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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2009	.	
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The Committee on Banking and Insurance (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete lines 621 - 1281

and insert:

Section 3. Subsections (2) and (5) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on such classes of insurance



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12 written in this state. A copy of rates, rating schedules, rating
13 manuals, premium credits or discount schedules, and surcharge
14 schedules, and changes thereto, shall be filed with the office
15 under one of the following procedures except as provided in
16 subparagraph 3.:

17 1. If the filing is made at least 90 days before the
18 proposed effective date and the filing is not implemented during
19 the office's review of the filing and any proceeding and
20 judicial review, then such filing shall be considered a "file
21 and use" filing. In such case, the office shall finalize its
22 review by issuance of a notice of intent to approve or a notice
23 of intent to disapprove within 90 days after receipt of the
24 filing. The notice of intent to approve and the notice of intent
25 to disapprove constitute agency action for purposes of the
26 Administrative Procedure Act. Requests for supporting
27 information, requests for mathematical or mechanical
28 corrections, or notification to the insurer by the office of its
29 preliminary findings shall not toll the 90-day period during any
30 such proceedings and subsequent judicial review. The rate shall
31 be deemed approved if the office does not issue a notice of
32 intent to approve or a notice of intent to disapprove within 90
33 days after receipt of the filing.

34 2. If the filing is not made in accordance with the
35 provisions of subparagraph 1., such filing shall be made as soon
36 as practicable, but no later than 30 days after the effective
37 date, and shall be considered a "use and file" filing. An
38 insurer making a "use and file" filing is potentially subject to
39 an order by the office to return to policyholders portions of
40 rates found to be excessive, as provided in paragraph (h).



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41 3. For all property insurance filings made or submitted
42 before December 31, 2010 ~~after January 25, 2007, but before~~
43 ~~December 31, 2009~~, an insurer seeking a rate that is greater
44 than the rate most recently approved by the office shall make a
45 "file and use" filing. For purposes of this subparagraph, motor
46 vehicle collision and comprehensive coverages are not considered
47 to be property coverages.

48 (b) Upon receiving a rate filing, the office shall review
49 the rate filing to determine if a rate is excessive, inadequate,
50 or unfairly discriminatory, except as provided in paragraph (k)
51 or paragraph (l). In making that determination, the office
52 shall, in accordance with generally accepted and reasonable
53 actuarial techniques, consider the following factors:

54 1. Past and prospective loss experience within and without
55 this state.

56 2. Past and prospective expenses.

57 3. The degree of competition among insurers for the risk
58 insured.

59 4. Investment income reasonably expected by the insurer,
60 consistent with the insurer's investment practices, from
61 investable premiums anticipated in the filing, plus any other
62 expected income from currently invested assets representing the
63 amount expected on unearned premium reserves and loss reserves.
64 The commission may adopt rules using reasonable techniques of
65 actuarial science and economics to specify the manner in which
66 insurers shall calculate investment income attributable to such
67 classes of insurance written in this state and the manner in
68 which such investment income shall be used to calculate
69 insurance rates. Such manner shall contemplate allowances for an



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70 underwriting profit factor and full consideration of investment
71 income which produce a reasonable rate of return; however,
72 investment income from invested surplus may not be considered.

73 5. The reasonableness of the judgment reflected in the
74 filing.

75 6. Dividends, savings, or unabsorbed premium deposits
76 allowed or returned to Florida policyholders, members, or
77 subscribers.

78 7. The adequacy of loss reserves.

79 8. The cost of reinsurance. The office shall not disapprove
80 a rate as excessive solely due to the insurer having obtained
81 catastrophic reinsurance to cover the insurer's estimated 250-
82 year probable maximum loss or any lower level of loss.

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

85 10. Conflagration and catastrophe hazards, if applicable.

86 11. Projected hurricane losses, if applicable, which must
87 be estimated using a model or method found to be acceptable or
88 reliable by the Florida Commission on Hurricane Loss Projection
89 Methodology, and as further provided in s. 627.0628.

90 12. A reasonable margin for underwriting profit and
91 contingencies.

92 13. The cost of medical services, if applicable.

93 14. Other relevant factors which impact upon the frequency
94 or severity of claims or upon expenses.

95 (c) In the case of fire insurance rates, consideration
96 shall be given to the availability of water supplies and the
97 experience of the fire insurance business during a period of not
98 less than the most recent 5-year period for which such



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99 experience is available.

