

By the Committee on Banking and Insurance; and Senator Richter

597-04422-09

20091950c1

1                                   A bill to be entitled  
2           An act relating to property insurance; amending s.  
3           215.555, F.S.; revising the dates of an insurer's  
4           contract year for purposes of calculating the  
5           insurer's retention; requiring the State Board of  
6           Administration to offer an additional amount of  
7           reimbursement coverage to certain insurers that  
8           purchased coverage during a certain calendar year;  
9           requiring an insurer that purchases certain coverage  
10          to retain an amount equal to a percentage of the  
11          insurer's surplus on a certain date; providing that an  
12          insurer's retention will apply along with a mandatory  
13          coverage after an optional coverage is exhausted;  
14          revising an expiration date on the requirement for the  
15          State Board of Administration to offer certain  
16          optional coverage to insurers; revising the dates on  
17          which the State Board of Administration is required to  
18          publish a statement of the estimated borrowing  
19          capacity of the Hurricane Catastrophe Fund;  
20          authorizing the State Board of Administration to  
21          reimburse insurers based on a formula related to the  
22          claims-paying capacity of the Hurricane Catastrophe  
23          Fund; requiring the formula to determine an  
24          actuarially indicated premium to include specified  
25          cash build-up factors; authorizing insurers to  
26          purchase temporary increased coverage limit for  
27          certain future hurricane seasons; providing that a  
28          cash build-up factor does not apply to temporary  
29          increased coverage limit premiums; providing dates on

597-04422-09

20091950c1

30 which the claims-paying capacity of the fund will  
31 increase; deleting authority for the State Board of  
32 Administration to increase the claims-paying capacity  
33 of the Hurricane Catastrophe Fund; amending s.  
34 627.062, F.S.; revising the date by which certain  
35 filings for a rate increase must be made by a file and  
36 use filing; exempting certain rate filings from  
37 determination by the Office of Insurance Regulation  
38 that the rate in the rate filing is excessive or  
39 unfairly discriminatory; amending s. 627.0621, F.S.;  
40 deleting a limitation on the application of the  
41 attorney-client privilege and work product doctrine in  
42 challenges to actions by the Office of Insurance  
43 Regulation relating to rate filings; amending s.  
44 627.0629, F.S.; authorizing an insurer to include in  
45 its rates the actual cost of certain reinsurance;  
46 amending s. 627.351, F.S.; deleting a provision  
47 requiring a seller of certain residential property to  
48 disclose the structure's windstorm mitigation rating  
49 to the prospective purchaser of the property;  
50 providing for members of the board of governors of  
51 Citizens Property Insurance Corporation to serve  
52 staggered terms; requiring Citizen's Property  
53 Insurance Corporation to implement rate increases  
54 until the implementation of actuarially sound rates;  
55 requiring the corporation to transfer a portion of the  
56 funds received from the rate increase into the General  
57 Revenue Fund; revising the dates after which the State  
58 Board of Administration is required to reduce the

597-04422-09

20091950c1

59 boundaries of high-risk areas eligible for wind-only  
60 coverages under certain circumstances; amending s.  
61 627.3512, F.S.; authorizing insurers to recoup  
62 assessments within a certain period; requiring  
63 insurers to file a final accounting report with the  
64 Office of Insurance Regulation which documents the  
65 assessment recouped; requiring the officer of the  
66 insurer who signs the report to acknowledge certain  
67 statements; prohibiting insurers that do not file the  
68 report from including the uncollected assessment  
69 amount in any subsequent rate filing; amending s.  
70 627.712, F.S.; revising the properties for which an  
71 insurer must make policies available which exclude  
72 windstorm coverage; amending s. 631.57, F.S.; deleting  
73 provisions requiring certain insurers to submit  
74 certain information; amending s. 631.64, F.S.;  
75 authorizing insurers to recoup certain assessments;  
76 requiring the recoupment to begin within a certain  
77 period; limiting the recoupment factor; authorizing  
78 insurers to carry forward certain assessments that  
79 have not been recouped; requiring insurers to file a  
80 final accounting report with the Office of Insurance  
81 Regulation which documents the assessment recouped;  
82 requiring the officer of the insurer who signs the  
83 report to acknowledge certain statements; providing  
84 that all excess recoupment be sent to the Florida  
85 Insurance Guaranty Association; requiring that the  
86 insurer document the accounting of the over-recoupment  
87 in the final accounting report; authorizing the

597-04422-09

20091950c1

88 commission to adopt rules; amending s. 631.65, F.S.;

89 providing that an insurance agent is not prohibited

90 from explaining the existence or function of the

91 insurance guaranty association; providing for the

92 appropriation of certain transferred funds to the

93 Insurance Regulatory Trust Fund for purposes of the My

94 Safe Florida Home Program; providing an effective

95 date.

96

97 Be It Enacted by the Legislature of the State of Florida:

98

99 Section 1. Paragraph (e) of subsection (2), subsection (4),

100 paragraph (b) of subsection (5), and subsection (17) of section

101 215.555, Florida Statutes, are amended to read:

102 215.555 Florida Hurricane Catastrophe Fund.—

103 (2) DEFINITIONS.—As used in this section:

104 (e) "Retention" means the amount of losses below which an

105 insurer is not entitled to reimbursement from the fund. An

106 insurer's retention shall be calculated as follows:

107 1. The board shall calculate and report to each insurer the

108 retention multiples for that year. For the contract year

109 beginning June 1, 2005, the retention multiple shall be equal to

110 \$4.5 billion divided by the total estimated reimbursement

111 premium for the contract year; for subsequent years, the

112 retention multiple shall be equal to \$4.5 billion, adjusted

113 based upon the reported exposure from the prior contract year to

114 reflect the percentage growth in exposure to the fund for

115 covered policies since 2004, divided by the total estimated

116 reimbursement premium for the contract year. Total reimbursement

597-04422-09

20091950c1

117 premium for purposes of the calculation under this subparagraph  
118 shall be estimated using the assumption that all insurers have  
119 selected the 90-percent coverage level. In 2010, the contract  
120 year begins June 1 and ends December 31, 2010. In 2011 and  
121 thereafter, the contract year begins January 1 and ends December  
122 31.

123 2. The retention multiple as determined under subparagraph  
124 1. shall be adjusted to reflect the coverage level elected by  
125 the insurer. For insurers electing the 90-percent coverage  
126 level, the adjusted retention multiple is 100 percent of the  
127 amount determined under subparagraph 1. For insurers electing  
128 the 75-percent coverage level, the retention multiple is 120  
129 percent of the amount determined under subparagraph 1. For  
130 insurers electing the 45-percent coverage level, the adjusted  
131 retention multiple is 200 percent of the amount determined under  
132 subparagraph 1.

133 3. An insurer shall determine its provisional retention by  
134 multiplying its provisional reimbursement premium by the  
135 applicable adjusted retention multiple and shall determine its  
136 actual retention by multiplying its actual reimbursement premium  
137 by the applicable adjusted retention multiple.

138 4. For insurers who experience multiple covered events  
139 causing loss during the contract year, beginning June 1, 2005,  
140 each insurer's full retention shall be applied to each of the  
141 covered events causing the two largest losses for that insurer.  
142 For each other covered event resulting in losses, the insurer's  
143 retention shall be reduced to one-third of the full retention.  
144 The reimbursement contract shall provide for the reimbursement  
145 of losses for each covered event based on the full retention

597-04422-09

20091950c1

146 with adjustments made to reflect the reduced retentions on or  
147 after January 1 of the contract year provided the insurer  
148 reports its losses as specified in the reimbursement contract.

149 (4) REIMBURSEMENT CONTRACTS.—

150 (a) The board shall enter into a contract with each insurer  
151 writing covered policies in this state to provide to the insurer  
152 the reimbursement described in paragraphs (b) and (d), in  
153 exchange for the reimbursement premium paid into the fund under  
154 subsection (5). As a condition of doing business in this state,  
155 each such insurer shall enter into such a contract.

156 (b)1. The contract shall contain a promise by the board to  
157 reimburse the insurer for 45 percent, 75 percent, or 90 percent  
158 of its losses from each covered event in excess of the insurer's  
159 retention, plus 5 percent of the reimbursed losses to cover loss  
160 adjustment expenses.

161 2. The insurer must elect one of the percentage coverage  
162 levels specified in this paragraph and may, upon renewal of a  
163 reimbursement contract, elect a lower percentage coverage level  
164 if no revenue bonds issued under subsection (6) after a covered  
165 event are outstanding, or elect a higher percentage coverage  
166 level, regardless of whether or not revenue bonds are  
167 outstanding. All members of an insurer group must elect the same  
168 percentage coverage level. Any joint underwriting association,  
169 risk apportionment plan, or other entity created under s.  
170 627.351 must elect the 90-percent coverage level.

171 3. The contract shall provide that reimbursement amounts  
172 shall not be reduced by reinsurance paid or payable to the  
173 insurer from other sources.

