.--It
 83 | shall be the duty of the Public Counsel to provide legal
 84 | representation for the people of the state in proceedings before

85 | the Public Service Commission and the Office of Insurance
 86 | Regulation and in proceedings before counties pursuant to s.
 87 | 367.171(8). The Public Counsel shall have such powers as are
 88 | necessary to carry out the duties of his or her office,
 89 | including, but not limited to, the following specific powers:

90 | (1) To recommend to the Public Service Commission or the
 91 | counties, by petition, the commencement of any proceeding or
 92 | action or to appear, in the name of the state or its citizens,
 93 | in any proceeding or action before the commission or the
 94 | counties.

95 | (2) To recommend to the Office of Insurance Regulation, by
 96 | petition, the commencement of, and to appear in the name of the
 97 | state or its citizens in, any proceeding or action before the
 98 | office relating to:

99 | (a) Rules governing residential property insurance; or

100 | (b) Rate filings for residential property insurance which,
 101 | pursuant to standards determined by the office, request an
 102 | average statewide rate increase of 10 percent or greater as
 103 | compared to the current rates in effect or the rates in effect
 104 | 12 months prior to the proposed effective date.

105 |
 106 | The Public Counsel may not stay any final order of the Office of
 107 | Insurance Regulation.

108 | (3) To ~~and~~ urge in any proceeding or action to which he or
 109 | she is a party therein any position that ~~which~~ he or she deems
 110 | to be in the public interest, whether consistent or inconsistent
 111 | with positions previously adopted by the commission, ~~or~~ the
 112 | counties, or the office, and use ~~utilize~~ therein all forms of

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113 | discovery available to attorneys in civil actions generally,
 114 | subject to protective orders of the commission, ~~or~~ the counties,
 115 | or the office, which shall be reviewable by summary procedure in
 116 | the circuit courts of this state. ~~;~~

117 | ~~(4)(2)~~ To have access to and use of all files, records,
 118 | and data of the commission, ~~or~~ the counties, or the office
 119 | available to any other attorney representing parties in a
 120 | proceeding before the commission, ~~or~~ the counties, or the
 121 | office. ~~;~~

122 | ~~(5)(3)~~ In any proceeding in which he or she has
 123 | participated as a party, to seek review of any determination,
 124 | finding, or order of the commission, ~~or~~ the counties, or the
 125 | office, or of any hearing examiner designated by the commission,
 126 | ~~or~~ the counties, or the office, in the name of the state or its
 127 | citizens. ~~;~~

128 | ~~(6)(4)~~ To prepare and issue reports, recommendations, and
 129 | proposed orders to the commission or office, the Governor, and
 130 | the Legislature on any matter or subject within the jurisdiction
 131 | of the commission or office, and to make such recommendations as
 132 | he or she deems appropriate for legislation relative to
 133 | commission or office procedures, rules, jurisdiction, personnel,
 134 | and functions. ~~;~~ ~~and~~

135 | ~~(7)(5)~~ To appear before other state agencies, federal
 136 | agencies, and state and federal courts in connection with
 137 | matters under the jurisdiction of the commission or office, in
 138 | the name of the state or its citizens.

139 | Section 4. Section 350.0612, Florida Statutes, is
 140 | transferred, renumbered as section 11.404, Florida Statutes, and

141 amended to read:

142 11.404 ~~350.0612~~ Public Counsel; location.--The Public
 143 Counsel shall maintain his or her office in Leon County ~~on the~~
 144 ~~premises of the commission or, if suitable space there cannot be~~
 145 ~~provided,~~ at such ~~other~~ place convenient to the offices of the
 146 Public Services Commission or the Office of Insurance Regulation
 147 ~~commissioners~~ as will enable him or her to carry out
 148 expeditiously the duties and functions of his or her office.

149 Section 5. Section 350.0613, Florida Statutes, is
 150 transferred, renumbered as section 11.405, Florida Statutes, and
 151 amended to read:

152 11.405 ~~350.0613~~ Public Counsel; employees; receipt of
 153 pleadings.--The Joint Legislative Auditing Committee may
 154 authorize the Public Counsel to employ clerical and technical
 155 assistants whose qualifications, duties, and responsibilities
 156 the committee shall from time to time prescribe. The committee
 157 may from time to time authorize retention of the services of
 158 additional attorneys, actuaries, economists, or experts to the
 159 extent that the best interests of the people of the state will
 160 be better served thereby, including the retention of expert
 161 witnesses and other technical personnel for participation in
 162 contested proceedings before the Public Service Commission or
 163 Office of Insurance Regulation. The commission shall furnish the
 164 Public Counsel with copies of the initial pleadings in all
 165 proceedings before the commission. The office shall furnish the
 166 Public Counsel with copies of all filings that relate to the
 167 jurisdiction of the Public Counsel pursuant to s. 11.403(2).
 168 ~~and~~ If the Public Counsel intervenes as a party in any

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169 proceeding he or she shall be served with copies of all
170 subsequent pleadings, exhibits, and prepared testimony, if used.
171 Upon filing notice of intervention, the Public Counsel shall
172 serve all interested parties with copies of such notice and all
173 of his or her subsequent pleadings and exhibits.

174 Section 6. Section 350.0614, Florida Statutes, is
175 transferred and renumbered as section 11.406, Florida Statutes.

176 Section 7. Paragraph (b) of subsection (1) of section
177 112.3145, Florida Statutes, is amended to read:

178 112.3145 Disclosure of financial interests and clients
179 represented before agencies.--

180 (1) For purposes of this section, unless the context
181 otherwise requires, the term:

182 (b) "Specified state employee" means:

183 1. Public counsel created by chapter 11 350, an assistant
184 state attorney, an assistant public defender, a full-time state
185 employee who serves as counsel or assistant counsel to any state
186 agency, the Deputy Chief Judge of Compensation Claims, a judge
187 of compensation claims, an administrative law judge, or a
188 hearing officer.

189 2. Any person employed in the office of the Governor or in
190 the office of any member of the Cabinet if that person is exempt
191 from the Career Service System, except persons employed in
192 clerical, secretarial, or similar positions.

193 3. Each appointed secretary, assistant secretary, deputy
194 secretary, executive director, assistant executive director, or
195 deputy executive director of each state department, commission,
196 board, or council; unless otherwise provided, the division

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197 director, assistant division director, deputy director, bureau
198 chief, and assistant bureau chief of any state department or
199 division; or any person having the power normally conferred upon
200 such persons, by whatever title.

201 4. The superintendent or institute director of a state
202 mental health institute established for training and research in
203 the mental health field or the warden or director of any major
204 state institution or facility established for corrections,
205 training, treatment, or rehabilitation.

206 5. Business managers, purchasing agents having the power
207 to make any purchase exceeding the threshold amount provided for
208 in s. 287.017 for CATEGORY ONE, finance and accounting
209 directors, personnel officers, or grants coordinators for any
210 state agency.

211 6. Any person, other than a legislative assistant exempted
212 by the presiding officer of the house by which the legislative
213 assistant is employed, who is employed in the legislative branch
214 of government, except persons employed in maintenance, clerical,
215 secretarial, or similar positions.

216 7. Each employee of the Commission on Ethics.

217 Section 8. Section 215.559, Florida Statutes, is amended
218 to read:

219 215.559 Hurricane Loss Mitigation Program.--

220 (1) There is created a Hurricane Loss Mitigation Program.
221 The Legislature shall annually appropriate \$10 million of the
222 moneys authorized for appropriation under s. 215.555(7)(c) from
223 the Florida Hurricane Catastrophe Fund to the Department of
224 Community Affairs for the purposes set forth in this section.

225 (2) (a) One ~~Seven~~ million dollars in funds provided in
 226 subsection (1) shall be used for programs to improve the wind
 227 resistance of ~~residences and mobile homes, including loans,~~
 228 ~~subsidies, grants, demonstration projects, and direct~~
 229 ~~assistance; cooperative programs with local governments and the~~
 230 ~~Federal Government; and other efforts~~ to prevent or reduce
 231 losses or reduce the cost of rebuilding after a disaster.

232 (b) Six million dollars of the funds provided in
 233 subsection (1) shall be used for programs to improve the wind
 234 resistance of residences to prevent or reduce losses or reduce
 235 the cost of rebuilding after a disaster.

236 (c) The department shall, with the funds authorized in
 237 paragraphs (a) and (b), establish a program of low-interest
 238 loans to qualified owners of residences and qualified owners of
 239 mobile homes. For the purpose of this section, the term "low-
 240 interest loan" means any direct loan or loan guarantee issued or
 241 backed by such authorized funds to a qualified owner to finance
 242 efforts to prevent or reduce losses or reduce the cost of
 243 rebuilding after a disaster with a requirement for repayment by
 244 the owner. Loans provided under this section shall be made at a
 245 rate of up to 2 percent below the qualified loan rate as
 246 determined by the department. The terms and conditions of the
 247 low-interest loan program, including loan incentive provisions,
 248 and the qualifications required of owners of residences and
 249 owners of mobile homes shall be determined by the department.

250 (d) ~~(b)~~ Three million dollars in funds provided in
 251 subsection (1) shall be used to retrofit existing facilities
 252 used as public hurricane shelters. The department must

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253 prioritize the use of these funds for projects included in the
254 September 1, 2000, version of the Shelter Retrofit Report
255 prepared in accordance with s. 252.385(3), and each annual
256 report thereafter. The department must give funding priority to
257 projects in regional planning council regions that have shelter
258 deficits and to projects that maximize use of state funds.