100 (d) If conflagration or catastrophe hazards are given
101 consideration by an insurer in its rates or rating plan,
102 including surcharges and discounts, the insurer shall establish
103 a reserve for that portion of the premium allocated to such
104 hazard and shall maintain the premium in a catastrophe reserve.
105 Any removal of such premiums from the reserve for purposes other
106 than paying claims associated with a catastrophe or purchasing
107 reinsurance for catastrophes shall be subject to approval of the
108 office. Any ceding commission received by an insurer purchasing
109 reinsurance for catastrophes shall be placed in the catastrophe
110 reserve.

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

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

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

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

127 4. A rating plan, including discounts, credits, or



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128 surcharges, shall be deemed unfairly discriminatory if it fails
129 to clearly and equitably reflect consideration of the
130 policyholder's participation in a risk management program
131 adopted pursuant to s. 627.0625.

132 5. A rate shall be deemed inadequate as to the premium
133 charged to a risk or group of risks if discounts or credits are
134 allowed which exceed a reasonable reflection of expense savings
135 and reasonably expected loss experience from the risk or group
136 of risks.

137 6. A rate shall be deemed unfairly discriminatory as to a
138 risk or group of risks if the application of premium discounts,
139 credits, or surcharges among such risks does not bear a
140 reasonable relationship to the expected loss and expense
141 experience among the various risks.

142 (f) In reviewing a rate filing, the office may require the
143 insurer to provide at the insurer's expense all information
144 necessary to evaluate the condition of the company and the
145 reasonableness of the filing according to the criteria
146 enumerated in this section.

147 (g) The office may at any time review a rate, rating
148 schedule, rating manual, or rate change; the pertinent records
149 of the insurer; and market conditions. If the office finds on a
150 preliminary basis that a rate may be excessive, inadequate, or
151 unfairly discriminatory, the office shall initiate proceedings
152 to disapprove the rate and shall so notify the insurer. However,
153 the office may not disapprove as excessive any rate for which it
154 has given final approval or which has been deemed approved for a
155 period of 1 year after the effective date of the filing unless
156 the office finds that a material misrepresentation or material



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157 error was made by the insurer or was contained in the filing.
158 Upon being so notified, the insurer or rating organization
159 shall, within 60 days, file with the office all information
160 which, in the belief of the insurer or organization, proves the
161 reasonableness, adequacy, and fairness of the rate or rate
162 change. The office shall issue a notice of intent to approve or
163 a notice of intent to disapprove pursuant to the procedures of
164 paragraph (a) within 90 days after receipt of the insurer's
165 initial response. In such instances and in any administrative
166 proceeding relating to the legality of the rate, the insurer or
167 rating organization shall carry the burden of proof by a
168 preponderance of the evidence to show that the rate is not
169 excessive, inadequate, or unfairly discriminatory. After the
170 office notifies an insurer that a rate may be excessive,
171 inadequate, or unfairly discriminatory, unless the office
172 withdraws the notification, the insurer shall not alter the rate
173 except to conform with the office's notice until the earlier of
174 120 days after the date the notification was provided or 180
175 days after the date of the implementation of the rate. The
176 office may, subject to chapter 120, disapprove without the 60-
177 day notification any rate increase filed by an insurer within
178 the prohibited time period or during the time that the legality
179 of the increased rate is being contested.

180 (h) In the event the office finds that a rate or rate
181 change is excessive, inadequate, or unfairly discriminatory, the
182 office shall issue an order of disapproval specifying that a new
183 rate or rate schedule which responds to the findings of the
184 office be filed by the insurer. The office shall further order,
185 for any "use and file" filing made in accordance with



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186 subparagraph (a)2., that premiums charged each policyholder
187 constituting the portion of the rate above that which was
188 actuarially justified be returned to such policyholder in the
189 form of a credit or refund. If the office finds that an
190 insurer's rate or rate change is inadequate, the new rate or
191 rate schedule filed with the office in response to such a
192 finding shall be applicable only to new or renewal business of
193 the insurer written on or after the effective date of the
194 responsive filing.

195 (i) Except as otherwise specifically provided in this
196 chapter, the office shall not prohibit any insurer, including
197 any residual market plan or joint underwriting association, from
198 paying acquisition costs based on the full amount of premium, as
199 defined in s. 627.403, applicable to any policy, or prohibit any
200 such insurer from including the full amount of acquisition costs
201 in a rate filing.

202 (j) With respect to residential property insurance rate
203 filings, the rate filing must account for mitigation measures
204 undertaken by policyholders to reduce hurricane losses.