174 4. Notwithstanding any other provision contained in this

597-04422-09

20091950c1

175 section, the board shall make available to insurers that  
176 purchased coverage provided by this subparagraph in 2008 ~~2007~~,  
177 insurers qualifying as limited apportionment companies under s.  
178 627.351(6)(c), and insurers that have been approved to  
179 participate in the Insurance Capital Build-Up Incentive Program  
180 pursuant to s. 215.5595 a contract or contract addendum that  
181 provides an additional amount of reimbursement coverage of up to  
182 \$10 million. The premium to be charged for this additional  
183 reimbursement coverage shall be 50 percent of the additional  
184 reimbursement coverage provided, which shall include one prepaid  
185 reinstatement. The minimum retention level that an eligible  
186 participating insurer must retain associated with this  
187 additional coverage layer is 30 percent of the insurer's surplus  
188 as of December 31, 2008 ~~December 31, 2007~~. This coverage shall  
189 be in addition to all other coverage that may be provided under  
190 this section. The coverage provided by the fund under this  
191 subparagraph shall be in addition to the claims-paying capacity  
192 as defined in subparagraph (c)1., but only with respect to those  
193 insurers that select the additional coverage option and meet the  
194 requirements of this subparagraph. The claims-paying capacity  
195 with respect to all other participating insurers and limited  
196 apportionment companies that do not select the additional  
197 coverage option shall be limited to their reimbursement  
198 premium's proportionate share of the actual claims-paying  
199 capacity otherwise defined in subparagraph (c)1. and as provided  
200 for under the terms of the reimbursement contract. The optional  
201 coverage retention as specified shall be accessed before the  
202 mandatory coverage under the reimbursement contract, but once  
203 the limit of coverage selected under this option is exhausted,

597-04422-09

20091950c1

204 the insurer's retention under the mandatory coverage will apply.  
205 This coverage will apply and be paid concurrently with mandatory  
206 coverage. Coverage provided in the reimbursement contract shall  
207 not be affected by the additional premiums paid by participating  
208 insurers exercising the additional coverage option allowed in  
209 this subparagraph. This subparagraph expires on January 1, 2012  
210 May 31, 2009.

211 (c)1. The contract shall also provide that the obligation  
212 of the board with respect to all contracts covering a particular  
213 contract year shall not exceed the actual claims-paying capacity  
214 of the fund up to a limit of \$15 billion for that contract year  
215 adjusted based upon the reported exposure from the prior  
216 contract year to reflect the percentage growth in exposure to  
217 the fund for covered policies since 2003, provided the dollar  
218 growth in the limit may not increase in any year by an amount  
219 greater than the dollar growth of the balance of the fund as of  
220 December 31, less any premiums or interest attributable to  
221 optional coverage, as defined by rule which occurred over the  
222 prior calendar year.

223 2. In May ~~before the start of the upcoming contract year~~  
224 and ~~in~~ October of ~~during~~ the contract year, the board shall  
225 publish in the Florida Administrative Weekly a statement of the  
226 fund's estimated borrowing capacity and the projected balance of  
227 the fund as of December 31. After the end of each calendar year,  
228 the board shall notify insurers of the estimated borrowing  
229 capacity and the balance of the fund as of December 31 to  
230 provide insurers with data necessary to assist them in  
231 determining their retention and projected payout from the fund  
232 for loss reimbursement purposes. In conjunction with the



597-04422-09

20091950c1

233 development of the premium formula, as provided for in  
234 subsection (5), the board shall publish factors or multiples  
235 that assist insurers in determining their retention and  
236 projected payout for the next contract year. For all regulatory  
237 and reinsurance purposes, an insurer may calculate its projected  
238 payout from the fund as its share of the total fund premium for  
239 the current contract year multiplied by the sum of the projected  
240 balance of the fund as of December 31 and the estimated  
241 borrowing capacity for that contract year as reported under this  
242 subparagraph.

243 (d)1. For purposes of determining potential liability and  
244 to aid in the sound administration of the fund, the contract  
245 shall require each insurer to report such insurer's losses from  
246 each covered event on an interim basis, as directed by the  
247 board. The contract shall require the insurer to report to the  
248 board no later than December 31 of each year, and quarterly  
249 thereafter, its reimbursable losses from covered events for the  
250 year. The contract shall require the board to determine and pay,  
251 as soon as practicable after receiving these reports of  
252 reimbursable losses, the initial amount of reimbursement due and  
253 adjustments to this amount based on later loss information. The  
254 adjustments to reimbursement amounts shall require the board to  
255 pay, or the insurer to return, amounts reflecting the most  
256 recent calculation of losses.

257 2. In determining reimbursements pursuant to this  
258 subsection, the contract shall provide that the board shall pay  
259 to each insurer such insurer's projected payout, which is the  
260 amount of reimbursement it is owed, up to an amount equal to the  
261 insurer's share of the actual premium paid for that contract

597-04422-09

20091950c1

262 year, multiplied by the actual claims-paying capacity available  
263 for that contract year.

264 3. The board may reimburse insurers for amounts up to the  
265 published factors or multiples for determining each  
266 participating insurer's retention and projected payout derived  
267 as a result of the development of the premium formula in those  
268 situations in which the total reimbursement of losses to such  
269 insurers would not exceed the estimated claims-paying capacity  
270 of the fund. Otherwise, such factors or multiples shall be  
271 reduced uniformly among all insurers to reflect the estimated  
272 claims-paying capacity.

273 (e)1. Except as provided in subparagraphs 2. and 3., the  
274 contract shall provide that if an insurer demonstrates to the  
275 board that it is likely to qualify for reimbursement under the  
276 contract, and demonstrates to the board that the immediate  
277 receipt of moneys from the board is likely to prevent the  
278 insurer from becoming insolvent, the board shall advance the  
279 insurer, at market interest rates, the amounts necessary to  
280 maintain the solvency of the insurer, up to 50 percent of the  
281 board's estimate of the reimbursement due the insurer. The  
282 insurer's reimbursement shall be reduced by an amount equal to  
283 the amount of the advance and interest thereon.

284 2. With respect only to an entity created under s. 627.351,  
285 the contract shall also provide that the board may, upon  
286 application by such entity, advance to such entity, at market  
287 interest rates, up to 90 percent of the lesser of:

288 a. The board's estimate of the amount of reimbursement due  
289 to such entity; or

290 b. The entity's share of the actual reimbursement premium

597-04422-09

20091950c1

291 paid for that contract year, multiplied by the currently  
292 available liquid assets of the fund. In order for the entity to  
293 qualify for an advance under this subparagraph, the entity must  
294 demonstrate to the board that the advance is essential to allow  
295 the entity to pay claims for a covered event and the board must  
296 determine that the fund's assets are sufficient and are  
297 sufficiently liquid to allow the board to make an advance to the  
298 entity and still fulfill the board's reimbursement obligations  
299 to other insurers. The entity's final reimbursement for any  
300 contract year in which an advance has been made under this  
301 subparagraph must be reduced by an amount equal to the amount of  
302 the advance and any interest on such advance. In order to  
303 determine what amounts, if any, are due the entity, the board  
304 may require the entity to report its exposure and its losses at  
305 any time to determine retention levels and reimbursements  
306 payable.

307 3. The contract shall also provide specifically and solely  
308 with respect to any limited apportionment company under s.  
309 627.351(2)(b)3. that the board may, upon application by such  
310 company, advance to such company the amount of the estimated  
311 reimbursement payable to such company as calculated pursuant to  
312 paragraph (d), at market interest rates, if the board determines  
313 that the fund's assets are sufficient and are sufficiently  
314 liquid to permit the board to make an advance to such company  
315 and at the same time fulfill its reimbursement obligations to  
316 the insurers that are participants in the fund. Such company's  
317 final reimbursement for any contract year in which an advance  
318 pursuant to this subparagraph has been made shall be reduced by  
319 an amount equal to the amount of the advance and interest

597-04422-09

20091950c1

320 thereon. In order to determine what amounts, if any, are due to  
321 such company, the board may require such company to report its  
322 exposure and its losses at such times as may be required to  
323 determine retention levels and loss reimbursements payable.

324 (f) In order to ensure that insurers have properly reported  
325 the insured values on which the reimbursement premium is based  
326 and to ensure that insurers have properly reported the losses  
327 for which reimbursements have been made, the board shall  
328 inspect, examine, and verify the records of each insurer's  
329 covered policies at such times as the board deems appropriate  
330 and according to standards established by rule for the specific  
331 purpose of validating the accuracy of exposures and losses  
332 required to be reported under the terms and conditions of the  
333 reimbursement contract. The costs of the examinations shall be  
334 borne by the board. However, in order to remove any incentive  
335 for an insurer to delay preparations for an examination, the  
336 board shall be reimbursed by the insurer for any examination  
337 expenses incurred in addition to the usual and customary costs  
338 of the examination, which additional expenses were incurred as a  
339 result of an insurer's failure, despite proper notice, to be  
340 prepared for the examination or as a result of an insurer's  
341 failure to provide requested information while the examination  
342 is in progress. If the board finds any insurer's records or  
343 other necessary information to be inadequate or inadequately  
344 posted, recorded, or maintained, the board may employ experts to  
345 reconstruct, rewrite, record, post, or maintain such records or  
346 information, at the expense of the insurer being examined, if  
347 such insurer has failed to maintain, complete, or correct such  
348 records or deficiencies after the board has given the insurer

597-04422-09

20091950c1

349 notice and a reasonable opportunity to do so. Any information  
350 contained in an examination report, which information is  
351 described in s. 215.557, is confidential and exempt from the  
352 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
353 Constitution, as provided in s. 215.557. Nothing in this  
354 paragraph expands the exemption in s. 215.557.

355 (g) The contract shall provide that in the event of the  
356 insolvency of an insurer, the fund shall pay directly to the  
357 Florida Insurance Guaranty Association for the benefit of  
358 Florida policyholders of the insurer the net amount of all  
359 reimbursement moneys owed to the insurer. As used in this  
360 paragraph, the term "net amount of all reimbursement moneys"  
361 means that amount which remains after reimbursement for:

362 1. Preliminary or duplicate payments owed to private  
363 reinsurers or other inuring reinsurance payments to private  
364 reinsurers that satisfy statutory or contractual obligations of  
365 the insolvent insurer attributable to covered events to such  
366 reinsurers; or

367 2. Funds owed to a bank or other financial institution to  
368 cover obligations of the insolvent insurer under a credit  
369 agreement that assists the insolvent insurer in paying claims  
370 attributable to covered events.