259 ~~(3) By the 2006 2007 fiscal year, the Department of~~
260 ~~Community Affairs shall develop a low interest loan program for~~
261 ~~homeowners and mobile home owners to retrofit their homes with~~
262 ~~fixtures or apply construction techniques that have been~~
263 ~~demonstrated to reduce the amount of damage or loss due to a~~
264 ~~hurricane. Funding for the program shall be used to subsidize or~~
265 ~~guaranty private sector loans for this purpose to qualified~~
266 ~~homeowners by financial institutions chartered by the state or~~
267 ~~Federal Government. The department may enter into contracts with~~
268 ~~financial institutions for this purpose. The department shall~~
269 ~~establish criteria for determining eligibility for the loans and~~
270 ~~selecting recipients, standards for retrofitting homes or mobile~~
271 ~~homes, limitations on loan subsidies and loan guaranties, and~~
272 ~~other terms and conditions of the program, which must be~~
273 ~~specified in the department's report to the Legislature on~~
274 ~~January 1, 2006, required by subsection (8). For the 2005 2006~~
275 ~~fiscal year, the Department of Community Affairs may use up to~~
276 ~~\$1 million of the funds appropriated pursuant to paragraph~~
277 ~~(2)(a) to begin the low interest loan program as a pilot project~~
278 ~~in one or more counties. The Department of Financial Services,~~
279 ~~the Office of Financial Regulation, the Florida Housing Finance~~
280 ~~Corporation, and the Office of Tourism, Trade, and Economic~~

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281 ~~Development shall assist the Department of Community Affairs in~~
282 ~~establishing the program and pilot project. The department may~~
283 ~~use up to 2.5 percent of the funds appropriated in any given~~
284 ~~fiscal year for administering the loan program. The department~~
285 ~~may adopt rules to implement the program.~~

286 (3)~~(4)~~ Forty percent of the total appropriation in
287 paragraph (2) (a) shall be used to inspect and improve tie-downs
288 for mobile homes. Within 30 days after the effective date of
289 that appropriation, the department shall contract with a public
290 higher educational institution in this state which has previous
291 experience in administering the programs set forth in this
292 subsection to serve as the administrative entity and fiscal
293 agent pursuant to s. 216.346 for the purpose of administering
294 the programs set forth in this subsection in accordance with
295 established policy and procedures. The administrative entity
296 working with the advisory council set up under subsection (5)
297 ~~(6)~~ shall develop a list of mobile home parks and counties that
298 may be eligible to participate in the tie-down program.

299 (4)~~(5)~~ Of moneys provided to the Department of Community
300 Affairs in paragraphs ~~paragraph~~ (2) (a) and (b), 10 percent shall
301 be allocated to a Type I Center within the State University
302 System dedicated to hurricane research. The Type I Center shall
303 develop a preliminary work plan approved by the advisory council
304 set forth in subsection (5) ~~(6)~~ to eliminate the state and local
305 barriers to upgrading existing residences, mobile homes, and
306 communities; r research and develop a program for the recycling
307 of existing older mobile homes; r and support programs of
308 research and development relating to hurricane loss reduction

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309 devices and techniques for site-built residences. The State
310 University System also shall consult with the Department of
311 Community Affairs and assist the department with the report
312 required under subsection (7) ~~(8)~~.

313 (5)~~(6)~~ The Department of Community Affairs shall develop
314 the programs set forth in this section in consultation with an
315 advisory council consisting of a representative designated by
316 the Chief Financial Officer, a representative designated by the
317 Florida Home Builders Association, a representative designated
318 by the Florida Insurance Council, a representative designated by
319 the Federation of Manufactured Home Owners, a representative
320 designated by the Florida Association of Counties, and a
321 representative designated by the Florida Manufactured Housing
322 Association.

323 (6)~~(7)~~ Moneys provided to the Department of Community
324 Affairs under this section are intended to supplement other
325 funding sources of the Department of Community Affairs and may
326 not supplant other funding sources of the Department of
327 Community Affairs.

328 (7)~~(8)~~ On January 1st of each year, the Department of
329 Community Affairs shall provide a full report and accounting of
330 activities under this section and an evaluation of such
331 activities to the Speaker of the House of Representatives, the
332 President of the Senate, and the Majority and Minority Leaders
333 of the House of Representatives and the Senate.

334 (8)~~(9)~~ This section is repealed June 30, 2011.

335 Section 9. Subsection (1) of section 408.40, Florida
336 Statutes, is amended to read:

337 408.40 Public Counsel.--

338 (1) Notwithstanding any other provisions of this chapter,
 339 the Public Counsel shall represent the public in any proceeding
 340 before the agency or its advisory panels in any administrative
 341 hearing conducted pursuant to chapter 120 or before any other
 342 state and federal agencies and courts in any issue before the
 343 agency, any court, or any agency. With respect to any such
 344 proceeding, the Public Counsel is subject to the provisions of
 345 and may use the powers granted to him or her by ss. 11.402-
 346 11.406 ~~350.061-350.0614~~.

347 Section 10. Paragraph (b) of subsection (3) of section
 348 624.319, Florida Statutes, is amended to read:

349 624.319 Examination and investigation reports.--

350 (3)

351 (b) Workpapers and other information held by the
 352 department or office, and workpapers and other information
 353 received from another governmental entity or the National
 354 Association of Insurance Commissioners, for the department's or
 355 office's use in the performance of its examination or
 356 investigation duties pursuant to this section and ss. 624.316,
 357 624.3161, 624.317, and 624.318 are confidential and exempt from
 358 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 359 Constitution. This exemption applies to workpapers and other
 360 information held by the department or office before, on, or
 361 after the effective date of this exemption. Such confidential
 362 and exempt information may be disclosed to another governmental
 363 entity, if disclosure is necessary for the receiving entity to
 364 perform its duties and responsibilities, and may be disclosed to

365 the National Association of Insurance Commissioners. The Public
 366 Counsel shall have access to such confidential and exempt
 367 information pertaining to residential property insurance at any
 368 time. The receiving governmental entity or the association must
 369 maintain the confidential and exempt status of the information.
 370 The information made confidential and exempt by this paragraph
 371 may be used in a criminal, civil, or administrative proceeding
 372 so long as the confidential and exempt status of such
 373 information is maintained. This paragraph is subject to the Open
 374 Government Sunset Review Act of 1995 in accordance with s.
 375 119.15 and shall stand repealed on October 2, 2007, unless
 376 reviewed and saved from repeal through reenactment by the
 377 Legislature.

378 Section 11. Subsection (2) of section 627.062, Florida
 379 Statutes, is amended to read:

380 627.062 Rate standards.--

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

382 (a) Insurers or rating organizations shall establish and
 383 use rates, rating schedules, or rating manuals to allow the
 384 insurer a reasonable rate of return on such classes of insurance
 385 written in this state. A copy of rates, rating schedules, rating
 386 manuals, premium credits or discount schedules, and surcharge
 387 schedules, and changes thereto, shall be filed with the office
 388 ~~under one of the following procedures:~~

389 ~~1. If the filing is made at least 90 days before the~~
 390 ~~proposed effective date. and~~ The filing may is not be
 391 implemented during the office's review of the filing and any
 392 proceeding and judicial review. ~~then Such filing is shall be~~

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393 considered a "file and use" filing. ~~In such case,~~ The office
394 shall finalize its review by issuance of a notice of intent to
395 approve or a notice of intent to disapprove within 90 days after
396 receipt of the filing. The notice of intent to approve and the
397 notice of intent to disapprove constitute agency action for
398 purposes of the Administrative Procedure Act. Requests for
399 supporting information, requests for mathematical or mechanical
400 corrections, or notification to the insurer by the office of its
401 preliminary findings shall not toll the 90-day period during any
402 such proceedings and subsequent judicial review. The rate shall
403 be deemed approved if the office does not issue a notice of
404 intent to approve or a notice of intent to disapprove within 90
405 days after receipt of the filing.

406 ~~2. If the filing is not made in accordance with the~~
407 ~~provisions of subparagraph 1., such filing shall be made as soon~~
408 ~~as practicable, but no later than 30 days after the effective~~
409 ~~date, and shall be considered a "use and file" filing. An~~
410 ~~insurer making a "use and file" filing is potentially subject to~~
411 ~~an order by the office to return to policyholders portions of~~
412 ~~rates found to be excessive, as provided in paragraph (h).~~

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

418 1. Past and prospective loss experience within and without
419 this state.

420 2. Past and prospective expenses.

421 3. The degree of competition among insurers for the risk
422 insured.

423 4. Investment income reasonably expected by the insurer,
424 consistent with the insurer's investment practices, from
425 investable premiums anticipated in the filing, plus any other
426 expected income from currently invested assets representing the
427 amount expected on unearned premium reserves and loss reserves.
428 The commission may adopt rules utilizing reasonable techniques
429 of actuarial science and economics to specify the manner in
430 which insurers shall calculate investment income attributable to
431 such classes of insurance written in this state and the manner
432 in which such investment income shall be used in the calculation
433 of insurance rates. Such manner shall contemplate allowances for
434 an underwriting profit factor and full consideration of
435 investment income which produce a reasonable rate of return;
436 however, investment income from invested surplus shall not be
437 considered.