205 (k) Notwithstanding any other provision of this section:

206 1. A rate filing for residential property insurance
207 relating to rate changes, rating factors, territories,
208 classification, discounts, credits, or similar matters with
209 respect to any policy form, including endorsements issued with
210 the form, is exempt from a determination by the office that the
211 rate is excessive or unfairly discriminatory under s. 627.062
212 if:

213 a. All changes specified in the filing do not result in an
214 increase from the insurer's rates then in effect of more than



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215 the rate increase authorized by s. 627.0629(5), plus the actual
216 additional cost paid due to the application of s.
217 215.555(17)(f), plus the actual additional cost paid due to the
218 application by the Florida Hurricane Catastrophe Fund of a cash
219 buildup factor pursuant to s. 215.555(5)(b); and

220 b. All changes specified in the filing do not result in an
221 overall premium increase of more than 10 percent statewide, and
222 12 percent for an individual policyholder, for reasons related
223 solely to the rate change.

224 2. An insurer that submits a filing pursuant to this
225 paragraph shall include a copy of the reinsurance contract,
226 proof of the billing or payment for the contract, and the
227 calculations upon which the rate change is based.

228 3. A rate filing is not exempt under subparagraph 1. if the
229 filing exceeds the overall premium increases authorized under
230 subparagraph 1. in any 12-month period. An insurer must proceed
231 under other provisions of this section or other provisions of
232 law if the insurer seeks to exceed the premium or rate
233 limitations of subparagraph 1.

234 4. This paragraph does not limit the authority of the
235 office to disapprove a rate as inadequate or to disapprove a
236 filing for the use of unfairly discriminatory rating factors
237 pursuant to s. 626.9541. An insurer that elects to implement a
238 rate change under this paragraph must file its rate filing with
239 the office at least 40 days before the effective date of the
240 rate change. The office shall have 30 days after the date that
241 the rate filing is submitted to review the filing and determine
242 if the rate is inadequate or uses unfairly discriminatory rating
243 factors. Absent a finding by the office within the 30-day period



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244 that the rate is inadequate or that the insurer has used
245 unfairly discriminatory rating factors, the filing is deemed
246 approved. If the office finds during the 30-day period that the
247 filing will result in inadequate premiums or otherwise endanger
248 the insurer's solvency, the rate increase shall proceed pending
249 additional action by the office to ensure the adequacy of the
250 rate.

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

253 (1) Beginning January 2010, the office shall publish an
254 annual informational memorandum to establish an inflation trend
255 factor for residential property insurance representing an
256 estimate of cost increases based on industry-wide data available
257 from the Insurance Services Office or other public source. Such
258 factor is exempt from the rulemaking requirement of chapter 120
259 and an insurer is not required to adopt the factor. An insurer
260 making an annual filing to adopt the factor shall adjust its
261 rates based solely upon the inflation trend factor to increase
262 statewide rates in an amount equal to the inflation trend factor
263 or 5 percent, whichever is less. Any rate increase implemented
264 pursuant to this paragraph may not exceed 8 percent for any
265 policyholder. An insurer is eligible to adopt the inflation
266 trend factor if it has not implemented a rate increase within
267 the 6 months preceding the inflation trend factor filing. An
268 insurer adopting the inflation trend factor is not eligible to
269 make another inflation trend factor filing to increase rates for
270 the same program for 12 months after the inflation trend factor
271 filing is implemented. The information required for the
272 inflation trend factor filing shall be limited to rates and



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273 rating examples and an explanation demonstrating the insurer's
274 eligibility to adopt the inflation trend factor. The office must
275 approve or disapprove the adoption of the inflation trend factor
276 based on the criteria in this subsection within 30 days of
277 receipt of a complete filing. This paragraph applies only to
278 residential property insurance.

279 (m)1. Insurers complying with the requirements of s.
280 627.7031 may use a rate in excess of the otherwise applicable
281 filed rate.

282 2. Policies subject to this paragraph shall not be counted
283 in the calculation under s. 627.171(2).

284 3. Such rates shall be filed with the office. This
285 paragraph does not affect the authority of the office to
286 disapprove rates as inadequate or to disapprove a rate filing
287 for the use of a rating factor that is unlawful under s.
288 626.9541(1). Upon finding that an insurer has used a rating
289 factor that is unlawful under s. 626.9541(1), the office may
290 direct the insurer to make a filing for rates governed by this
291 paragraph that do not use such rating factor.