371  
372 The private reinsurers, banks, or other financial institutions  
373 shall be reimbursed or otherwise paid prior to payment to the  
374 Florida Insurance Guaranty Association, notwithstanding any law  
375 to the contrary. The guaranty association shall pay all claims  
376 up to the maximum amount permitted by chapter 631; thereafter,  
377 any remaining moneys shall be paid pro rata to claims not fully

597-04422-09

20091950c1

378 satisfied. This paragraph does not apply to a joint underwriting  
379 association, risk apportionment plan, or other entity created  
380 under s. 627.351.

381 (5) REIMBURSEMENT PREMIUMS.—

382 (b) The State Board of Administration shall select an  
383 independent consultant to develop a formula for determining the  
384 actuarially indicated premium to be paid to the fund. The  
385 formula shall specify, for each zip code or other limited  
386 geographical area, the amount of premium to be paid by an  
387 insurer for each \$1,000 of insured value under covered policies  
388 in that zip code or other area. In establishing premiums, the  
389 board shall consider the coverage elected under paragraph (4) (b)  
390 and any factors that tend to enhance the actuarial  
391 sophistication of ratemaking for the fund, including  
392 deductibles, type of construction, type of coverage provided,  
393 relative concentration of risks, and other such factors deemed  
394 by the board to be appropriate. The formula must provide for a  
395 cash build-up factor. For the 2009-2010 contract year, the  
396 factor is 5 percent. For the contract year beginning June 1,  
397 2010, and ending December 31, 2010, the factor is 10 percent.  
398 For the 2011 contract year, the factor is 15 percent. For the  
399 2012 contract year, the factor is 20 percent. For the 2013  
400 contract year and thereafter, the factor is 25 percent. The  
401 formula may provide for a procedure to determine the premiums to  
402 be paid by new insurers that begin writing covered policies  
403 after the beginning of a contract year, taking into  
404 consideration when the insurer starts writing covered policies,  
405 the potential exposure of the insurer, the potential exposure of  
406 the fund, the administrative costs to the insurer and to the

597-04422-09

20091950c1

407 fund, and any other factors deemed appropriate by the board. The  
408 formula must be approved by unanimous vote of the board. The  
409 board may, at any time, revise the formula pursuant to the  
410 procedure provided in this paragraph.

411 (17) TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

412 (a) *Findings and intent.*—

413 1. The Legislature finds that:

414 a. Because of temporary disruptions in the market for  
415 catastrophic reinsurance, many property insurers were unable to  
416 procure sufficient amounts of reinsurance for the 2006 hurricane  
417 season or were able to procure such reinsurance only by  
418 incurring substantially higher costs than in prior years.

419 b. The reinsurance market problems were responsible, at  
420 least in part, for substantial premium increases to many  
421 consumers and increases in the number of policies issued by  
422 Citizens Property Insurance Corporation.

423 c. It is likely that the reinsurance market disruptions  
424 will not significantly abate prior to the 2007 hurricane season.

425 2. It is the intent of the Legislature to create options  
426 for insurers to purchase a temporary increased coverage limit  
427 above the statutorily determined limit in subparagraph (4)(c)1.,  
428 applicable for the 2007, 2008, ~~and~~ 2009, 2010, 2011, 2012, and  
429 2013 hurricane seasons, to address market disruptions and enable  
430 insurers, at their option, to procure additional coverage from  
431 the Florida Hurricane Catastrophe Fund.

432 (b) *Applicability of other provisions of this section.*—All  
433 provisions of this section and the rules adopted under this  
434 section apply to the coverage created by this subsection unless  
435 specifically superseded by provisions in this subsection.

597-04422-09

20091950c1

436 (c) *Optional coverage.*—For the contract year commencing  
437 June 1, 2007, and ending May 31, 2008, the contract year  
438 commencing June 1, 2008, and ending May 31, 2009, ~~and~~ the  
439 contract year commencing June 1, 2009, and ending May 31, 2010,  
440 the contract year commencing June 1, 2010, and ending December  
441 31, 2010, the contract year commencing January 1, 2011, and  
442 ending December 31, 2011, the contract year commencing January  
443 1, 2012, and ending December 31, 2012, and the contract year  
444 commencing January 1, 2013, and ending December 31, 2013, the  
445 board shall offer, for each of such years, the optional coverage  
446 as provided in this subsection.

447 (d) *Additional definitions.*—As used in this subsection, the  
448 term:

449 1. "FHCF" means Florida Hurricane Catastrophe Fund.

450 2. "FHCF reimbursement premium" means the premium paid by  
451 an insurer for its coverage as a mandatory participant in the  
452 FHCF, but does not include additional premiums for optional  
453 coverages.

454 3. "Payout multiple" means the number or multiple created  
455 by dividing the statutorily defined claims-paying capacity as  
456 determined in subparagraph (4)(c)1. by the aggregate  
457 reimbursement premiums paid by all insurers estimated or  
458 projected as of calendar year-end.

459 4. "TICL" means the temporary increase in coverage limit.

460 5. "TICL options" means the temporary increase in coverage  
461 options created under this subsection.

462 6. "TICL insurer" means an insurer that has opted to obtain  
463 coverage under the TICL options addendum in addition to the  
464 coverage provided to the insurer under its FHCF reimbursement



597-04422-09

20091950c1

465 contract.

466 7. "TICL reimbursement premium" means the premium charged  
467 by the fund for coverage provided under the TICL option.

468 8. "TICL coverage multiple" means the coverage multiple  
469 when multiplied by an insurer's reimbursement premium that  
470 defines the temporary increase in coverage limit.

471 9. "TICL coverage" means the coverage for an insurer's  
472 losses above the insurer's statutorily determined claims-paying  
473 capacity based on the claims-paying limit in subparagraph  
474 (4)(c)1., which an insurer selects as its temporary increase in  
475 coverage from the fund under the TICL options selected. A TICL  
476 insurer's increased coverage limit options shall be calculated  
477 as follows:

478 a. The board shall calculate and report to each TICL  
479 insurer the TICL coverage multiples based on 12 options for  
480 increasing the insurer's FHCF coverage limit. Each TICL coverage  
481 multiple shall be calculated by dividing \$1 billion, \$2 billion,  
482 \$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7 billion, \$8  
483 billion, \$9 billion, \$10 billion, \$11 billion, or \$12 billion by  
484 the total estimated aggregate FHCF reimbursement premiums for  
485 the 2007-2008 contract year, and the 2008-2009 contract year,  
486 ~~and the 2009-2010 contract year.~~

487 b. For the 2009-2010 contract year, the board shall  
488 calculate and report to each TICL insurer the TICL coverage  
489 multiples based on 10 options for increasing the insurer's FHCF  
490 coverage limit. Each TICL coverage multiple shall be calculated  
491 by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5  
492 billion, \$6 billion, \$7 billion, \$8 billion, \$9 billion, and \$10  
493 billion by the total estimated aggregate FHCF reimbursement

597-04422-09

20091950c1

494 premiums for the 2009-2010 contract year.

495 c. For the contract year beginning June 1, 2010, and ending  
496 December 31, 2010, the board shall calculate and report to each  
497 TICL insurer the TICL coverage multiples based on eight options  
498 for increasing the insurer's FHCF coverage limit. Each TICL  
499 coverage multiple shall be calculated by dividing \$1 billion, \$2  
500 billion, \$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7  
501 billion, and \$8 billion by the total estimated aggregate FHCF  
502 reimbursement premiums for the contract year.

503 d. For the 2011 contract year, the board shall calculate  
504 and report to each TICL insurer the TICL coverage multiples  
505 based on six options for increasing the insurer's FHCF coverage  
506 limit. Each TICL coverage multiple shall be calculated by  
507 dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5  
508 billion, and \$6 billion by the total estimated aggregate FHCF  
509 reimbursement premiums for the 2011 contract year.

510 e. For the 2012 contract year, the board shall calculate  
511 and report to each TICL insurer the TICL coverage multiples  
512 based on four options for increasing the insurer's FHCF coverage  
513 limit. Each TICL coverage multiple shall be calculated by  
514 dividing \$1 billion, \$2 billion, \$3 billion, and \$4 billion by  
515 the total estimated aggregate FHCF reimbursement premiums for  
516 the 2012 contract year.

517 f. For the 2013 contract year, the board shall calculate  
518 and report to each TICL insurer the TICL coverage multiples  
519 based on two options for increasing the insurer's FHCF coverage  
520 limit. Each TICL coverage multiple shall be calculated by  
521 dividing \$1 billion and \$2 billion by the total estimated  
522 aggregate FHCF reimbursement premiums for the 2013 contract

597-04422-09

20091950c1

523 year.

524 ~~g.b.~~ The TICL insurer's increased coverage shall be the  
525 FHCF reimbursement premium multiplied by the TICL coverage  
526 multiple. In order to determine an insurer's total limit of  
527 coverage, an insurer shall add its TICL coverage multiple to its  
528 payout multiple. The total shall represent a number that, when  
529 multiplied by an insurer's FHCF reimbursement premium for a  
530 given reimbursement contract year, defines an insurer's total  
531 limit of FHCF reimbursement coverage for that reimbursement  
532 contract year.

533 10. "TICL options addendum" means an addendum to the  
534 reimbursement contract reflecting the obligations of the fund  
535 and insurers selecting an option to increase an insurer's FHCF  
536 coverage limit.