438 5. The reasonableness of the judgment reflected in the
439 filing.

440 6. Dividends, savings, or unabsorbed premium deposits
441 allowed or returned to Florida policyholders, members, or
442 subscribers.

443 7. The adequacy of loss reserves.

444 8. The cost of reinsurance.

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

447 10. Conflagration and catastrophe hazards, if applicable.

448 11. A reasonable margin for underwriting profit and

449 contingencies.

450 12. The cost of medical services, if applicable.

451 13. Other relevant factors which impact upon the frequency
452 or severity of claims or upon expenses.

453 (c) In the case of fire insurance rates, consideration
454 shall be given to the availability of water supplies and the
455 experience of the fire insurance business during a period of not
456 less than the most recent 5-year period for which such
457 experience is available.

458 (d) If conflagration or catastrophe hazards are given
459 consideration by an insurer in its rates or rating plan,
460 including surcharges and discounts, the insurer shall establish
461 a reserve for that portion of the premium allocated to such
462 hazard and shall maintain the premium in a catastrophe reserve.
463 Any removal of such premiums from the reserve for purposes other
464 than paying claims associated with a catastrophe or purchasing
465 reinsurance for catastrophes shall be subject to approval of the
466 office. Any ceding commission received by an insurer purchasing
467 reinsurance for catastrophes shall be placed in the catastrophe
468 reserve.

469 (e) After consideration of the rate factors provided in
470 paragraphs (b), (c), and (d), a rate may be found by the office
471 to be excessive, inadequate, or unfairly discriminatory based
472 upon the following standards:

473 1. Rates shall be deemed excessive if they are likely to
474 produce a profit from Florida business that is unreasonably high
475 in relation to the risk involved in the class of business or if
476 expenses are unreasonably high in relation to services rendered.

477 2. Rates shall be deemed excessive if, among other things,
478 the rate structure established by a stock insurance company
479 provides for replenishment of surpluses from premiums, when the
480 replenishment is attributable to investment losses.

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

485 4. A rating plan, including discounts, credits, or
486 surcharges, shall be deemed unfairly discriminatory if it fails
487 to clearly and equitably reflect consideration of the
488 policyholder's participation in a risk management program
489 adopted pursuant to s. 627.0625.

490 5. A rate shall be deemed inadequate as to the premium
491 charged to a risk or group of risks if discounts or credits are
492 allowed which exceed a reasonable reflection of expense savings
493 and reasonably expected loss experience from the risk or group
494 of risks.

495 6. A rate shall be deemed unfairly discriminatory as to a
496 risk or group of risks if the application of premium discounts,
497 credits, or surcharges among such risks does not bear a
498 reasonable relationship to the expected loss and expense
499 experience among the various risks.

500 (f) In reviewing a rate filing, the office may require the
501 insurer to provide at the insurer's expense all information
502 necessary to evaluate the condition of the company and the
503 reasonableness of the filing according to the criteria
504 enumerated in this section.

505 (g) The office may at any time review a rate, rating
506 schedule, rating manual, or rate change; the pertinent records
507 of the insurer; and market conditions. If the office finds on a
508 preliminary basis that a rate may be excessive, inadequate, or
509 unfairly discriminatory, the office shall initiate proceedings
510 to disapprove the rate and shall so notify the insurer. However,
511 the office may not disapprove as excessive any rate for which it
512 has given final approval or which has been deemed approved for a
513 period of 1 year after the effective date of the filing unless
514 the office finds that a material misrepresentation or material
515 error was made by the insurer or was contained in the filing.
516 Upon being so notified, the insurer or rating organization
517 shall, within 60 days, file with the office all information
518 which, in the belief of the insurer or organization, proves the
519 reasonableness, adequacy, and fairness of the rate or rate
520 change. The office shall issue a notice of intent to approve or
521 a notice of intent to disapprove pursuant to the procedures of
522 paragraph (a) within 90 days after receipt of the insurer's
523 initial response. In such instances and in any administrative
524 proceeding relating to the legality of the rate, the insurer or
525 rating organization shall carry the burden of proof by a
526 preponderance of the evidence to show that the rate is not
527 excessive, inadequate, or unfairly discriminatory. After the
528 office notifies an insurer that a rate may be excessive,
529 inadequate, or unfairly discriminatory, unless the office
530 withdraws the notification, the insurer shall not alter the rate
531 except to conform with the office's notice until the earlier of
532 120 days after the date the notification was provided or 180

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533 days after the date of the implementation of the rate. The
534 office may, subject to chapter 120, disapprove without the 60-
535 day notification any rate increase filed by an insurer within
536 the prohibited time period or during the time that the legality
537 of the increased rate is being contested.

538 (h) If ~~In the event~~ the office finds that a rate or rate
539 change is excessive, inadequate, or unfairly discriminatory, the
540 office shall issue an order of disapproval specifying that a new
541 rate or rate schedule which responds to the findings of the
542 office be filed by the insurer. ~~The office shall further order,~~
543 ~~for any "use and file" filing made in accordance with~~
544 ~~subparagraph (a)2., that premiums charged each policyholder~~
545 ~~constituting the portion of the rate above that which was~~
546 ~~actuarially justified be returned to such policyholder in the~~
547 ~~form of a credit or refund.~~ If the office finds that an
548 insurer's rate or rate change is inadequate, the new rate or
549 rate schedule filed with the office in response to such a
550 finding shall be applicable only to new or renewal business of
551 the insurer written on or after the effective date of the
552 responsive filing.

553 (i) Except as otherwise specifically provided in this
554 chapter, the office shall not prohibit any insurer, including
555 any residual market plan or joint underwriting association, from
556 paying acquisition costs based on the full amount of premium, as
557 defined in s. 627.403, applicable to any policy, or prohibit any
558 such insurer from including the full amount of acquisition costs
559 in a rate filing.

560

561 ~~The provisions of~~ This subsection does ~~shall~~ not apply to
 562 workers' compensation and employer's liability insurance and to
 563 motor vehicle insurance.

564 Section 12. Effective upon this act becoming a law,
 565 subsections (6), (7), and (8) of section 627.062, Florida
 566 Statutes, are amended to read:

567 627.062 Rate standards.--

568 ~~(6)(a) After any action with respect to a rate filing that~~
 569 ~~constitutes agency action for purposes of the Administrative~~
 570 ~~Procedure Act, except for a rate filing for medical malpractice,~~
 571 ~~an insurer may, in lieu of demanding a hearing under s. 120.57,~~
 572 ~~require arbitration of the rate filing. Arbitration shall be~~
 573 ~~conducted by a board of arbitrators consisting of an arbitrator~~
 574 ~~selected by the office, an arbitrator selected by the insurer,~~
 575 ~~and an arbitrator selected jointly by the other two arbitrators.~~
 576 ~~Each arbitrator must be certified by the American Arbitration~~
 577 ~~Association. A decision is valid only upon the affirmative vote~~
 578 ~~of at least two of the arbitrators. No arbitrator may be an~~
 579 ~~employee of any insurance regulator or regulatory body or of any~~
 580 ~~insurer, regardless of whether or not the employing insurer does~~
 581 ~~business in this state. The office and the insurer must treat~~
 582 ~~the decision of the arbitrators as the final approval of a rate~~
 583 ~~filing. Costs of arbitration shall be paid by the insurer.~~

584 ~~(b) Arbitration under this subsection shall be conducted~~
 585 ~~pursuant to the procedures specified in ss. 682.06-682.10.~~
 586 ~~Either party may apply to the circuit court to vacate or modify~~
 587 ~~the decision pursuant to s. 682.13 or s. 682.14. The commission~~
 588 ~~shall adopt rules for arbitration under this subsection, which~~

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589 ~~rules may not be inconsistent with the arbitration rules of the~~
590 ~~American Arbitration Association as of January 1, 1996.~~

591 ~~(c) Upon initiation of the arbitration process, the~~
592 ~~insurer waives all rights to challenge the action of the office~~
593 ~~under the Administrative Procedure Act or any other provision of~~
594 ~~law; however, such rights are restored to the insurer if the~~
595 ~~arbitrators fail to render a decision within 90 days after~~
596 ~~initiation of the arbitration process.~~

597 (6)~~(7)~~(a) The provisions of this subsection apply only
598 with respect to rates for medical malpractice insurance and
599 shall control to the extent of any conflict with other
600 provisions of this section.

601 (b) Any portion of a judgment entered or settlement paid
602 as a result of a statutory or common-law bad faith action and
603 any portion of a judgment entered which awards punitive damages
604 against an insurer may not be included in the insurer's rate
605 base, and shall not be used to justify a rate or rate change.
606 Any common-law bad faith action identified as such, any portion
607 of a settlement entered as a result of a statutory or common-law
608 action, or any portion of a settlement wherein an insurer agrees
609 to pay specific punitive damages may not be used to justify a
610 rate or rate change. The portion of the taxable costs and
611 attorney's fees which is identified as being related to the bad
612 faith and punitive damages in these judgments and settlements
613 may not be included in the insurer's rate base and may not be
614 utilized to justify a rate or rate change.

615 (c) Upon reviewing a rate filing and determining whether
616 the rate is excessive, inadequate, or unfairly discriminatory,

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617 the office shall consider, in accordance with generally accepted
618 and reasonable actuarial techniques, past and present
619 prospective loss experience, either using loss experience solely
620 for this state or giving greater credibility to this state's
621 loss data after applying actuarially sound methods of assigning
622 credibility to such data.