292
293 The provisions of this subsection do ~~shall~~ not apply to workers'
294 compensation and employer's liability insurance and to motor
295 vehicle insurance.

296 (5) With respect to a rate filing involving coverage of the
297 type for which the insurer is required to pay a reimbursement
298 premium to the Florida Hurricane Catastrophe Fund, the insurer
299 may fully recoup in its property insurance premiums any
300 reimbursement premiums paid to the Florida Hurricane Catastrophe
301 Fund, together with reasonable costs of other reinsurance, but



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302 except as otherwise provided in this section, may not recoup
303 reinsurance costs that duplicate coverage provided by the
304 Florida Hurricane Catastrophe Fund. An insurer may not recoup
305 more than 1 year of reimbursement premium at a time. Any under-
306 recoupment from the prior year may be added to the following
307 year's reimbursement premium and any over-recoupment shall be
308 subtracted from the following year's reimbursement premium.

309 Section 4. Section 627.0621, Florida Statutes, is amended
310 to read:

311 627.0621 Transparency in rate regulation.—

312 (1) DEFINITIONS.—As used in this section, the term:

313 (a) "Rate filing" means any original or amended rate
314 residential property insurance filing.

315 (b) "Recommendation" means any proposed, preliminary, or
316 final recommendation from an office actuary reviewing a rate
317 filing with respect to the issue of approval or disapproval of
318 the rate filing or with respect to rate indications that the
319 office would consider acceptable.

320 (2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING INFORMATION.—
321 With respect to any rate filing made on or after July 1, 2008,
322 the office shall provide the following information on a publicly
323 accessible Internet website:

324 (a) The overall rate change requested by the insurer.

325 (b) All assumptions made by the office's actuaries.

326 (c) A statement describing any assumptions or methods that
327 deviate from the actuarial standards of practice of the Casualty
328 Actuarial Society or the American Academy of Actuaries,
329 including an explanation of the nature, rationale, and effect of
330 the deviation.



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331 (d) All recommendations made by any office actuary who
332 reviewed the rate filing.

333 (e) Certification by the office's actuary that, based on
334 the actuary's knowledge, his or her recommendations are
335 consistent with accepted actuarial principles.

336 (f) The overall rate change approved by the office.

337 ~~(3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT. It is the~~
338 ~~intent of the Legislature that the principles of the public~~
339 ~~records and open meetings laws apply to the assertion of~~
340 ~~attorney-client privilege and work product confidentiality by~~
341 ~~the office in connection with a challenge to its actions on a~~
342 ~~rate filing. Therefore, in any administrative or judicial~~
343 ~~proceeding relating to a rate filing, attorney-client privilege~~
344 ~~and work product exemptions from disclosure do not apply to~~
345 ~~communications with office attorneys or records prepared by or~~
346 ~~at the direction of an office attorney, except when the~~
347 ~~conditions of paragraphs (a) and (b) have been met:~~

348 ~~(a) The communication or record reflects a mental~~
349 ~~impression, conclusion, litigation strategy, or legal theory of~~
350 ~~the attorney or office that was prepared exclusively for civil~~
351 ~~or criminal litigation or adversarial administrative~~
352 ~~proceedings.~~

353 ~~(b) The communication occurred or the record was prepared~~
354 ~~after the initiation of an action in a court of competent~~
355 ~~jurisdiction, after the issuance of a notice of intent to deny a~~
356 ~~rate filing, or after the filing of a request for a proceeding~~
357 ~~under ss. 120.569 and 120.57.~~

358 Section 5. Subsection (5) of section 627.0629, Florida
359 Statutes, is amended to read:



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360 627.0629 Residential property insurance; rate filings.—

361 (5) In order to provide an appropriate transition period,
362 an insurer may, in its sole discretion, implement an approved
363 rate filing for residential property insurance over a period of
364 years. An insurer electing to phase in its rate filing must
365 provide an informational notice to the office setting out its
366 schedule for implementation of the phased-in rate filing. An
367 insurer may include in its rate the actual cost of reinsurance
368 that duplicates available coverage of the Temporary Increase in
369 Coverage Limits, TICL, from the Florida Hurricane Catastrophe
370 Fund. The insurer may include the cost of reinsurance in its
371 rate even if the insurer does not purchase the TICL layer.
372 However, this cost for reinsurance may not include any expense
373 or profit load or result in a total annual base rate increase in
374 excess of 10 percent.