537 (e) *TICL options addendum.*—

538 1. The TICL options addendum shall provide for  
539 reimbursement of TICL insurers for covered events occurring  
540 between June 1, 2007, and May 31, 2008, ~~and~~ between June 1,  
541 2008, and May 31, 2009, ~~or~~ between June 1, 2009, and May 31,  
542 2010, between June 1, 2010, and December 31, 2010, between  
543 January 1, 2011, and December 31, 2011, between January 1, 2012,  
544 and December 31, 2012, or between January 1, 2013, and December  
545 31, 2013, in exchange for the TICL reimbursement premium paid  
546 into the fund under paragraph (f). Any insurer writing covered  
547 policies has the option of selecting an increased limit of  
548 coverage under the TICL options addendum and shall select such  
549 coverage at the time that it executes the FHCF reimbursement  
550 contract.

551 2. The TICL addendum shall contain a promise by the board

597-04422-09

20091950c1

552 to reimburse the TICL insurer for 45 percent, 75 percent, or 90  
553 percent of its losses from each covered event in excess of the  
554 insurer's retention, plus 5 percent of the reimbursed losses to  
555 cover loss adjustment expenses. The percentage shall be the same  
556 as the coverage level selected by the insurer under paragraph  
557 (4) (b) .

558 3. The TICL addendum shall provide that reimbursement  
559 amounts shall not be reduced by reinsurance paid or payable to  
560 the insurer from other sources.

561 4. The priorities, schedule, and method of reimbursements  
562 under the TICL addendum shall be the same as provided under  
563 subsection (4) .

564 (f) *TICL reimbursement premiums.*—Each TICL insurer shall  
565 pay to the fund, in the manner and at the time provided in the  
566 reimbursement contract for payment of reimbursement premiums, a  
567 TICL reimbursement premium determined as specified in subsection  
568 (5), except that a cash build-up factor does not apply to the  
569 TICL reimbursement premiums. However, the TICL reimbursement  
570 premium shall be increased in contract year 2009-2010 by a  
571 factor of two, in the contract year beginning June 1, 2010, and  
572 ending December 31, 2010, by a factor of three, in the 2011  
573 contract year by a factor of four, in the 2012 contract year by  
574 a factor of five, and in the 2013 contract year by a factor of  
575 six.

576 (g) *Effect on claims-paying capacity of the fund.*—For the  
577 contract terms commencing June 1, 2007, June 1, 2008, ~~and~~ June  
578 1, 2009, June 1, 2010, January 1, 2011, January 1, 2012, and  
579 January 1, 2013, the program created by this subsection shall  
580 increase the claims-paying capacity of the fund as provided in

597-04422-09

20091950c1

581 subparagraph (4)(c)1. by an amount not to exceed \$12 billion and  
582 shall depend on the TICL coverage options selected and the  
583 number of insurers that select the TICL optional coverage. The  
584 additional capacity shall apply only to the additional coverage  
585 provided under the TICL options and shall not otherwise affect  
586 any insurer's reimbursement from the fund if the insurer chooses  
587 not to select the temporary option to increase its limit of  
588 coverage under the FHCF.

589 ~~(h) Increasing the claims-paying capacity of the fund. For~~  
590 ~~the contract years commencing June 1, 2007, June 1, 2008, and~~  
591 ~~June 1, 2009, the board may increase the claims-paying capacity~~  
592 ~~of the fund as provided in paragraph (g) by an amount not to~~  
593 ~~exceed \$4 billion in four \$1 billion options and shall depend on~~  
594 ~~the TICL coverage options selected and the number of insurers~~  
595 ~~that select the TICL optional coverage. Each insurer's TICL~~  
596 ~~premium shall be calculated based upon the additional limit of~~  
597 ~~increased coverage that the insurer selects. Such limit is~~  
598 ~~determined by multiplying the TICL multiple associated with one~~  
599 ~~of the four options times the insurer's FHCF reimbursement~~  
600 ~~premium. The reimbursement premium associated with the~~  
601 ~~additional coverage provided in this paragraph shall be~~  
602 ~~determined as specified in subsection (5).~~

603 Section 2. Subsections (2) and (5) of section 627.062,  
604 Florida Statutes, are amended to read:

605 627.062 Rate standards.—

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

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

597-04422-09

20091950c1

610 written in this state. A copy of rates, rating schedules, rating  
611 manuals, premium credits or discount schedules, and surcharge  
612 schedules, and changes thereto, shall be filed with the office  
613 under one of the following procedures except as provided in  
614 subparagraph 3.:

615       1. If the filing is made at least 90 days before the  
616 proposed effective date and the filing is not implemented during  
617 the office's review of the filing and any proceeding and  
618 judicial review, then such filing shall be considered a "file  
619 and use" filing. In such case, the office shall finalize its  
620 review by issuance of a notice of intent to approve or a notice  
621 of intent to disapprove within 90 days after receipt of the  
622 filing. The notice of intent to approve and the notice of intent  
623 to disapprove constitute agency action for purposes of the  
624 Administrative Procedure Act. Requests for supporting  
625 information, requests for mathematical or mechanical  
626 corrections, or notification to the insurer by the office of its  
627 preliminary findings shall not toll the 90-day period during any  
628 such proceedings and subsequent judicial review. The rate shall  
629 be deemed approved if the office does not issue a notice of  
630 intent to approve or a notice of intent to disapprove within 90  
631 days after receipt of the filing.

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

597-04422-09

20091950c1

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

646           (b) Upon receiving a rate filing, the office shall review  
647 the rate filing to determine if a rate is excessive, inadequate,  
648 or unfairly discriminatory, except as provided in paragraph (k)  
649 or paragraph (l). In making that determination, the office  
650 shall, in accordance with generally accepted and reasonable  
651 actuarial techniques, consider the following factors:

652           1. Past and prospective loss experience within and without  
653 this state.

654           2. Past and prospective expenses.

655           3. The degree of competition among insurers for the risk  
656 insured.

657           4. Investment income reasonably expected by the insurer,  
658 consistent with the insurer's investment practices, from  
659 investable premiums anticipated in the filing, plus any other  
660 expected income from currently invested assets representing the  
661 amount expected on unearned premium reserves and loss reserves.  
662 The commission may adopt rules using reasonable techniques of  
663 actuarial science and economics to specify the manner in which  
664 insurers shall calculate investment income attributable to such  
665 classes of insurance written in this state and the manner in  
666 which such investment income shall be used to calculate  
667 insurance rates. Such manner shall contemplate allowances for an

597-04422-09

20091950c1

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

671 5. The reasonableness of the judgment reflected in the  
672 filing.

673 6. Dividends, savings, or unabsorbed premium deposits  
674 allowed or returned to Florida policyholders, members, or  
675 subscribers.

676 7. The adequacy of loss reserves.

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

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

683 10. Conflagration and catastrophe hazards, if applicable.

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

688 12. A reasonable margin for underwriting profit and  
689 contingencies.

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

691 14. Other relevant factors which impact upon the frequency  
692 or severity of claims or upon expenses.

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



597-04422-09

20091950c1

697 experience is available.

698 (d) If conflagration or catastrophe hazards are given  
699 consideration by an insurer in its rates or rating plan,  
700 including surcharges and discounts, the insurer shall establish  
701 a reserve for that portion of the premium allocated to such  
702 hazard and shall maintain the premium in a catastrophe reserve.  
703 Any removal of such premiums from the reserve for purposes other  
704 than paying claims associated with a catastrophe or purchasing  
705 reinsurance for catastrophes shall be subject to approval of the  
706 office. Any ceding commission received by an insurer purchasing  
707 reinsurance for catastrophes shall be placed in the catastrophe  
708 reserve.

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

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

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

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

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

597-04422-09

20091950c1

726 surcharges, shall be deemed unfairly discriminatory if it fails  
727 to clearly and equitably reflect consideration of the  
728 policyholder's participation in a risk management program  
729 adopted pursuant to s. 627.0625.

730 5. A rate shall be deemed inadequate as to the premium  
731 charged to a risk or group of risks if discounts or credits are  
732 allowed which exceed a reasonable reflection of expense savings  
733 and reasonably expected loss experience from the risk or group  
734 of risks.

735 6. A rate shall be deemed unfairly discriminatory as to a  
736 risk or group of risks if the application of premium discounts,  
737 credits, or surcharges among such risks does not bear a  
738 reasonable relationship to the expected loss and expense  
739 experience among the various risks.

740 (f) In reviewing a rate filing, the office may require the  
741 insurer to provide at the insurer's expense all information  
742 necessary to evaluate the condition of the company and the  
743 reasonableness of the filing according to the criteria  
744 enumerated in this section.

745 (g) The office may at any time review a rate, rating  
746 schedule, rating manual, or rate change; the pertinent records  
747 of the insurer; and market conditions. If the office finds on a  
748 preliminary basis that a rate may be excessive, inadequate, or  
749 unfairly discriminatory, the office shall initiate proceedings  
750 to disapprove the rate and shall so notify the insurer. However,  
751 the office may not disapprove as excessive any rate for which it  
752 has given final approval or which has been deemed approved for a  
753 period of 1 year after the effective date of the filing unless  
754 the office finds that a material misrepresentation or material

597-04422-09

20091950c1

755 error was made by the insurer or was contained in the filing.  
756 Upon being so notified, the insurer or rating organization  
757 shall, within 60 days, file with the office all information  
758 which, in the belief of the insurer or organization, proves the  
759 reasonableness, adequacy, and fairness of the rate or rate  
760 change. The office shall issue a notice of intent to approve or  
761 a notice of intent to disapprove pursuant to the procedures of  
762 paragraph (a) within 90 days after receipt of the insurer's  
763 initial response. In such instances and in any administrative  
764 proceeding relating to the legality of the rate, the insurer or  
765 rating organization shall carry the burden of proof by a  
766 preponderance of the evidence to show that the rate is not  
767 excessive, inadequate, or unfairly discriminatory. After the  
768 office notifies an insurer that a rate may be excessive,  
769 inadequate, or unfairly discriminatory, unless the office  
770 withdraws the notification, the insurer shall not alter the rate  
771 except to conform with the office's notice until the earlier of  
772 120 days after the date the notification was provided or 180  
773 days after the date of the implementation of the rate. The  
774 office may, subject to chapter 120, disapprove without the 60-  
775 day notification any rate increase filed by an insurer within  
776 the prohibited time period or during the time that the legality  
777 of the increased rate is being contested.