623 (d) Rates shall be deemed excessive if, among other
624 standards established by this section, the rate structure
625 provides for replenishment of reserves or surpluses from
626 premiums when the replenishment is attributable to investment
627 losses.

628 (e) The insurer must apply a discount or surcharge based
629 on the health care provider's loss experience or shall establish
630 an alternative method giving due consideration to the provider's
631 loss experience. The insurer must include in the filing a copy
632 of the surcharge or discount schedule or a description of the
633 alternative method used, and must provide a copy of such
634 schedule or description, as approved by the office, to
635 policyholders at the time of renewal and to prospective
636 policyholders at the time of application for coverage.

637 (f) Each medical malpractice insurer must make a rate
638 filing under this section, sworn to by at least two executive
639 officers of the insurer, at least once each calendar year.

640 (7)~~(8)~~(a)1. No later than 60 days after the effective date
641 of medical malpractice legislation enacted during the 2003
642 Special Session D of the Florida Legislature, the office shall
643 calculate a presumed factor that reflects the impact that the
644 changes contained in such legislation will have on rates for

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645 | medical malpractice insurance and shall issue a notice informing
646 | all insurers writing medical malpractice coverage of such
647 | presumed factor. In determining the presumed factor, the office
648 | shall use generally accepted actuarial techniques and standards
649 | provided in this section in determining the expected impact on
650 | losses, expenses, and investment income of the insurer. To the
651 | extent that the operation of a provision of medical malpractice
652 | legislation enacted during the 2003 Special Session D of the
653 | Florida Legislature is stayed pending a constitutional
654 | challenge, the impact of that provision shall not be included in
655 | the calculation of a presumed factor under this subparagraph.

656 | 2. No later than 60 days after the office issues its
657 | notice of the presumed rate change factor under subparagraph 1.,
658 | each insurer writing medical malpractice coverage in this state
659 | shall submit to the office a rate filing for medical malpractice
660 | insurance, which will take effect no later than January 1, 2004,
661 | and apply retroactively to policies issued or renewed on or
662 | after the effective date of medical malpractice legislation
663 | enacted during the 2003 Special Session D of the Florida
664 | Legislature. Except as authorized under paragraph (b), the
665 | filing shall reflect an overall rate reduction at least as great
666 | as the presumed factor determined under subparagraph 1. With
667 | respect to policies issued on or after the effective date of
668 | such legislation and prior to the effective date of the rate
669 | filing required by this subsection, the office shall order the
670 | insurer to make a refund of the amount that was charged in
671 | excess of the rate that is approved.

672 | (b) Any insurer or rating organization that contends that

673 the rate provided for in paragraph (a) is excessive, inadequate,
674 or unfairly discriminatory shall separately state in its filing
675 the rate it contends is appropriate and shall state with
676 specificity the factors or data that it contends should be
677 considered in order to produce such appropriate rate. The
678 insurer or rating organization shall be permitted to use all of
679 the generally accepted actuarial techniques provided in this
680 section in making any filing pursuant to this subsection. The
681 office shall review each such exception and approve or
682 disapprove it prior to use. It shall be the insurer's burden to
683 actuarially justify any deviations from the rates required to be
684 filed under paragraph (a). The insurer making a filing under
685 this paragraph shall include in the filing the expected impact
686 of medical malpractice legislation enacted during the 2003
687 Special Session D of the Florida Legislature on losses,
688 expenses, and rates.

689 (c) If any provision of medical malpractice legislation
690 enacted during the 2003 Special Session D of the Florida
691 Legislature is held invalid by a court of competent
692 jurisdiction, the office shall permit an adjustment of all
693 medical malpractice rates filed under this section to reflect
694 the impact of such holding on such rates so as to ensure that
695 the rates are not excessive, inadequate, or unfairly
696 discriminatory.

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

700 (e) The calculation and notice by the office of the

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701 presumed factor pursuant to paragraph (a) is not an order or
 702 rule that is subject to chapter 120. If the office enters into a
 703 contract with an independent consultant to assist the office in
 704 calculating the presumed factor, such contract shall not be
 705 subject to the competitive solicitation requirements of s.
 706 287.057.

707 Section 13. Subsection (11) is added to section 627.0629,
 708 Florida Statutes, to read:

709 627.0629 Residential property insurance; rate filings;
 710 underwriting rules.--

711 (11) The underwriting rules for homeowners' insurance not
 712 contained in rating manuals shall be filed with the office. All
 713 underwriting rules for homeowners' insurance must be approved by
 714 the office and be reasonable and comply with applicable
 715 provisions of law. The filing and form-approval provisions under
 716 s. 627.410 apply to the filing and approval of underwriting
 717 rules for homeowners' insurance.

718 Section 14. Subsections (1), (11), and (13) of section
 719 627.0651, Florida Statutes, are amended to read:

720 627.0651 Making and use of rates for motor vehicle
 721 insurance.--

722 (1) Insurers shall establish and use rates, rating
 723 schedules, or rating manuals to allow the insurer a reasonable
 724 rate of return on motor vehicle insurance written in this state.
 725 A copy of rates, rating schedules, and rating manuals, and
 726 changes therein, shall be filed with the office ~~under one of the~~
 727 ~~following procedures:~~

728 ~~(a) If the filing is made at least 60 days before the~~

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729 proposed effective date. and The filing may ~~is~~ not be
730 implemented during the office's review of the filing and any
731 proceeding and judicial review. Such filing is ~~shall be~~
732 considered a "file and use" filing. In such case, the office
733 shall initiate proceedings to disapprove the rate and so notify
734 the insurer or shall finalize its review within 60 days after
735 receipt of the filing. Notification to the insurer by the office
736 of its preliminary findings shall toll the 60-day period during
737 any such proceedings and subsequent judicial review. The rate
738 shall be deemed approved if the office does not issue notice to
739 the insurer of its preliminary findings within 60 days after the
740 filing.

741 ~~(b) If the filing is not made in accordance with the~~
742 ~~provisions of paragraph (a), such filing shall be made as soon~~
743 ~~as practicable, but no later than 30 days after the effective~~
744 ~~date, and shall be considered a "use and file" filing. An~~
745 ~~insurer making a "use and file" filing is potentially subject to~~
746 ~~an order by the office to return to policyholders portions of~~
747 ~~rates found to be excessive, as provided in subsection (11).~~

748 (11) If ~~In the event~~ the office finds that a rate or rate
749 change is excessive, inadequate, or unfairly discriminatory, the
750 office shall issue an order of disapproval specifying that a new
751 rate or rate schedule which responds to the findings of the
752 office be filed by the insurer. ~~The office shall further order~~
753 ~~for any "use and file" filing made in accordance with paragraph~~
754 ~~(1)(b), that premiums charged each policyholder constituting the~~
755 ~~portion of the rate above that which was actuarially justified~~
756 ~~be returned to such policyholder in the form of a credit or~~

757 ~~refund.~~ If the office finds that an insurer's rate or rate
 758 change is inadequate, the new rate or rate schedule filed with
 759 the office in response to such a finding shall be applicable
 760 only to new or renewal business of the insurer written on or
 761 after the effective date of the responsive filing.

762 (13) (a) Underwriting rules not contained in rating manuals
 763 shall be filed for private passenger automobile insurance ~~and~~
 764 ~~homeowners' insurance.~~

765 (b) The submission of rates, rating schedules, and rating
 766 manuals to the office by a licensed rating organization of which
 767 an insurer is a member or subscriber will be sufficient
 768 compliance with this subsection for any insurer maintaining
 769 membership or subscribership in such organization, to the extent
 770 that the insurer uses the rates, rating schedules, and rating
 771 manuals of such organization. All such information shall be
 772 available for public inspection, upon receipt by the office,
 773 during usual business hours.

774 Section 15. Paragraph (e) of subsection (5) of section
 775 627.311, Florida Statutes, is amended to read:

776 627.311 Joint underwriters and joint reinsurers; public
 777 records and public meetings exemptions.--

778 (5)

779 (e) The plan shall establish and use its rates and rating
 780 plans, and the plan may establish and use changes in rating
 781 plans at any time, but no more frequently than two times per any
 782 rating class for any calendar year. By December 1, 1993, and
 783 December 1 of each year thereafter, except as provided in
 784 subparagraph (c)22., the board shall establish and use

785 actuarially sound rates for use by the plan to assure that the
 786 plan is self-funding while those rates are in effect. Such rates
 787 and rating plans must be filed with the office as provided in s.
 788 627.062(2)(a) ~~within 30 calendar days after their effective~~
 789 ~~dates, and shall be considered a "use and file" filing. Any~~
 790 ~~disapproval by the office must have an effective date that is at~~
 791 ~~least 60 days from the date of disapproval of the rates and~~
 792 ~~rating plan and must have prospective effect only. The plan may~~
 793 ~~not be subject to any order by the office to return to~~
 794 ~~policyholders any portion of the rates disapproved by the~~
 795 ~~office.~~ The office may not disapprove any rates or rating plans
 796 unless it demonstrates that such rates and rating plans are
 797 excessive, inadequate, or unfairly discriminatory.