375 Section 6. Paragraphs (a), (m), and (x) of subsection (6)
376 of section 627.351, Florida Statutes, are amended to read:

377 627.351 Insurance risk apportionment plans.—

378 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

379 (a)1. It is the public purpose of this subsection to ensure
380 the existence of an orderly market for property insurance for
381 Floridians and Florida businesses. The Legislature finds that
382 private insurers are unwilling or unable to provide affordable
383 property insurance coverage in this state to the extent sought
384 and needed. The absence of affordable property insurance
385 threatens the public health, safety, and welfare and likewise
386 threatens the economic health of the state. The state therefore
387 has a compelling public interest and a public purpose to assist
388 in assuring that property in the state is insured and that it is



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389 insured at affordable rates so as to facilitate the remediation,
390 reconstruction, and replacement of damaged or destroyed property
391 in order to reduce or avoid the negative effects otherwise
392 resulting to the public health, safety, and welfare, to the
393 economy of the state, and to the revenues of the state and local
394 governments which are needed to provide for the public welfare.
395 It is necessary, therefore, to provide affordable property
396 insurance to applicants who are in good faith entitled to
397 procure insurance through the voluntary market but are unable to
398 do so. The Legislature intends by this subsection that
399 affordable property insurance be provided and that it continue
400 to be provided, as long as necessary, through Citizens Property
401 Insurance Corporation, a government entity that is an integral
402 part of the state, and that is not a private insurance company.
403 To that end, Citizens Property Insurance Corporation shall
404 strive to increase the availability of affordable property
405 insurance in this state, while achieving efficiencies and
406 economies, and while providing service to policyholders,
407 applicants, and agents which is no less than the quality
408 generally provided in the voluntary market, for the achievement
409 of the foregoing public purposes. Because it is essential for
410 this government entity to have the maximum financial resources
411 to pay claims following a catastrophic hurricane, it is the
412 intent of the Legislature that Citizens Property Insurance
413 Corporation continue to be an integral part of the state and
414 that the income of the corporation be exempt from federal income
415 taxation and that interest on the debt obligations issued by the
416 corporation be exempt from federal income taxation.

417 2. The Residential Property and Casualty Joint Underwriting



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418 Association originally created by this statute shall be known,
419 as of July 1, 2002, as the Citizens Property Insurance
420 Corporation. The corporation shall provide insurance for
421 residential and commercial property, for applicants who are in
422 good faith entitled, but are unable, to procure insurance
423 through the voluntary market. The corporation shall operate
424 pursuant to a plan of operation approved by order of the
425 Financial Services Commission. The plan is subject to continuous
426 review by the commission. The commission may, by order, withdraw
427 approval of all or part of a plan if the commission determines
428 that conditions have changed since approval was granted and that
429 the purposes of the plan require changes in the plan. The
430 corporation shall continue to operate pursuant to the plan of
431 operation approved by the Office of Insurance Regulation until
432 October 1, 2006. For the purposes of this subsection,
433 residential coverage includes both personal lines residential
434 coverage, which consists of the type of coverage provided by
435 homeowner's, mobile home owner's, dwelling, tenant's,
436 condominium unit owner's, and similar policies, and commercial
437 lines residential coverage, which consists of the type of
438 coverage provided by condominium association, apartment
439 building, and similar policies.

440 3. Effective January 1, 2009, a personal lines residential
441 structure that has a dwelling replacement cost of \$2 million or
442 more, or a single condominium unit that has a combined dwelling
443 and content replacement cost of \$2 million or more is not
444 eligible for coverage by the corporation. Such dwellings insured
445 by the corporation on December 31, 2008, may continue to be
446 covered by the corporation until the end of the policy term.



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447 However, such dwellings that are insured by the corporation and
448 become ineligible for coverage due to the provisions of this
449 subparagraph may reapply and obtain coverage if the property
450 owner provides the corporation with a sworn affidavit from one
451 or more insurance agents, on a form provided by the corporation,
452 stating that the agents have made their best efforts to obtain
453 coverage and that the property has been rejected for coverage by
454 at least one authorized insurer and at least three surplus lines
455 insurers. If such conditions are met, the dwelling may be
456 insured by the corporation for up to 3 years, after which time
457 the dwelling is ineligible for coverage. The office shall
458 approve the method used by the corporation for valuing the
459 dwelling replacement cost for the purposes of this subparagraph.
460 If a policyholder is insured by the corporation prior to being
461 determined to be ineligible pursuant to this subparagraph and
462 such policyholder files a lawsuit challenging the determination,
463 the policyholder may remain insured by the corporation until the
464 conclusion of the litigation.