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

597-04422-09

20091950c1

784 subparagraph (a)2., that premiums charged each policyholder  
785 constituting the portion of the rate above that which was  
786 actuarially justified be returned to such policyholder in the  
787 form of a credit or refund. If the office finds that an  
788 insurer's rate or rate change is inadequate, the new rate or  
789 rate schedule filed with the office in response to such a  
790 finding shall be applicable only to new or renewal business of  
791 the insurer written on or after the effective date of the  
792 responsive filing.

793 (i) Except as otherwise specifically provided in this  
794 chapter, the office shall not prohibit any insurer, including  
795 any residual market plan or joint underwriting association, from  
796 paying acquisition costs based on the full amount of premium, as  
797 defined in s. 627.403, applicable to any policy, or prohibit any  
798 such insurer from including the full amount of acquisition costs  
799 in a rate filing.

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

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

804 1. A rate filing for residential property insurance  
805 relating to rate changes, rating factors, territories,  
806 classification, discounts, credits, or similar matters with  
807 respect to any policy form, including endorsements issued with  
808 the form, is exempt from a determination by the office that the  
809 rate is excessive or unfairly discriminatory under s. 627.062  
810 if:

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

597-04422-09

20091950c1

813 the rate increase authorized by s. 627.0629(5), plus the actual  
814 additional cost paid due to the application of s.  
815 215.555(17)(f), plus the actual additional cost paid due to the  
816 application by the Florida Hurricane Catastrophe Fund of a cash  
817 buildup factor pursuant to s. 215.555(5)(b); and

818 b. All changes specified in the filing do not result in an  
819 overall premium increase of more than 10 percent statewide, and  
820 12 percent for an individual policyholder, for reasons related  
821 solely to the rate change.

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

826 3. A rate filing is not exempt under subparagraph 1. if the  
827 filing exceeds the overall premium increases authorized under  
828 subparagraph 1. in any 12-month period. An insurer must proceed  
829 under other provisions of this section or other provisions of  
830 law if the insurer seeks to exceed the premium or rate  
831 limitations of subparagraph 1.

832 4. This paragraph does not limit the authority of the  
833 office to disapprove a rate as inadequate or to disapprove a  
834 filing for the use of unfairly discriminatory rating factors  
835 pursuant to s. 626.9541. An insurer that elects to implement a  
836 rate change under this paragraph must file its rate filing with  
837 the office at least 40 days before the effective date of the  
838 rate change. The office shall have 30 days after the date that  
839 the rate filing is submitted to review the filing and determine  
840 if the rate is inadequate or uses unfairly discriminatory rating  
841 factors. Absent a finding by the office within the 30-day period

597-04422-09

20091950c1

842 that the rate is inadequate or that the insurer has used  
843 unfairly discriminatory rating factors, the filing is deemed  
844 approved. If the office finds during the 30-day period that the  
845 filing will result in inadequate premiums or otherwise endanger  
846 the insurer's solvency, the rate increase shall proceed pending  
847 additional action by the office to ensure the adequacy of the  
848 rate.

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

851

852 The provisions of this subsection do ~~shall~~ not apply to workers'  
853 compensation and employer's liability insurance and to motor  
854 vehicle insurance.

855 (5) With respect to a rate filing involving coverage of the  
856 type for which the insurer is required to pay a reimbursement  
857 premium to the Florida Hurricane Catastrophe Fund, the insurer  
858 may fully recoup in its property insurance premiums any  
859 reimbursement premiums paid to the Florida Hurricane Catastrophe  
860 Fund, together with reasonable costs of other reinsurance, but  
861 except as otherwise provided in this section, may not recoup  
862 reinsurance costs that duplicate coverage provided by the  
863 Florida Hurricane Catastrophe Fund. An insurer may not recoup  
864 more than 1 year of reimbursement premium at a time. Any under-  
865 recoupment from the prior year may be added to the following  
866 year's reimbursement premium and any over-recoupment shall be  
867 subtracted from the following year's reimbursement premium.

868 Section 3. Section 627.0621, Florida Statutes, is amended  
869 to read:

870 627.0621 Transparency in rate regulation.—

597-04422-09

20091950c1

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

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

874 (b) "Recommendation" means any proposed, preliminary, or  
875 final recommendation from an office actuary reviewing a rate  
876 filing with respect to the issue of approval or disapproval of  
877 the rate filing or with respect to rate indications that the  
878 office would consider acceptable.

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

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

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

885 (c) A statement describing any assumptions or methods that  
886 deviate from the actuarial standards of practice of the Casualty  
887 Actuarial Society or the American Academy of Actuaries,  
888 including an explanation of the nature, rationale, and effect of  
889 the deviation.

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

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

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

896 ~~(3) ATTORNEY-CLIENT PRIVILEGE; WORK PRODUCT. It is the~~  
897 ~~intent of the Legislature that the principles of the public~~  
898 ~~records and open meetings laws apply to the assertion of~~  
899 ~~attorney-client privilege and work product confidentiality by~~

597-04422-09

20091950c1

900 ~~the office in connection with a challenge to its actions on a~~  
901 ~~rate filing. Therefore, in any administrative or judicial~~  
902 ~~proceeding relating to a rate filing, attorney-client privilege~~  
903 ~~and work product exemptions from disclosure do not apply to~~  
904 ~~communications with office attorneys or records prepared by or~~  
905 ~~at the direction of an office attorney, except when the~~  
906 ~~conditions of paragraphs (a) and (b) have been met:~~

907 ~~(a) The communication or record reflects a mental~~  
908 ~~impression, conclusion, litigation strategy, or legal theory of~~  
909 ~~the attorney or office that was prepared exclusively for civil~~  
910 ~~or criminal litigation or adversarial administrative~~  
911 ~~proceedings.~~

912 ~~(b) The communication occurred or the record was prepared~~  
913 ~~after the initiation of an action in a court of competent~~  
914 ~~jurisdiction, after the issuance of a notice of intent to deny a~~  
915 ~~rate filing, or after the filing of a request for a proceeding~~  
916 ~~under ss. 120.569 and 120.57.~~

917 Section 4. Subsection (5) of section 627.0629, Florida  
918 Statutes, is amended to read:

919 627.0629 Residential property insurance; rate filings.—

920 (5) In order to provide an appropriate transition period,  
921 an insurer may, in its sole discretion, implement an approved  
922 rate filing for residential property insurance over a period of  
923 years. An insurer electing to phase in its rate filing must  
924 provide an informational notice to the office setting out its  
925 schedule for implementation of the phased-in rate filing. An  
926 insurer may include in its rate the actual cost of reinsurance  
927 that duplicates available coverage of the Temporary Increase in  
928 Coverage Limits, TICL, from the Florida Hurricane Catastrophe



597-04422-09

20091950c1

929 Fund. The insurer may include the cost of reinsurance in its  
930 rate even if the insurer does not purchase the TICL layer.  
931 However, this cost for reinsurance may not include any expense  
932 or profit load or result in a total annual base rate increase in  
933 excess of 10 percent.

934 Section 5. Paragraphs (a), (c), (m), and (x) of subsection  
935 (6) of section 627.351, Florida Statutes, are amended to read:

936 627.351 Insurance risk apportionment plans.—

937 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

938 (a)1. It is the public purpose of this subsection to ensure  
939 the existence of an orderly market for property insurance for  
940 Floridians and Florida businesses. The Legislature finds that  
941 private insurers are unwilling or unable to provide affordable  
942 property insurance coverage in this state to the extent sought  
943 and needed. The absence of affordable property insurance  
944 threatens the public health, safety, and welfare and likewise  
945 threatens the economic health of the state. The state therefore  
946 has a compelling public interest and a public purpose to assist  
947 in assuring that property in the state is insured and that it is  
948 insured at affordable rates so as to facilitate the remediation,  
949 reconstruction, and replacement of damaged or destroyed property  
950 in order to reduce or avoid the negative effects otherwise  
951 resulting to the public health, safety, and welfare, to the  
952 economy of the state, and to the revenues of the state and local  
953 governments which are needed to provide for the public welfare.  
954 It is necessary, therefore, to provide affordable property  
955 insurance to applicants who are in good faith entitled to  
956 procure insurance through the voluntary market but are unable to  
957 do so. The Legislature intends by this subsection that

597-04422-09

20091950c1

958 affordable property insurance be provided and that it continue  
959 to be provided, as long as necessary, through Citizens Property  
960 Insurance Corporation, a government entity that is an integral  
961 part of the state, and that is not a private insurance company.  
962 To that end, Citizens Property Insurance Corporation shall  
963 strive to increase the availability of affordable property  
964 insurance in this state, while achieving efficiencies and  
965 economies, and while providing service to policyholders,  
966 applicants, and agents which is no less than the quality  
967 generally provided in the voluntary market, for the achievement  
968 of the foregoing public purposes. Because it is essential for  
969 this government entity to have the maximum financial resources  
970 to pay claims following a catastrophic hurricane, it is the  
971 intent of the Legislature that Citizens Property Insurance  
972 Corporation continue to be an integral part of the state and  
973 that the income of the corporation be exempt from federal income  
974 taxation and that interest on the debt obligations issued by the  
975 corporation be exempt from federal income taxation.