798 Section 16. Effective upon this act becoming a law,
 799 paragraph (b) of subsection (2) of section 627.351, Florida
 800 Statutes, is amended to read:

801 627.351 Insurance risk apportionment plans.--

802 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

803 (b) The department shall require all insurers holding a
 804 certificate of authority to transact property insurance on a
 805 direct basis in this state, other than joint underwriting
 806 associations and other entities formed pursuant to this section,
 807 to provide windstorm coverage to applicants from areas
 808 determined to be eligible pursuant to paragraph (c) who in good
 809 faith are entitled to, but are unable to procure, such coverage
 810 through ordinary means; or it shall adopt a reasonable plan or
 811 plans for the equitable apportionment or sharing among such
 812 insurers of windstorm coverage, which may include formation of

813 an association for this purpose. As used in this subsection, the
 814 term "property insurance" means insurance on real or personal
 815 property, as defined in s. 624.604, including insurance for
 816 fire, industrial fire, allied lines, farmowners multiperil,
 817 homeowners' multiperil, commercial multiperil, and mobile homes,
 818 and including liability coverages on all such insurance, but
 819 excluding inland marine as defined in s. 624.607(3) and
 820 excluding vehicle insurance as defined in s. 624.605(1)(a) other
 821 than insurance on mobile homes used as permanent dwellings. The
 822 department shall adopt rules that provide a formula for the
 823 recovery and repayment of any deferred assessments.

824 1. For the purpose of this section, properties eligible
 825 for such windstorm coverage are defined as dwellings, buildings,
 826 and other structures, including mobile homes which are used as
 827 dwellings and which are tied down in compliance with mobile home
 828 tie-down requirements prescribed by the Department of Highway
 829 Safety and Motor Vehicles pursuant to s. 320.8325, and the
 830 contents of all such properties. An applicant or policyholder is
 831 eligible for coverage only if an offer of coverage cannot be
 832 obtained by or for the applicant or policyholder from an
 833 admitted insurer at approved rates.

834 2.a.(I) All insurers required to be members of such
 835 association shall participate in its writings, expenses, and
 836 losses. Surplus of the association shall be retained for the
 837 payment of claims and shall not be distributed to the member
 838 insurers. Such participation by member insurers shall be in the
 839 proportion that the net direct premiums of each member insurer
 840 written for property insurance in this state during the

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841 preceding calendar year bear to the aggregate net direct
842 premiums for property insurance of all member insurers, as
843 reduced by any credits for voluntary writings, in this state
844 during the preceding calendar year. For the purposes of this
845 subsection, the term "net direct premiums" means direct written
846 premiums for property insurance, reduced by premium for
847 liability coverage and for the following if included in allied
848 lines: rain and hail on growing crops; livestock; association
849 direct premiums booked; National Flood Insurance Program direct
850 premiums; and similar deductions specifically authorized by the
851 plan of operation and approved by the department. A member's
852 participation shall begin on the first day of the calendar year
853 following the year in which it is issued a certificate of
854 authority to transact property insurance in the state and shall
855 terminate 1 year after the end of the calendar year during which
856 it no longer holds a certificate of authority to transact
857 property insurance in the state. The commissioner, after review
858 of annual statements, other reports, and any other statistics
859 that the commissioner deems necessary, shall certify to the
860 association the aggregate direct premiums written for property
861 insurance in this state by all member insurers.

862 (II) Effective July 1, 2002, the association shall operate
863 subject to the supervision and approval of a board of governors
864 who are the same individuals that have been appointed by the
865 Treasurer to serve on the board of governors of the Citizens
866 Property Insurance Corporation.

867 (III) The plan of operation shall provide a formula
868 whereby a company voluntarily providing windstorm coverage in

869 affected areas will be relieved wholly or partially from
870 apportionment of a regular assessment pursuant to sub-sub-
871 subparagraph d.(I) or sub-sub-subparagraph d.(II).

872 (IV) A company which is a member of a group of companies
873 under common management may elect to have its credits applied on
874 a group basis, and any company or group may elect to have its
875 credits applied to any other company or group.

876 (V) There shall be no credits or relief from apportionment
877 to a company for emergency assessments collected from its
878 policyholders under sub-sub-subparagraph d.(III).

879 (VI) The plan of operation may also provide for the award
880 of credits, for a period not to exceed 3 years, from a regular
881 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
882 subparagraph d.(II) as an incentive for taking policies out of
883 the Residential Property and Casualty Joint Underwriting
884 Association. In order to qualify for the exemption under this
885 sub-sub-subparagraph, the take-out plan must provide that at
886 least 40 percent of the policies removed from the Residential
887 Property and Casualty Joint Underwriting Association cover risks
888 located in Dade, Broward, and Palm Beach Counties or at least 30
889 percent of the policies so removed cover risks located in Dade,
890 Broward, and Palm Beach Counties and an additional 50 percent of
891 the policies so removed cover risks located in other coastal
892 counties, and must also provide that no more than 15 percent of
893 the policies so removed may exclude windstorm coverage. With the
894 approval of the department, the association may waive these
895 geographic criteria for a take-out plan that removes at least
896 the lesser of 100,000 Residential Property and Casualty Joint

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897 Underwriting Association policies or 15 percent of the total
898 number of Residential Property and Casualty Joint Underwriting
899 Association policies, provided the governing board of the
900 Residential Property and Casualty Joint Underwriting Association
901 certifies that the take-out plan will materially reduce the
902 Residential Property and Casualty Joint Underwriting
903 Association's 100-year probable maximum loss from hurricanes.
904 With the approval of the department, the board may extend such
905 credits for an additional year if the insurer guarantees an
906 additional year of renewability for all policies removed from
907 the Residential Property and Casualty Joint Underwriting
908 Association, or for 2 additional years if the insurer guarantees
909 2 additional years of renewability for all policies removed from
910 the Residential Property and Casualty Joint Underwriting
911 Association.

912 b. Assessments to pay deficits in the association under
913 this subparagraph shall be included as an appropriate factor in
914 the making of rates as provided in s. 627.3512.

915 c. The Legislature finds that the potential for unlimited
916 deficit assessments under this subparagraph may induce insurers
917 to attempt to reduce their writings in the voluntary market, and
918 that such actions would worsen the availability problems that
919 the association was created to remedy. It is the intent of the
920 Legislature that insurers remain fully responsible for paying
921 regular assessments and collecting emergency assessments for any
922 deficits of the association; however, it is also the intent of
923 the Legislature to provide a means by which assessment
924 liabilities may be amortized over a period of years.

925 d.(I) When the deficit incurred in a particular calendar
 926 year is 10 percent or less of the aggregate statewide direct
 927 written premium for property insurance for the prior calendar
 928 year for all member insurers, the association shall levy an
 929 assessment on member insurers in an amount equal to the deficit.

930 (II) When the deficit incurred in a particular calendar
 931 year exceeds 10 percent of the aggregate statewide direct
 932 written premium for property insurance for the prior calendar
 933 year for all member insurers, the association shall levy an
 934 assessment on member insurers in an amount equal to the greater
 935 of 10 percent of the deficit or 10 percent of the aggregate
 936 statewide direct written premium for property insurance for the
 937 prior calendar year for member insurers. Any remaining deficit
 938 shall be recovered through emergency assessments under sub-sub-
 939 subparagraph (III).

940 (III) Upon a determination by the board of directors that
 941 a deficit exceeds the amount that will be recovered through
 942 regular assessments on member insurers, pursuant to sub-sub-
 943 subparagraph (I) or sub-sub-subparagraph (II), the board shall
 944 levy, after verification by the department, emergency
 945 assessments to be collected by member insurers and by
 946 underwriting associations created pursuant to this section which
 947 write property insurance, upon issuance or renewal of property
 948 insurance policies other than National Flood Insurance policies
 949 in the year or years following levy of the regular assessments.
 950 The amount of the emergency assessment collected in a particular
 951 year shall be a uniform percentage of that year's direct written
 952 premium for property insurance for all member insurers and

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953 | underwriting associations, excluding National Flood Insurance
954 | policy premiums, as annually determined by the board and
955 | verified by the department. The department shall verify the
956 | arithmetic calculations involved in the board's determination
957 | within 30 days after receipt of the information on which the
958 | determination was based. Notwithstanding any other provision of
959 | law, each member insurer and each underwriting association
960 | created pursuant to this section shall collect emergency
961 | assessments from its policyholders without such obligation being
962 | affected by any credit, limitation, exemption, or deferment. The
963 | emergency assessments so collected shall be transferred directly
964 | to the association on a periodic basis as determined by the
965 | association. The aggregate amount of emergency assessments
966 | levied under this sub-sub-subparagraph in any calendar year may
967 | not exceed the greater of 10 percent of the amount needed to
968 | cover the original deficit, plus interest, fees, commissions,
969 | required reserves, and other costs associated with financing of
970 | the original deficit, or 10 percent of the aggregate statewide
971 | direct written premium for property insurance written by member
972 | insurers and underwriting associations for the prior year, plus
973 | interest, fees, commissions, required reserves, and other costs
974 | associated with financing the original deficit. The board may
975 | pledge the proceeds of the emergency assessments under this sub-
976 | sub-subparagraph as the source of revenue for bonds, to retire
977 | any other debt incurred as a result of the deficit or events
978 | giving rise to the deficit, or in any other way that the board
979 | determines will efficiently recover the deficit. The emergency
980 | assessments under this sub-sub-subparagraph shall continue as

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981 long as any bonds issued or other indebtedness incurred with
982 respect to a deficit for which the assessment was imposed remain
983 outstanding, unless adequate provision has been made for the
984 payment of such bonds or other indebtedness pursuant to the
985 document governing such bonds or other indebtedness. Emergency
986 assessments collected under this sub-sub-subparagraph are not
987 part of an insurer's rates, are not premium, and are not subject
988 to premium tax, fees, or commissions; however, failure to pay
989 the emergency assessment shall be treated as failure to pay
990 premium.