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

474 5. Effective January 1, 2009, a personal lines residential
475 structure that is located in the "wind-borne debris region," as



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476 defined in s. 1609.2, International Building Code (2006), and
477 that has an insured value on the structure of \$750,000 or more
478 is not eligible for coverage by the corporation unless the
479 structure has opening protections as required under the Florida
480 Building Code for a newly constructed residential structure in
481 that area. A residential structure shall be deemed to comply
482 with the requirements of this subparagraph if it has shutters or
483 opening protections on all openings and if such opening
484 protections complied with the Florida Building Code at the time
485 they were installed. Effective January 1, 2012 ~~January 1, 2010~~,
486 for personal lines residential property insured by the
487 corporation that is located in the wind-borne debris region and
488 has an insured value on the structure of \$500,000 or more, a
489 prospective purchaser of any such residential property must be
490 provided by the seller a written disclosure that contains the
491 structure's windstorm mitigation rating based on the uniform
492 home grading scale adopted under s. 215.55865. Such rating shall
493 be provided to the purchaser at or before the time the purchaser
494 executes a contract for sale and purchase.

495 (m)1. Rates for coverage provided by the corporation shall
496 be actuarially sound and subject to the requirements of s.
497 627.062, except as otherwise provided in this paragraph. The
498 corporation shall file its recommended rates with the office at
499 least annually. The corporation shall provide any additional
500 information regarding the rates which the office requires. The
501 office shall consider the recommendations of the board and issue
502 a final order establishing the rates for the corporation within
503 45 days after the recommended rates are filed. The corporation
504 may not pursue an administrative challenge or judicial review of



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505 the final order of the office.

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

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

518 4. The rate filings for the corporation which were approved
519 by the office and which took effect January 1, 2007, are
520 rescinded, except for those rates that were lowered. As soon as
521 possible, the corporation shall begin using the lower rates that
522 were in effect on December 31, 2006, and shall provide refunds
523 to policyholders who have paid higher rates as a result of that
524 rate filing. The rates in effect on December 31, 2006, shall
525 remain in effect for the 2007 and 2008 calendar years except for
526 any rate change that results in a lower rate. The next rate
527 change that may increase rates shall take effect pursuant to a
528 new rate filing recommended by the corporation and established
529 by the office, subject to the requirements of this paragraph.

530 5. Beginning on July 15, 2009, and each year thereafter,
531 the corporation must make a recommended actuarially sound rate
532 filing for each personal and commercial line of business it
533 writes, to be effective no earlier than January 1, 2010.



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534 6. Notwithstanding the board's recommended rates and the
535 office's final order regarding the corporation's filed rates
536 under subparagraph 1., the corporation shall implement a rate
537 increase each year which does not exceed 10 percent for any
538 single policy issued by the corporation, adjusted for exposure
539 change. The corporation may also implement an increase to
540 reflect the effect on the corporation of the cash buildup factor
541 pursuant to s. 215.555(5)(b).

542 7. The corporation's implementation of rates as prescribed
543 in subparagraph 6. shall cease upon the corporation's
544 implementation of actuarially sound rates.

545 8. Beginning January 1, 2010, and each year thereafter, the
546 corporation shall transfer 10 percent of the funds received from
547 the rate increase prescribed by subparagraph 6. to the General
548 Revenue Fund. The corporation's transfer of such funds shall
549 cease upon the corporation's implementation of actuarially sound
550 rates.

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

557 1. The board shall, on or before February 1 of each year,
558 provide a report to the President of the Senate and the Speaker
559 of the House of Representatives showing the reduction or
560 increase in the 100-year probable maximum loss attributable to
561 wind-only coverages and the quota share program under this
562 subsection combined, as compared to the benchmark 100-year



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563 probable maximum loss of the Florida Windstorm Underwriting
564 Association. For purposes of this paragraph, the benchmark 100-
565 year probable maximum loss of the Florida Windstorm Underwriting
566 Association shall be the calculation dated February 2001 and
567 based on November 30, 2000, exposures. In order to ensure
568 comparability of data, the board shall use the same methods for
569 calculating its probable maximum loss as were used to calculate
570 the benchmark probable maximum loss.