976       2. The Residential Property and Casualty Joint Underwriting  
977 Association originally created by this statute shall be known,  
978 as of July 1, 2002, as the Citizens Property Insurance  
979 Corporation. The corporation shall provide insurance for  
980 residential and commercial property, for applicants who are in  
981 good faith entitled, but are unable, to procure insurance  
982 through the voluntary market. The corporation shall operate  
983 pursuant to a plan of operation approved by order of the  
984 Financial Services Commission. The plan is subject to continuous  
985 review by the commission. The commission may, by order, withdraw  
986 approval of all or part of a plan if the commission determines

597-04422-09

20091950c1

987 that conditions have changed since approval was granted and that  
988 the purposes of the plan require changes in the plan. The  
989 corporation shall continue to operate pursuant to the plan of  
990 operation approved by the Office of Insurance Regulation until  
991 October 1, 2006. For the purposes of this subsection,  
992 residential coverage includes both personal lines residential  
993 coverage, which consists of the type of coverage provided by  
994 homeowner's, mobile home owner's, dwelling, tenant's,  
995 condominium unit owner's, and similar policies, and commercial  
996 lines residential coverage, which consists of the type of  
997 coverage provided by condominium association, apartment  
998 building, and similar policies.

999 3. Effective January 1, 2009, a personal lines residential  
1000 structure that has a dwelling replacement cost of \$2 million or  
1001 more, or a single condominium unit that has a combined dwelling  
1002 and content replacement cost of \$2 million or more is not  
1003 eligible for coverage by the corporation. Such dwellings insured  
1004 by the corporation on December 31, 2008, may continue to be  
1005 covered by the corporation until the end of the policy term.  
1006 However, such dwellings that are insured by the corporation and  
1007 become ineligible for coverage due to the provisions of this  
1008 subparagraph may reapply and obtain coverage if the property  
1009 owner provides the corporation with a sworn affidavit from one  
1010 or more insurance agents, on a form provided by the corporation,  
1011 stating that the agents have made their best efforts to obtain  
1012 coverage and that the property has been rejected for coverage by  
1013 at least one authorized insurer and at least three surplus lines  
1014 insurers. If such conditions are met, the dwelling may be  
1015 insured by the corporation for up to 3 years, after which time

597-04422-09

20091950c1

1016 the dwelling is ineligible for coverage. The office shall  
1017 approve the method used by the corporation for valuing the  
1018 dwelling replacement cost for the purposes of this subparagraph.  
1019 If a policyholder is insured by the corporation prior to being  
1020 determined to be ineligible pursuant to this subparagraph and  
1021 such policyholder files a lawsuit challenging the determination,  
1022 the policyholder may remain insured by the corporation until the  
1023 conclusion of the litigation.

1024 4. It is the intent of the Legislature that policyholders,  
1025 applicants, and agents of the corporation receive service and  
1026 treatment of the highest possible level but never less than that  
1027 generally provided in the voluntary market. It also is intended  
1028 that the corporation be held to service standards no less than  
1029 those applied to insurers in the voluntary market by the office  
1030 with respect to responsiveness, timeliness, customer courtesy,  
1031 and overall dealings with policyholders, applicants, or agents  
1032 of the corporation.

1033 5. Effective January 1, 2009, a personal lines residential  
1034 structure that is located in the "wind-borne debris region," as  
1035 defined in s. 1609.2, International Building Code (2006), and  
1036 that has an insured value on the structure of \$750,000 or more  
1037 is not eligible for coverage by the corporation unless the  
1038 structure has opening protections as required under the Florida  
1039 Building Code for a newly constructed residential structure in  
1040 that area. A residential structure shall be deemed to comply  
1041 with the requirements of this subparagraph if it has shutters or  
1042 opening protections on all openings and if such opening  
1043 protections complied with the Florida Building Code at the time  
1044 they were installed. ~~Effective January 1, 2010, for personal~~

597-04422-09

20091950c1

1045 ~~lines residential property insured by the corporation that is~~  
1046 ~~located in the wind-borne debris region and has an insured value~~  
1047 ~~on the structure of \$500,000 or more, a prospective purchaser of~~  
1048 ~~any such residential property must be provided by the seller a~~  
1049 ~~written disclosure that contains the structure's windstorm~~  
1050 ~~mitigation rating based on the uniform home grading scale~~  
1051 ~~adopted under s. 215.55865. Such rating shall be provided to the~~  
1052 ~~purchaser at or before the time the purchaser executes a~~  
1053 ~~contract for sale and purchase.~~

1054 (c) The plan of operation of the corporation:

1055 1. Must provide for adoption of residential property and  
1056 casualty insurance policy forms and commercial residential and  
1057 nonresidential property insurance forms, which forms must be  
1058 approved by the office prior to use. The corporation shall adopt  
1059 the following policy forms:

1060 a. Standard personal lines policy forms that are  
1061 comprehensive multiperil policies providing full coverage of a  
1062 residential property equivalent to the coverage provided in the  
1063 private insurance market under an HO-3, HO-4, or HO-6 policy.

1064 b. Basic personal lines policy forms that are policies  
1065 similar to an HO-8 policy or a dwelling fire policy that provide  
1066 coverage meeting the requirements of the secondary mortgage  
1067 market, but which coverage is more limited than the coverage  
1068 under a standard policy.

1069 c. Commercial lines residential and nonresidential policy  
1070 forms that are generally similar to the basic perils of full  
1071 coverage obtainable for commercial residential structures and  
1072 commercial nonresidential structures in the admitted voluntary  
1073 market.

597-04422-09

20091950c1

1074 d. Personal lines and commercial lines residential property  
1075 insurance forms that cover the peril of wind only. The forms are  
1076 applicable only to residential properties located in areas  
1077 eligible for coverage under the high-risk account referred to in  
1078 sub-subparagraph (b)2.a.

1079 e. Commercial lines nonresidential property insurance forms  
1080 that cover the peril of wind only. The forms are applicable only  
1081 to nonresidential properties located in areas eligible for  
1082 coverage under the high-risk account referred to in sub-  
1083 subparagraph (b)2.a.

1084 f. The corporation may adopt variations of the policy forms  
1085 listed in sub-subparagraphs a.-e. that contain more restrictive  
1086 coverage.

1087 2.a. Must provide that the corporation adopt a program in  
1088 which the corporation and authorized insurers enter into quota  
1089 share primary insurance agreements for hurricane coverage, as  
1090 defined in s. 627.4025(2) (a), for eligible risks, and adopt  
1091 property insurance forms for eligible risks which cover the  
1092 peril of wind only. As used in this subsection, the term:

1093 (I) "Quota share primary insurance" means an arrangement in  
1094 which the primary hurricane coverage of an eligible risk is  
1095 provided in specified percentages by the corporation and an  
1096 authorized insurer. The corporation and authorized insurer are  
1097 each solely responsible for a specified percentage of hurricane  
1098 coverage of an eligible risk as set forth in a quota share  
1099 primary insurance agreement between the corporation and an  
1100 authorized insurer and the insurance contract. The  
1101 responsibility of the corporation or authorized insurer to pay  
1102 its specified percentage of hurricane losses of an eligible

597-04422-09

20091950c1

1103 risk, as set forth in the quota share primary insurance  
1104 agreement, may not be altered by the inability of the other  
1105 party to the agreement to pay its specified percentage of  
1106 hurricane losses. Eligible risks that are provided hurricane  
1107 coverage through a quota share primary insurance arrangement  
1108 must be provided policy forms that set forth the obligations of  
1109 the corporation and authorized insurer under the arrangement,  
1110 clearly specify the percentages of quota share primary insurance  
1111 provided by the corporation and authorized insurer, and  
1112 conspicuously and clearly state that neither the authorized  
1113 insurer nor the corporation may be held responsible beyond its  
1114 specified percentage of coverage of hurricane losses.

1115 (II) "Eligible risks" means personal lines residential and  
1116 commercial lines residential risks that meet the underwriting  
1117 criteria of the corporation and are located in areas that were  
1118 eligible for coverage by the Florida Windstorm Underwriting  
1119 Association on January 1, 2002.

1120 b. The corporation may enter into quota share primary  
1121 insurance agreements with authorized insurers at corporation  
1122 coverage levels of 90 percent and 50 percent.

1123 c. If the corporation determines that additional coverage  
1124 levels are necessary to maximize participation in quota share  
1125 primary insurance agreements by authorized insurers, the  
1126 corporation may establish additional coverage levels. However,  
1127 the corporation's quota share primary insurance coverage level  
1128 may not exceed 90 percent.

1129 d. Any quota share primary insurance agreement entered into  
1130 between an authorized insurer and the corporation must provide  
1131 for a uniform specified percentage of coverage of hurricane

597-04422-09

20091950c1

1132 losses, by county or territory as set forth by the corporation  
1133 board, for all eligible risks of the authorized insurer covered  
1134 under the quota share primary insurance agreement.

1135 e. Any quota share primary insurance agreement entered into  
1136 between an authorized insurer and the corporation is subject to  
1137 review and approval by the office. However, such agreement shall  
1138 be authorized only as to insurance contracts entered into  
1139 between an authorized insurer and an insured who is already  
1140 insured by the corporation for wind coverage.

1141 f. For all eligible risks covered under quota share primary  
1142 insurance agreements, the exposure and coverage levels for both  
1143 the corporation and authorized insurers shall be reported by the  
1144 corporation to the Florida Hurricane Catastrophe Fund. For all  
1145 policies of eligible risks covered under quota share primary  
1146 insurance agreements, the corporation and the authorized insurer  
1147 shall maintain complete and accurate records for the purpose of  
1148 exposure and loss reimbursement audits as required by Florida  
1149 Hurricane Catastrophe Fund rules. The corporation and the  
1150 authorized insurer shall each maintain duplicate copies of  
1151 policy declaration pages and supporting claims documents.