991 (IV) Each member insurer's share of the total regular
992 assessments under sub-sub-subparagraph (I) or sub-sub-
993 subparagraph (II) shall be in the proportion that the insurer's
994 net direct premium for property insurance in this state, for the
995 year preceding the assessment bears to the aggregate statewide
996 net direct premium for property insurance of all member
997 insurers, as reduced by any credits for voluntary writings for
998 that year.

999 (V) If regular deficit assessments are made under sub-sub-
1000 subparagraph (I) or sub-sub-subparagraph (II), or by the
1001 Residential Property and Casualty Joint Underwriting Association
1002 under sub-subparagraph (6)(b)3.a. or sub-subparagraph
1003 (6)(b)3.b., the association shall levy upon the association's
1004 policyholders, as part of its next rate filing, or by a separate
1005 rate filing solely for this purpose, a market equalization
1006 surcharge in a percentage equal to the total amount of such
1007 regular assessments divided by the aggregate statewide direct
1008 written premium for property insurance for member insurers for

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1009 the prior calendar year. Market equalization surcharges under
1010 this sub-sub-subparagraph are not considered premium and are not
1011 subject to commissions, fees, or premium taxes; however, failure
1012 to pay a market equalization surcharge shall be treated as
1013 failure to pay premium.

1014 e. The governing body of any unit of local government, any
1015 residents of which are insured under the plan, may issue bonds
1016 as defined in s. 125.013 or s. 166.101 to fund an assistance
1017 program, in conjunction with the association, for the purpose of
1018 defraying deficits of the association. In order to avoid
1019 needless and indiscriminate proliferation, duplication, and
1020 fragmentation of such assistance programs, any unit of local
1021 government, any residents of which are insured by the
1022 association, may provide for the payment of losses, regardless
1023 of whether or not the losses occurred within or outside of the
1024 territorial jurisdiction of the local government. Revenue bonds
1025 may not be issued until validated pursuant to chapter 75, unless
1026 a state of emergency is declared by executive order or
1027 proclamation of the Governor pursuant to s. 252.36 making such
1028 findings as are necessary to determine that it is in the best
1029 interests of, and necessary for, the protection of the public
1030 health, safety, and general welfare of residents of this state
1031 and the protection and preservation of the economic stability of
1032 insurers operating in this state, and declaring it an essential
1033 public purpose to permit certain municipalities or counties to
1034 issue bonds as will provide relief to claimants and
1035 policyholders of the association and insurers responsible for
1036 apportionment of plan losses. Any such unit of local government

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1037 may enter into such contracts with the association and with any
1038 other entity created pursuant to this subsection as are
1039 necessary to carry out this paragraph. Any bonds issued under
1040 this sub-subparagraph shall be payable from and secured by
1041 moneys received by the association from assessments under this
1042 subparagraph, and assigned and pledged to or on behalf of the
1043 unit of local government for the benefit of the holders of such
1044 bonds. The funds, credit, property, and taxing power of the
1045 state or of the unit of local government shall not be pledged
1046 for the payment of such bonds. If any of the bonds remain unsold
1047 60 days after issuance, the department shall require all
1048 insurers subject to assessment to purchase the bonds, which
1049 shall be treated as admitted assets; each insurer shall be
1050 required to purchase that percentage of the unsold portion of
1051 the bond issue that equals the insurer's relative share of
1052 assessment liability under this subsection. An insurer shall not
1053 be required to purchase the bonds to the extent that the
1054 department determines that the purchase would endanger or impair
1055 the solvency of the insurer. The authority granted by this sub-
1056 subparagraph is additional to any bonding authority granted by
1057 subparagraph 6.

1058 3. The plan shall also provide that any member with a
1059 surplus as to policyholders of \$20 million or less writing 25
1060 percent or more of its total countrywide property insurance
1061 premiums in this state may petition the department, within the
1062 first 90 days of each calendar year, to qualify as a limited
1063 apportionment company. The apportionment of such a member
1064 company in any calendar year for which it is qualified shall not

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1065 exceed its gross participation, which shall not be affected by
1066 the formula for voluntary writings. In no event shall a limited
1067 apportionment company be required to participate in any
1068 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
1069 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
1070 \$50 million after payment of available plan funds in any
1071 calendar year. However, a limited apportionment company shall
1072 collect from its policyholders any emergency assessment imposed
1073 under sub-sub-subparagraph 2.d.(III). The plan shall provide
1074 that, if the department determines that any regular assessment
1075 will result in an impairment of the surplus of a limited
1076 apportionment company, the department may direct that all or
1077 part of such assessment be deferred. However, there shall be no
1078 limitation or deferment of an emergency assessment to be
1079 collected from policyholders under sub-sub-subparagraph
1080 2.d.(III).

1081 4. The plan shall provide for the deferment, in whole or
1082 in part, of a regular assessment of a member insurer under sub-
1083 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
1084 not for an emergency assessment collected from policyholders
1085 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
1086 commissioner, payment of such regular assessment would endanger
1087 or impair the solvency of the member insurer. In the event a
1088 regular assessment against a member insurer is deferred in whole
1089 or in part, the amount by which such assessment is deferred may
1090 be assessed against the other member insurers in a manner
1091 consistent with the basis for assessments set forth in sub-sub-
1092 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

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1093 5.a. The plan of operation may include deductibles and
1094 rules for classification of risks and rate modifications
1095 consistent with the objective of providing and maintaining funds
1096 sufficient to pay catastrophe losses.

1097 b. ~~The association may require arbitration of a rate~~
1098 ~~filing under s. 627.062(6).~~ It is the intent of the Legislature
1099 that the rates for coverage provided by the association be
1100 actuarially sound and not competitive with approved rates
1101 charged in the admitted voluntary market such that the
1102 association functions as a residual market mechanism to provide
1103 insurance only when the insurance cannot be procured in the
1104 voluntary market. The plan of operation shall provide a
1105 mechanism to assure that, beginning no later than January 1,
1106 1999, the rates charged by the association for each line of
1107 business are reflective of approved rates in the voluntary
1108 market for hurricane coverage for each line of business in the
1109 various areas eligible for association coverage.

1110 c. The association shall provide for windstorm coverage on
1111 residential properties in limits up to \$10 million for
1112 commercial lines residential risks and up to \$1 million for
1113 personal lines residential risks. If coverage with the
1114 association is sought for a residential risk valued in excess of
1115 these limits, coverage shall be available to the risk up to the
1116 replacement cost or actual cash value of the property, at the
1117 option of the insured, if coverage for the risk cannot be
1118 located in the authorized market. The association must accept a
1119 commercial lines residential risk with limits above \$10 million
1120 or a personal lines residential risk with limits above \$1

1121 million if coverage is not available in the authorized market.
 1122 The association may write coverage above the limits specified in
 1123 this subparagraph with or without facultative or other
 1124 reinsurance coverage, as the association determines appropriate.

1125 d. The plan of operation must provide objective criteria
 1126 and procedures, approved by the department, to be uniformly
 1127 applied for all applicants in determining whether an individual
 1128 risk is so hazardous as to be uninsurable. In making this
 1129 determination and in establishing the criteria and procedures,
 1130 the following shall be considered:

1131 (I) Whether the likelihood of a loss for the individual
 1132 risk is substantially higher than for other risks of the same
 1133 class; and

1134 (II) Whether the uncertainty associated with the
 1135 individual risk is such that an appropriate premium cannot be
 1136 determined.

1137
 1138 The acceptance or rejection of a risk by the association
 1139 pursuant to such criteria and procedures must be construed as
 1140 the private placement of insurance, and the provisions of
 1141 chapter 120 do not apply.

1142 e. If the risk accepts an offer of coverage through the
 1143 market assistance program or through a mechanism established by
 1144 the association, either before the policy is issued by the
 1145 association or during the first 30 days of coverage by the
 1146 association, and the producing agent who submitted the
 1147 application to the association is not currently appointed by the
 1148 insurer, the insurer shall:

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1149 (I) Pay to the producing agent of record of the policy,
1150 for the first year, an amount that is the greater of the
1151 insurer's usual and customary commission for the type of policy
1152 written or a fee equal to the usual and customary commission of
1153 the association; or

1154 (II) Offer to allow the producing agent of record of the
1155 policy to continue servicing the policy for a period of not less
1156 than 1 year and offer to pay the agent the greater of the
1157 insurer's or the association's usual and customary commission
1158 for the type of policy written.

1159

1160 If the producing agent is unwilling or unable to accept
1161 appointment, the new insurer shall pay the agent in accordance
1162 with sub-sub-subparagraph (I). Subject to the provisions of s.
1163 627.3517, the policies issued by the association must provide
1164 that if the association obtains an offer from an authorized
1165 insurer to cover the risk at its approved rates under either a
1166 standard policy including wind coverage or, if consistent with
1167 the insurer's underwriting rules as filed with the department, a
1168 basic policy including wind coverage, the risk is no longer
1169 eligible for coverage through the association. Upon termination
1170 of eligibility, the association shall provide written notice to
1171 the policyholder and agent of record stating that the
1172 association policy must be canceled as of 60 days after the date
1173 of the notice because of the offer of coverage from an
1174 authorized insurer. Other provisions of the insurance code
1175 relating to cancellation and notice of cancellation do not apply
1176 to actions under this sub-subparagraph.