571 2. Beginning February 1, 2013 ~~February 1, 2010~~, if the
572 report under subparagraph 1. for any year indicates that the
573 100-year probable maximum loss attributable to wind-only
574 coverages and the quota share program combined does not reflect
575 a reduction of at least 25 percent from the benchmark, the board
576 shall reduce the boundaries of the high-risk area eligible for
577 wind-only coverages under this subsection in a manner calculated
578 to reduce such probable maximum loss to an amount at least 25
579 percent below the benchmark.

580 3. Beginning February 1, 2018 ~~February 1, 2015~~, if the
581 report under subparagraph 1. for any year indicates that the
582 100-year probable maximum loss attributable to wind-only
583 coverages and the quota share program combined does not reflect
584 a reduction of at least 50 percent from the benchmark, the
585 boundaries of the high-risk area eligible for wind-only
586 coverages under this subsection shall be reduced by the
587 elimination of any area that is not seaward of a line 1,000 feet
588 inland from the Intracoastal Waterway.

589 Section 7. Section 627.3512, Florida Statutes, is amended
590 to read:

591 627.3512 Recoupment of residual market deficit



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592 assessments.-

593 (1) An insurer or insurer group may recoup any assessments
594 that have been paid during or after 1995 by the insurer or
595 insurer group to defray deficits of an insurance risk
596 apportionment plan or assigned risk plan under ss. 627.311 and
597 627.351, net of any earnings returned to the insurer or insurer
598 group by the association or plan for any year after 1993. The
599 insurer or insurer group shall begin the recoupment process
600 within 180 days after the date of the assessment as indicated on
601 the invoice received by the insurer or insurer group. An insurer
602 that fails to begin the recoupment process within 180 days after
603 the date of the assessment may not recoup the amount assessed. A
604 limited apportionment company as defined in s. 627.351(6)(c) may
605 recoup any regular assessment that has been levied by, or paid
606 to, Citizens Property Insurance Corporation.

607 (2) The recoupment shall be made by applying a separate
608 recoupment assessment factor on policies of the same line or
609 type as were considered by the residual markets in determining
610 the assessment liability of the insurer or insurer group. An
611 insurer or insurer group shall calculate a separate assessment
612 factor for personal lines and commercial lines. ~~The separate~~
613 ~~assessment factor shall provide for full recoupment of the~~
614 ~~assessments over a period of 1 year, unless the insurer or~~
615 ~~insurer group, at its option, elects to recoup the assessments~~
616 ~~over a longer period. The assessment factor expires upon~~
617 ~~collection of the full amount allowed to be recouped. Amounts~~
618 ~~recouped under this section are not subject to premium taxes,~~
619 ~~fees, or commissions.~~

620 (3) ~~(2)~~ The recoupment assessment factor may ~~must~~ not be



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621 more than 3 percentage points above the ratio of the deficit
622 assessment to the Florida direct written premium for policies
623 for the lines or types of business as to which the assessment
624 was calculated, ~~as written in the year the deficit assessment~~
625 ~~was paid~~. If an insurer or insurer group fails to collect the
626 full amount of the deficit assessment within a 1-year period,
627 the insurer or insurer group may ~~must~~ carry forward the amount
628 of the deficit and adjust the deficit assessment to be recouped
629 in the ~~a~~ subsequent year ~~by that amount~~. The insurer or insurer
630 group shall adjust the recoupment factor to be applied for the
631 subsequent year. The insurer or insurer group may not apply any
632 recoupment factor in a manner that is unfairly discriminatory
633 among its policyholders within the same lines, types, or
634 sublines of business.

635 (4) ~~(3)~~ The insurer or insurer group shall file with the
636 office a statement setting forth the amount of the assessment
637 factor and an explanation of how the factor will be applied, at
638 least 15 days prior to the factor being applied to any policies.
639 The statement shall include documentation of the assessment paid
640 by the insurer or insurer group and the arithmetic calculations
641 supporting the assessment factor. The office shall complete its
642 review within 30 ~~15~~ days after receipt of the filing and shall
643 limit its review to verification of the arithmetic calculations.
644 The insurer or insurer group may use the assessment factor at
645 any time after the expiration of the 30-day ~~15-day~~ period unless
646 the office has notified the insurer or insurer group in writing
647 that the arithmetic calculations are incorrect.

648 (5) If an insurer or insurer group over-recoups any
649 assessment it has, it shall forward all excess recoupment to the



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650 corporation to be held in a separate account to offset future
651 assessments.