1152 g. The corporation board shall establish in its plan of  
1153 operation standards for quota share agreements which ensure that  
1154 there is no discriminatory application among insurers as to the  
1155 terms of quota share agreements, pricing of quota share  
1156 agreements, incentive provisions if any, and consideration paid  
1157 for servicing policies or adjusting claims.

1158 h. The quota share primary insurance agreement between the  
1159 corporation and an authorized insurer must set forth the  
1160 specific terms under which coverage is provided, including, but



597-04422-09

20091950c1

1161 not limited to, the sale and servicing of policies issued under  
1162 the agreement by the insurance agent of the authorized insurer  
1163 producing the business, the reporting of information concerning  
1164 eligible risks, the payment of premium to the corporation, and  
1165 arrangements for the adjustment and payment of hurricane claims  
1166 incurred on eligible risks by the claims adjuster and personnel  
1167 of the authorized insurer. Entering into a quota sharing  
1168 insurance agreement between the corporation and an authorized  
1169 insurer shall be voluntary and at the discretion of the  
1170 authorized insurer.

1171       3. May provide that the corporation may employ or otherwise  
1172 contract with individuals or other entities to provide  
1173 administrative or professional services that may be appropriate  
1174 to effectuate the plan. The corporation shall have the power to  
1175 borrow funds, by issuing bonds or by incurring other  
1176 indebtedness, and shall have other powers reasonably necessary  
1177 to effectuate the requirements of this subsection, including,  
1178 without limitation, the power to issue bonds and incur other  
1179 indebtedness in order to refinance outstanding bonds or other  
1180 indebtedness. The corporation may, but is not required to, seek  
1181 judicial validation of its bonds or other indebtedness under  
1182 chapter 75. The corporation may issue bonds or incur other  
1183 indebtedness, or have bonds issued on its behalf by a unit of  
1184 local government pursuant to subparagraph (p)2., in the absence  
1185 of a hurricane or other weather-related event, upon a  
1186 determination by the corporation, subject to approval by the  
1187 office, that such action would enable it to efficiently meet the  
1188 financial obligations of the corporation and that such  
1189 financings are reasonably necessary to effectuate the

597-04422-09

20091950c1

1190 requirements of this subsection. The corporation is authorized  
1191 to take all actions needed to facilitate tax-free status for any  
1192 such bonds or indebtedness, including formation of trusts or  
1193 other affiliated entities. The corporation shall have the  
1194 authority to pledge assessments, projected recoveries from the  
1195 Florida Hurricane Catastrophe Fund, other reinsurance  
1196 recoverables, market equalization and other surcharges, and  
1197 other funds available to the corporation as security for bonds  
1198 or other indebtedness. In recognition of s. 10, Art. I of the  
1199 State Constitution, prohibiting the impairment of obligations of  
1200 contracts, it is the intent of the Legislature that no action be  
1201 taken whose purpose is to impair any bond indenture or financing  
1202 agreement or any revenue source committed by contract to such  
1203 bond or other indebtedness.

1204 4.a. Must require that the corporation operate subject to  
1205 the supervision and approval of a board of governors consisting  
1206 of eight individuals who are residents of this state, from  
1207 different geographical areas of this state. The Governor, the  
1208 Chief Financial Officer, the President of the Senate, and the  
1209 Speaker of the House of Representatives shall each appoint two  
1210 members of the board. At least one of the two members appointed  
1211 by each appointing officer must have demonstrated expertise in  
1212 insurance. The Chief Financial Officer shall designate one of  
1213 the appointees as chair. All board members serve at the pleasure  
1214 of the appointing officer. All members of the board of governors  
1215 are subject to removal at will by the officers who appointed  
1216 them. All board members, including the chair, must be appointed  
1217 to serve for 3-year terms beginning annually on a date  
1218 designated by the plan. However, for the first term beginning on

597-04422-09

20091950c1

1219 or after July 1, 2009, each appointing officer shall appoint one  
1220 member of the board for a 2-year term and one member for a 3-  
1221 year term. Any board vacancy shall be filled for the unexpired  
1222 term by the appointing officer. The Chief Financial Officer  
1223 shall appoint a technical advisory group to provide information  
1224 and advice to the board of governors in connection with the  
1225 board's duties under this subsection. The executive director and  
1226 senior managers of the corporation shall be engaged by the board  
1227 and serve at the pleasure of the board. Any executive director  
1228 appointed on or after July 1, 2006, is subject to confirmation  
1229 by the Senate. The executive director is responsible for  
1230 employing other staff as the corporation may require, subject to  
1231 review and concurrence by the board.

1232       b. The board shall create a Market Accountability Advisory  
1233 Committee to assist the corporation in developing awareness of  
1234 its rates and its customer and agent service levels in  
1235 relationship to the voluntary market insurers writing similar  
1236 coverage. The members of the advisory committee shall consist of  
1237 the following 11 persons, one of whom must be elected chair by  
1238 the members of the committee: four representatives, one  
1239 appointed by the Florida Association of Insurance Agents, one by  
1240 the Florida Association of Insurance and Financial Advisors, one  
1241 by the Professional Insurance Agents of Florida, and one by the  
1242 Latin American Association of Insurance Agencies; three  
1243 representatives appointed by the insurers with the three highest  
1244 voluntary market share of residential property insurance  
1245 business in the state; one representative from the Office of  
1246 Insurance Regulation; one consumer appointed by the board who is  
1247 insured by the corporation at the time of appointment to the

597-04422-09

20091950c1

1248 committee; one representative appointed by the Florida  
1249 Association of Realtors; and one representative appointed by the  
1250 Florida Bankers Association. All members must serve for 3-year  
1251 terms and may serve for consecutive terms. The committee shall  
1252 report to the corporation at each board meeting on insurance  
1253 market issues which may include rates and rate competition with  
1254 the voluntary market; service, including policy issuance, claims  
1255 processing, and general responsiveness to policyholders,  
1256 applicants, and agents; and matters relating to depopulation.

1257 5. Must provide a procedure for determining the eligibility  
1258 of a risk for coverage, as follows:

1259 a. Subject to the provisions of s. 627.3517, with respect  
1260 to personal lines residential risks, if the risk is offered  
1261 coverage from an authorized insurer at the insurer's approved  
1262 rate under either a standard policy including wind coverage or,  
1263 if consistent with the insurer's underwriting rules as filed  
1264 with the office, a basic policy including wind coverage, for a  
1265 new application to the corporation for coverage, the risk is not  
1266 eligible for any policy issued by the corporation unless the  
1267 premium for coverage from the authorized insurer is more than 15  
1268 percent greater than the premium for comparable coverage from  
1269 the corporation. If the risk is not able to obtain any such  
1270 offer, the risk is eligible for either a standard policy  
1271 including wind coverage or a basic policy including wind  
1272 coverage issued by the corporation; however, if the risk could  
1273 not be insured under a standard policy including wind coverage  
1274 regardless of market conditions, the risk shall be eligible for  
1275 a basic policy including wind coverage unless rejected under  
1276 subparagraph 8. However, with regard to a policyholder of the

597-04422-09

20091950c1

1277 corporation or a policyholder removed from the corporation  
1278 through an assumption agreement until the end of the assumption  
1279 period, the policyholder remains eligible for coverage from the  
1280 corporation regardless of any offer of coverage from an  
1281 authorized insurer or surplus lines insurer. The corporation  
1282 shall determine the type of policy to be provided on the basis  
1283 of objective standards specified in the underwriting manual and  
1284 based on generally accepted underwriting practices.

1285 (I) If the risk accepts an offer of coverage through the  
1286 market assistance plan or an offer of coverage through a  
1287 mechanism established by the corporation before a policy is  
1288 issued to the risk by the corporation or during the first 30  
1289 days of coverage by the corporation, and the producing agent who  
1290 submitted the application to the plan or to the corporation is  
1291 not currently appointed by the insurer, the insurer shall:

1292 (A) Pay to the producing agent of record of the policy, for  
1293 the first year, an amount that is the greater of the insurer's  
1294 usual and customary commission for the type of policy written or  
1295 a fee equal to the usual and customary commission of the  
1296 corporation; or

1297 (B) Offer to allow the producing agent of record of the  
1298 policy to continue servicing the policy for a period of not less  
1299 than 1 year and offer to pay the agent the greater of the  
1300 insurer's or the corporation's usual and customary commission  
1301 for the type of policy written.

1302  
1303 If the producing agent is unwilling or unable to accept  
1304 appointment, the new insurer shall pay the agent in accordance  
1305 with sub-sub-sub-subparagraph (A).

597-04422-09

20091950c1

1306 (II) When the corporation enters into a contractual  
1307 agreement for a take-out plan, the producing agent of record of  
1308 the corporation policy is entitled to retain any unearned  
1309 commission on the policy, and the insurer shall:

1310 (A) Pay to the producing agent of record of the corporation  
1311 policy, for the first year, an amount that is the greater of the  
1312 insurer's usual and customary commission for the type of policy  
1313 written or a fee equal to the usual and customary commission of  
1314 the corporation; or

1315 (B) Offer to allow the producing agent of record of the  
1316 corporation policy to continue servicing the policy for a period  
1317 of not less than 1 year and offer to pay the agent the greater  
1318 of the insurer's or the corporation's usual and customary  
1319 commission for the type of policy written.

1320  
1321 If the producing agent is unwilling or unable to accept  
1322 appointment, the new insurer shall pay the agent in accordance  
1323 with sub-sub-sub-subparagraph (A).