1177 f. When the association enters into a contractual
 1178 agreement for a take-out plan, the producing agent of record of
 1179 the association policy is entitled to retain any unearned
 1180 commission on the policy, and the insurer shall:

1181 (I) Pay to the producing agent of record of the
 1182 association policy, for the first year, an amount that is the
 1183 greater of the insurer's usual and customary commission for the
 1184 type of policy written or a fee equal to the usual and customary
 1185 commission of the association; or

1186 (II) Offer to allow the producing agent of record of the
 1187 association policy to continue servicing the policy for a period
 1188 of not less than 1 year and offer to pay the agent the greater
 1189 of the insurer's or the association's usual and customary
 1190 commission for the type of policy written.

1191
 1192 If the producing agent is unwilling or unable to accept
 1193 appointment, the new insurer shall pay the agent in accordance
 1194 with sub-sub-subparagraph (I).

1195 6.a. The plan of operation may authorize the formation of
 1196 a private nonprofit corporation, a private nonprofit
 1197 unincorporated association, a partnership, a trust, a limited
 1198 liability company, or a nonprofit mutual company which may be
 1199 empowered, among other things, to borrow money by issuing bonds
 1200 or by incurring other indebtedness and to accumulate reserves or
 1201 funds to be used for the payment of insured catastrophe losses.
 1202 The plan may authorize all actions necessary to facilitate the
 1203 issuance of bonds, including the pledging of assessments or
 1204 other revenues.

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1205 b. Any entity created under this subsection, or any entity
1206 formed for the purposes of this subsection, may sue and be sued,
1207 may borrow money; issue bonds, notes, or debt instruments;
1208 pledge or sell assessments, market equalization surcharges and
1209 other surcharges, rights, premiums, contractual rights,
1210 projected recoveries from the Florida Hurricane Catastrophe
1211 Fund, other reinsurance recoverables, and other assets as
1212 security for such bonds, notes, or debt instruments; enter into
1213 any contracts or agreements necessary or proper to accomplish
1214 such borrowings; and take other actions necessary to carry out
1215 the purposes of this subsection. The association may issue bonds
1216 or incur other indebtedness, or have bonds issued on its behalf
1217 by a unit of local government pursuant to subparagraph (6)(g)2.,
1218 in the absence of a hurricane or other weather-related event,
1219 upon a determination by the association subject to approval by
1220 the department that such action would enable it to efficiently
1221 meet the financial obligations of the association and that such
1222 financings are reasonably necessary to effectuate the
1223 requirements of this subsection. Any such entity may accumulate
1224 reserves and retain surpluses as of the end of any association
1225 year to provide for the payment of losses incurred by the
1226 association during that year or any future year. The association
1227 shall incorporate and continue the plan of operation and
1228 articles of agreement in effect on the effective date of chapter
1229 76-96, Laws of Florida, to the extent that it is not
1230 inconsistent with chapter 76-96, and as subsequently modified
1231 consistent with chapter 76-96. The board of directors and
1232 officers currently serving shall continue to serve until their

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1233 successors are duly qualified as provided under the plan. The
1234 assets and obligations of the plan in effect immediately prior
1235 to the effective date of chapter 76-96 shall be construed to be
1236 the assets and obligations of the successor plan created herein.

1237 c. In recognition of s. 10, Art. I of the State
1238 Constitution, prohibiting the impairment of obligations of
1239 contracts, it is the intent of the Legislature that no action be
1240 taken whose purpose is to impair any bond indenture or financing
1241 agreement or any revenue source committed by contract to such
1242 bond or other indebtedness issued or incurred by the association
1243 or any other entity created under this subsection.

1244 7. On such coverage, an agent's remuneration shall be that
1245 amount of money payable to the agent by the terms of his or her
1246 contract with the company with which the business is placed.
1247 However, no commission will be paid on that portion of the
1248 premium which is in excess of the standard premium of that
1249 company.

1250 8. Subject to approval by the department, the association
1251 may establish different eligibility requirements and operational
1252 procedures for any line or type of coverage for any specified
1253 eligible area or portion of an eligible area if the board
1254 determines that such changes to the eligibility requirements and
1255 operational procedures are justified due to the voluntary market
1256 being sufficiently stable and competitive in such area or for
1257 such line or type of coverage and that consumers who, in good
1258 faith, are unable to obtain insurance through the voluntary
1259 market through ordinary methods would continue to have access to
1260 coverage from the association. When coverage is sought in

1261 connection with a real property transfer, such requirements and
 1262 procedures shall not provide for an effective date of coverage
 1263 later than the date of the closing of the transfer as
 1264 established by the transferor, the transferee, and, if
 1265 applicable, the lender.

1266 9. Notwithstanding any other provision of law:

1267 a. The pledge or sale of, the lien upon, and the security
 1268 interest in any rights, revenues, or other assets of the
 1269 association created or purported to be created pursuant to any
 1270 financing documents to secure any bonds or other indebtedness of
 1271 the association shall be and remain valid and enforceable,
 1272 notwithstanding the commencement of and during the continuation
 1273 of, and after, any rehabilitation, insolvency, liquidation,
 1274 bankruptcy, receivership, conservatorship, reorganization, or
 1275 similar proceeding against the association under the laws of
 1276 this state or any other applicable laws.

1277 b. No such proceeding shall relieve the association of its
 1278 obligation, or otherwise affect its ability to perform its
 1279 obligation, to continue to collect, or levy and collect,
 1280 assessments, market equalization or other surcharges, projected
 1281 recoveries from the Florida Hurricane Catastrophe Fund,
 1282 reinsurance recoverables, or any other rights, revenues, or
 1283 other assets of the association pledged.

1284 c. Each such pledge or sale of, lien upon, and security
 1285 interest in, including the priority of such pledge, lien, or
 1286 security interest, any such assessments, emergency assessments,
 1287 market equalization or renewal surcharges, projected recoveries
 1288 from the Florida Hurricane Catastrophe Fund, reinsurance

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1289 recoverables, or other rights, revenues, or other assets which
1290 are collected, or levied and collected, after the commencement
1291 of and during the pendency of or after any such proceeding shall
1292 continue unaffected by such proceeding.

1293 d. As used in this subsection, the term "financing
1294 documents" means any agreement, instrument, or other document
1295 now existing or hereafter created evidencing any bonds or other
1296 indebtedness of the association or pursuant to which any such
1297 bonds or other indebtedness has been or may be issued and
1298 pursuant to which any rights, revenues, or other assets of the
1299 association are pledged or sold to secure the repayment of such
1300 bonds or indebtedness, together with the payment of interest on
1301 such bonds or such indebtedness, or the payment of any other
1302 obligation of the association related to such bonds or
1303 indebtedness.

1304 e. Any such pledge or sale of assessments, revenues,
1305 contract rights or other rights or assets of the association
1306 shall constitute a lien and security interest, or sale, as the
1307 case may be, that is immediately effective and attaches to such
1308 assessments, revenues, contract, or other rights or assets,
1309 whether or not imposed or collected at the time the pledge or
1310 sale is made. Any such pledge or sale is effective, valid,
1311 binding, and enforceable against the association or other entity
1312 making such pledge or sale, and valid and binding against and
1313 superior to any competing claims or obligations owed to any
1314 other person or entity, including policyholders in this state,
1315 asserting rights in any such assessments, revenues, contract, or
1316 other rights or assets to the extent set forth in and in

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1317 accordance with the terms of the pledge or sale contained in the
 1318 applicable financing documents, whether or not any such person
 1319 or entity has notice of such pledge or sale and without the need
 1320 for any physical delivery, recordation, filing, or other action.

1321 f. There shall be no liability on the part of, and no
 1322 cause of action of any nature shall arise against, any member
 1323 insurer or its agents or employees, agents or employees of the
 1324 association, members of the board of directors of the
 1325 association, or the department or its representatives, for any
 1326 action taken by them in the performance of their duties or
 1327 responsibilities under this subsection. Such immunity does not
 1328 apply to actions for breach of any contract or agreement
 1329 pertaining to insurance, or any willful tort.

1330 Section 17. Paragraph (a) of subsection (2) of section
 1331 627.4025, Florida Statutes, is amended to read:

1332 627.4025 Residential coverage and hurricane coverage
 1333 defined.--

1334 (2) As used in policies providing residential coverage:

1335 (a) "Hurricane coverage" is coverage for loss or damage
 1336 caused by the peril of windstorm during a hurricane. The term
 1337 includes ensuing damage to the interior of a building, or to
 1338 property inside a building, caused by rain, snow, sleet, hail,
 1339 sand, or dust if the direct force of the windstorm first damages
 1340 the building, causing an opening through which rain, snow,
 1341 sleet, hail, sand, or dust enters and causes damage. The term
 1342 also includes coverage for damage to the interior of a building,
 1343 or to property inside a building, which is caused by wind-driven
 1344 water entering the building during a hurricane.

1345 Section 18. Effective upon this act becoming a law,
 1346 subsection (7) is added to section 627.4133, Florida Statutes,
 1347 to read:

1348 627.4133 Notice of cancellation, nonrenewal, or renewal
 1349 premium.--

1350 (7) An insurer may not cancel or nonrenew a residential
 1351 property insurance policy for any reason other than a fraudulent
 1352 act by the policyholder with respect to that or any other
 1353 policy, for a policyholder who has been continuously insured
 1354 with that insurer or with an insurer within the same insurance
 1355 group for 3 years or longer.