652 (6) A final accounting report documenting the assessment
653 recouped shall be submitted to the office within 60 days after
654 the recoupment period ends. The chief executive officer or chief
655 financial officer must certify under oath and subject to the
656 penalty of perjury, on a form approved by the commission, that
657 he or she has reviewed the report; that the information in the
658 report is true and accurate; and that, based on his or her
659 knowledge:

660 (a) The report does not contain any untrue statement of a
661 material fact or omit a material fact necessary in order to make
662 the statements not misleading, in light of the circumstances
663 under which the statements were made;

664 (b) The effective dates of the recoupment period are
665 correct;

666 (c) The recoupment factor used is correct;

667 (d) The direct written premium and associated recoupment
668 amounts received each month for the entire recoupment period are
669 correct; and

670 (e) All excess recoupment moneys have been paid to the
671 corporation.

672 (7) Any insurer or insurer group that does not elect to use
673 this process to recoup an assessment amount that it has paid is
674 prohibited from including this uncollected assessment amount as
675 any component in any subsequent rate filing required by s.
676 627.062 or s. 627.0651.

677 (8)~~(4)~~ The commission may adopt rules to implement this
678 section.



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679 Section 8. Section 627.7031, Florida Statutes, is created
680 to read:

681 627.7031 Residential property insurance option.-

682 (1) An insurer may offer or renew policies at rates
683 established in accordance with s. 627.062(2)(k) if all of the
684 following conditions are met:

685 (a) The insurer is authorized to write property insurance
686 in this state.

687 (b) The insurer has at the time of issuance of the policy
688 or, at the time of first renewal at rates pursuant to s.
689 627.062(2)(k), surplus as to policyholders equal to or greater
690 than \$500 million.

691 (c) For policies issued after July 1, 2009, or renewed at
692 such rate, the applicant or insured is given before each renewal
693 the following notice printed in at least 12-point boldfaced
694 type:

695
696 THE RATE FOR THIS POLICY IS NOT REGULATED BY THE
697 FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE
698 HIGHER THAN THE RATE APPROVED BY THAT OFFICE. A
699 RESIDENTIAL PROPERTY POLICY SUBJECT TO FULL RATE
700 REGULATION REQUIREMENTS MAY BE AVAILABLE FROM THIS
701 INSURER, ANOTHER INSURER, OR CITIZENS PROPERTY
702 INSURANCE CORPORATION. PLEASE DISCUSS YOUR POLICY
703 OPTIONS WITH YOUR INSURANCE AGENT.

704
705 (2) For policies issued before July 1, 2009, which are to
706 be renewed at such rate, the notice required by paragraph (1)(c)
707 must be furnished in writing as a document separate from the



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708 renewal notice, but may be contained within the same mailing as
709 the renewal notice.

710
711 ===== T I T L E A M E N D M E N T =====

712 And the title is amended as follows:

713 Delete lines 49 - 68

714 and insert:

715 authorizing an insurer complying with certain
716 provisions of state law to use a rate in excess of the
717 otherwise applicable filed rate; requiring the filing
718 of such rates with the office; preserving the
719 authority of the office to disapprove rates and rate
720 filings on certain grounds; authorizing the office to
721 direct the insurer to make a certain filing upon a
722 finding that an insurer has used a rating factor that
723 is unlawful under specified provisions of state law;
724 exempting certain policies from inclusion in a
725 specified calculation; amending s. 627.0621, F.S.;
726 deleting a limitation on the application of the
727 attorney-client privilege and work product doctrine in
728 challenges to actions by the Office of Insurance
729 Regulation relating to rate filings; amending s.
730 627.0629, F.S.; authorizing an insurer to include in
731 its rates the actual cost of certain reinsurance;
732 amending s. 627.351, F.S.; revising the date after
733 which a seller of certain residential property must
734 disclose the structure's windstorm mitigation rating
735 to the prospective purchaser of the property;
736 requiring Citizen's Property Insurance Corporation to



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737 implement rate increases until the implementation of
738 actuarially sound rates; requiring the corporation to
739 transfer a portion of the funds received from the rate
740 increase into the General Revenue Fund; revising the
741 dates after which the State Board of Administration is
742 required to reduce the boundaries of high-risk areas
743 eligible for wind-only coverages under certain
744 circumstances; creating s. 627.7031, F.S.; authorizing
745 an insurer to renew policies at certain rates under
746 certain conditions; providing notice requirements for
747 certain policies; amending s. 627.3512, F.S.;

748 authorizing