1356 Section 19. Subsection (1) of section 627.4145, Florida
 1357 Statutes, is amended to read:

1358 627.4145 Readable language in insurance policies.--

1359 (1) Every policy shall be readable as required by this
 1360 section. For the purposes of this section, the term "policy"
 1361 means a policy form or endorsement. A policy is deemed readable
 1362 if:

1363 (a) The text achieves a minimum score of 50 ~~45~~ on the
 1364 Flesch reading ease test as computed in subsection (5) or an
 1365 equivalent score on any other test comparable in result and
 1366 approved by the office.†

1367 (b) It uses layout and spacing which separate the
 1368 paragraphs from each other and from the border of the paper.†

1369 (c) It has section titles that are captioned in boldfaced
 1370 type or that otherwise stand out significantly from the text.†

1371 (d) It avoids the use of unnecessarily long, complicated,
 1372 or obscure words, sentences, paragraphs, or constructions.†

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1373 (e) The style, arrangement, and overall appearance of the
1374 policy give no undue prominence to any portion of the text of
1375 the policy or to any endorsements or riders. ~~and~~

1376 (f) It contains a table of contents or an index of the
1377 principal sections of the policy, if the policy has more than
1378 3,000 words or more than three pages.

1379 Section 20. Section 627.41494, Florida Statutes, is
1380 created to read:

1381 627.41494 Consumer participation in rate review.--

1382 (1) Upon the filing of a proposed rate change for
1383 residential property insurance by an insurer under s. 627.062,
1384 which filing would, pursuant to standards determined by the
1385 office, result in an average statewide increase of 10 percent or
1386 more as compared to the rates in effect at that time or the
1387 rates in effect 12 months prior to the proposed effective date,
1388 the insurer shall mail notice of such filing to each of its
1389 policyholders or members.

1390 (2) The rate filing shall be available for public
1391 inspection. If any policyholder or member requests the office
1392 within 30 days after the mailing of such notification pursuant
1393 to subsection (1) to hold a hearing, the office shall hold a
1394 hearing within 30 days after such request. Any consumer advocacy
1395 group or the Public Counsel under chapter 11 may participate in
1396 such hearing, and the commission may adopt rules governing such
1397 participation.

1398 (3) For purposes of this section, the term "consumer
1399 advocacy group" means an organization with a membership of at
1400 least 1,000 individuals, the purpose of which is to represent

1401 the best interests of the public in matters relating, but not
 1402 limited, to insurance rate filings before the office. The
 1403 consumer advocacy group may:

1404 (a) Appear in any proceeding or action before the
 1405 department or office or appear in any proceeding before the
 1406 Division of Administrative Hearings relating to rate filings
 1407 subject to subsection (1).

1408 (b) Have access to and use of all files, records, and data
 1409 of the office relating to such rate filings.

1410 (c) Examine such rate and form filings submitted to the
 1411 office.

1412 (d) Recommend to the office any position deemed by the
 1413 group to be in the best interest of the public in matters
 1414 relating to such rate filings.

1415
 1416 This subsection does not limit the rights of a consumer advocacy
 1417 group to have access to records of the office as otherwise
 1418 available pursuant to law.

1419 (4) The office shall order the insurer to pay the
 1420 reasonable costs of the consumer advocacy group if the office
 1421 determines that the consumer advocacy group made a relevant and
 1422 substantial contribution to the final order on the rate filing.
 1423 In determining the reasonable costs the insurer shall pay the
 1424 consumer advocacy group, the office shall consider, among other
 1425 things, the time, labor, fees, and expenses incurred by the
 1426 advocacy group.

1427 Section 21. Effective upon this act becoming a law,
 1428 subsection (3) of section 627.701, Florida Statutes, is amended

1429 | to read:
 1430 | 627.701 Liability of insureds; coinsurance; deductibles.--
 1431 | (3) (a) A policy of residential property insurance shall
 1432 | include a deductible amount applicable to hurricane losses no
 1433 | lower than \$500 and no higher than 5 ~~2~~ percent of the policy
 1434 | dwelling limits with respect to personal lines residential
 1435 | risks, and no higher than 3 percent of the policy limits with
 1436 | respect to commercial lines residential risks; however, if a
 1437 | risk was covered on August 24, 1992, under a policy having a
 1438 | higher deductible than the deductibles allowed by this
 1439 | paragraph, a policy covering such risk may include a deductible
 1440 | no higher than the deductible in effect on August 24, 1992.
 1441 | Notwithstanding the other provisions of this paragraph, a
 1442 | personal lines residential policy covering a risk valued at
 1443 | \$50,000 or less may include a deductible amount attributable to
 1444 | hurricane losses no lower than \$250, and a personal lines
 1445 | residential policy covering a risk valued at \$100,000 or more
 1446 | may include a deductible amount attributable to hurricane losses
 1447 | no higher than 10 percent of the policy limits unless subject to
 1448 | a higher deductible on August 24, 1992; however, no maximum
 1449 | deductible is required with respect to a personal lines
 1450 | residential policy covering a risk valued at more than \$500,000.
 1451 | An insurer may require a higher deductible, provided such
 1452 | deductible is the same as or similar to a deductible program
 1453 | lawfully in effect on June 14, 1995. In addition to the
 1454 | deductible amounts authorized by this paragraph, an insurer may
 1455 | also offer policies with a copayment provision under which,
 1456 | after exhaustion of the deductible, the policyholder is

1457 responsible for 10 percent of the next \$10,000 of insured
 1458 hurricane losses.

1459 (b)1. Except as otherwise provided in this paragraph,
 1460 prior to issuing a personal lines residential property insurance
 1461 policy on or after July ~~January~~ 1, 2006, or prior to the first
 1462 renewal of a residential property insurance policy on or after
 1463 July ~~January~~ 1, 2006, the insurer must offer alternative
 1464 deductible amounts applicable to hurricane losses equal to \$500,
 1465 1 percent, 2 percent, 5 percent, and 10 percent of the policy
 1466 dwelling limits, but it need not offer a deductible expressed as
 1467 a percentage when that ~~unless the specific percentage deductible~~
 1468 is less than \$500. The written notice of the offer shall specify
 1469 the hurricane or wind deductible to be applied in the event that
 1470 the applicant or policyholder fails to affirmatively choose a
 1471 hurricane deductible. The insurer must provide such policyholder
 1472 with notice of the availability of the deductible amounts
 1473 specified in this paragraph in a form approved by the office in
 1474 conjunction with each renewal of the policy. The failure to
 1475 provide such notice constitutes a violation of this code but
 1476 does not affect the coverage provided under the policy.

1477 2. This paragraph does not apply with respect to a
 1478 deductible program lawfully in effect on June 14, 1995, or to
 1479 any similar deductible program, if the deductible program
 1480 requires a minimum deductible amount of no less than 1 ~~2~~ percent
 1481 of the policy limits.

1482 ~~3. With respect to a policy covering a risk with dwelling~~
 1483 ~~limits of at least \$100,000, but less than \$250,000, the insurer~~
 1484 ~~may, in lieu of offering a policy with a \$500 hurricane or wind~~

1485 ~~deductible as required by subparagraph 1., offer a policy that~~
 1486 ~~the insurer guarantees it will not nonrenew for reasons of~~
 1487 ~~reducing hurricane loss for one renewal period and that contains~~
 1488 ~~up to a 2 percent hurricane or wind deductible as required by~~
 1489 ~~subparagraph 1.~~

1490 3.4. With respect to a policy covering a risk with
 1491 dwelling limits of \$250,000 or more, the insurer need not offer
 1492 the \$500 hurricane deductible as required by subparagraph 1.,
 1493 but must, except as otherwise provided in this subsection, offer
 1494 the other hurricane deductibles as required by subparagraph 1.

1495 Section 22. Section 627.70105, Florida Statutes, is
 1496 created to read:

1497 627.70105 Hurricane coverage; additional
 1498 requirement.--Each insurance contract providing hurricane
 1499 coverage must include a provision that, if insured residential
 1500 property becomes uninhabitable due to damage from a hurricane
 1501 and the insurer is liable for living expenses of the insured
 1502 while the covered property remains uninhabitable, initial living
 1503 expense payments must be delivered to the insured no later than
 1504 48 hours after a claim therefor is made with the insurer.

1505 Section 23. The sum of \$50 million is appropriated for
 1506 fiscal year 2006-2007 on a nonrecurring basis from the General
 1507 Revenue Fund to the Department of Community Affairs in the
 1508 special appropriation category "Residential Hurricane Mitigation
 1509 Low-Interest Loan Program" for low-interest loans to qualified
 1510 owners of residences and qualified owners of mobile homes to
 1511 finance efforts to improve the wind resistance of residences to
 1512 prevent or reduce losses or reduce the cost of rebuilding after

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1513 a disaster with a requirement of repayment by the owner, as
1514 provided in section 8. These funds shall be subject to the
1515 release provisions of chapter 216, Florida Statutes. Up to 0.5
1516 percent of this appropriation may be used by the department for
1517 administration of the loan program.

1518 Section 24. Except as otherwise expressly provided in this
1519 act, this act shall take effect July 1, 2006.