1324 b. With respect to commercial lines residential risks, for  
1325 a new application to the corporation for coverage, if the risk  
1326 is offered coverage under a policy including wind coverage from  
1327 an authorized insurer at its approved rate, the risk is not  
1328 eligible for any policy issued by the corporation unless the  
1329 premium for coverage from the authorized insurer is more than 15  
1330 percent greater than the premium for comparable coverage from  
1331 the corporation. If the risk is not able to obtain any such  
1332 offer, the risk is eligible for a policy including wind coverage  
1333 issued by the corporation. However, with regard to a  
1334 policyholder of the corporation or a policyholder removed from

597-04422-09

20091950c1

1335 the corporation through an assumption agreement until the end of  
1336 the assumption period, the policyholder remains eligible for  
1337 coverage from the corporation regardless of any offer of  
1338 coverage from an authorized insurer or surplus lines insurer.

1339 (I) If the risk accepts an offer of coverage through the  
1340 market assistance plan or an offer of coverage through a  
1341 mechanism established by the corporation before a policy is  
1342 issued to the risk by the corporation or during the first 30  
1343 days of coverage by the corporation, and the producing agent who  
1344 submitted the application to the plan or the corporation is not  
1345 currently appointed by the insurer, the insurer shall:

1346 (A) Pay to the producing agent of record of the policy, for  
1347 the first year, an amount that is the greater of the insurer's  
1348 usual and customary commission for the type of policy written or  
1349 a fee equal to the usual and customary commission of the  
1350 corporation; or

1351 (B) Offer to allow the producing agent of record of the  
1352 policy to continue servicing the policy for a period of not less  
1353 than 1 year and offer to pay the agent the greater of the  
1354 insurer's or the corporation's usual and customary commission  
1355 for the type of policy written.

1356  
1357 If the producing agent is unwilling or unable to accept  
1358 appointment, the new insurer shall pay the agent in accordance  
1359 with sub-sub-sub-subparagraph (A).

1360 (II) When the corporation enters into a contractual  
1361 agreement for a take-out plan, the producing agent of record of  
1362 the corporation policy is entitled to retain any unearned  
1363 commission on the policy, and the insurer shall:

597-04422-09

20091950c1

1364 (A) Pay to the producing agent of record of the corporation  
1365 policy, for the first year, an amount that is the greater of the  
1366 insurer's usual and customary commission for the type of policy  
1367 written or a fee equal to the usual and customary commission of  
1368 the corporation; or

1369 (B) Offer to allow the producing agent of record of the  
1370 corporation policy to continue servicing the policy for a period  
1371 of not less than 1 year and offer to pay the agent the greater  
1372 of the insurer's or the corporation's usual and customary  
1373 commission for the type of policy written.

1374  
1375 If the producing agent is unwilling or unable to accept  
1376 appointment, the new insurer shall pay the agent in accordance  
1377 with sub-sub-sub-subparagraph (A).

1378 c. For purposes of determining comparable coverage under  
1379 sub-subparagraphs a. and b., the comparison shall be based on  
1380 those forms and coverages that are reasonably comparable. The  
1381 corporation may rely on a determination of comparable coverage  
1382 and premium made by the producing agent who submits the  
1383 application to the corporation, made in the agent's capacity as  
1384 the corporation's agent. A comparison may be made solely of the  
1385 premium with respect to the main building or structure only on  
1386 the following basis: the same coverage A or other building  
1387 limits; the same percentage hurricane deductible that applies on  
1388 an annual basis or that applies to each hurricane for commercial  
1389 residential property; the same percentage of ordinance and law  
1390 coverage, if the same limit is offered by both the corporation  
1391 and the authorized insurer; the same mitigation credits, to the  
1392 extent the same types of credits are offered both by the



597-04422-09

20091950c1

1393 corporation and the authorized insurer; the same method for loss  
1394 payment, such as replacement cost or actual cash value, if the  
1395 same method is offered both by the corporation and the  
1396 authorized insurer in accordance with underwriting rules; and  
1397 any other form or coverage that is reasonably comparable as  
1398 determined by the board. If an application is submitted to the  
1399 corporation for wind-only coverage in the high-risk account, the  
1400 premium for the corporation's wind-only policy plus the premium  
1401 for the ex-wind policy that is offered by an authorized insurer  
1402 to the applicant shall be compared to the premium for multiperil  
1403 coverage offered by an authorized insurer, subject to the  
1404 standards for comparison specified in this subparagraph. If the  
1405 corporation or the applicant requests from the authorized  
1406 insurer a breakdown of the premium of the offer by types of  
1407 coverage so that a comparison may be made by the corporation or  
1408 its agent and the authorized insurer refuses or is unable to  
1409 provide such information, the corporation may treat the offer as  
1410 not being an offer of coverage from an authorized insurer at the  
1411 insurer's approved rate.

1412         6. Must include rules for classifications of risks and  
1413 rates therefor.

1414         7. Must provide that if premium and investment income for  
1415 an account attributable to a particular calendar year are in  
1416 excess of projected losses and expenses for the account  
1417 attributable to that year, such excess shall be held in surplus  
1418 in the account. Such surplus shall be available to defray  
1419 deficits in that account as to future years and shall be used  
1420 for that purpose prior to assessing assessable insurers and  
1421 assessable insureds as to any calendar year.

597-04422-09

20091950c1

1422           8. Must provide objective criteria and procedures to be  
1423 uniformly applied for all applicants in determining whether an  
1424 individual risk is so hazardous as to be uninsurable. In making  
1425 this determination and in establishing the criteria and  
1426 procedures, the following shall be considered:

1427           a. Whether the likelihood of a loss for the individual risk  
1428 is substantially higher than for other risks of the same class;  
1429 and

1430           b. Whether the uncertainty associated with the individual  
1431 risk is such that an appropriate premium cannot be determined.

1432  
1433 The acceptance or rejection of a risk by the corporation shall  
1434 be construed as the private placement of insurance, and the  
1435 provisions of chapter 120 shall not apply.

1436           9. Must provide that the corporation shall make its best  
1437 efforts to procure catastrophe reinsurance at reasonable rates,  
1438 to cover its projected 100-year probable maximum loss as  
1439 determined by the board of governors.

1440           10. The policies issued by the corporation must provide  
1441 that, if the corporation or the market assistance plan obtains  
1442 an offer from an authorized insurer to cover the risk at its  
1443 approved rates, the risk is no longer eligible for renewal  
1444 through the corporation, except as otherwise provided in this  
1445 subsection.

1446           11. Corporation policies and applications must include a  
1447 notice that the corporation policy could, under this section, be  
1448 replaced with a policy issued by an authorized insurer that does  
1449 not provide coverage identical to the coverage provided by the  
1450 corporation. The notice shall also specify that acceptance of

597-04422-09

20091950c1

1451 corporation coverage creates a conclusive presumption that the  
1452 applicant or policyholder is aware of this potential.

1453 12. May establish, subject to approval by the office,  
1454 different eligibility requirements and operational procedures  
1455 for any line or type of coverage for any specified county or  
1456 area if the board determines that such changes to the  
1457 eligibility requirements and operational procedures are  
1458 justified due to the voluntary market being sufficiently stable  
1459 and competitive in such area or for such line or type of  
1460 coverage and that consumers who, in good faith, are unable to  
1461 obtain insurance through the voluntary market through ordinary  
1462 methods would continue to have access to coverage from the  
1463 corporation. When coverage is sought in connection with a real  
1464 property transfer, such requirements and procedures shall not  
1465 provide for an effective date of coverage later than the date of  
1466 the closing of the transfer as established by the transferor,  
1467 the transferee, and, if applicable, the lender.

1468 13. Must provide that, with respect to the high-risk  
1469 account, any assessable insurer with a surplus as to  
1470 policyholders of \$25 million or less writing 25 percent or more  
1471 of its total countrywide property insurance premiums in this  
1472 state may petition the office, within the first 90 days of each  
1473 calendar year, to qualify as a limited apportionment company. A  
1474 regular assessment levied by the corporation on a limited  
1475 apportionment company for a deficit incurred by the corporation  
1476 for the high-risk account in 2006 or thereafter may be paid to  
1477 the corporation on a monthly basis as the assessments are  
1478 collected by the limited apportionment company from its insureds  
1479 pursuant to s. 627.3512, but the regular assessment must be paid

597-04422-09

20091950c1

1480 in full within 12 months after being levied by the corporation.  
1481 A limited apportionment company shall collect from its  
1482 policyholders any emergency assessment imposed under sub-  
1483 subparagraph (b)3.d. The plan shall provide that, if the office  
1484 determines that any regular assessment will result in an  
1485 impairment of the surplus of a limited apportionment company,  
1486 the office may direct that all or part of such assessment be  
1487 deferred as provided in subparagraph (p)4. However, there shall  
1488 be no limitation or deferment of an emergency assessment to be  
1489 collected from policyholders under sub-subparagraph (b)3.d.

1490 14. Must provide that the corporation appoint as its  
1491 licensed agents only those agents who also hold an appointment  
1492 as defined in s. 626.015(3) with an insurer who at the time of  
1493 the agent's initial appointment by the corporation is authorized  
1494 to write and is actually writing personal lines residential  
1495 property coverage, commercial residential property coverage, or  
1496 commercial nonresidential property coverage within the state.

1497 15. Must provide, by July 1, 2007, a premium payment plan  
1498 option to its policyholders which allows at a minimum for  
1499 quarterly and semiannual payment of premiums. A monthly payment  
1500 plan may, but is not required to, be offered.

1501 16. Must limit coverage on mobile homes or manufactured  
1502 homes built prior to 1994 to actual cash value of the dwelling  
1503 rather than replacement costs of the dwelling.

1504 17. May provide such limits of coverage as the board  
1505 determines, consistent with the requirements of this subsection.

1506 18. May require commercial property to meet specified  
1507 hurricane mitigation construction features as a condition of  
1508 eligibility for coverage.

597-04422-09

20091950c1

1509 (m)1. Rates for coverage provided by the corporation shall  
1510 be actuarially sound and subject to the requirements of s.  
1511 627.062, except as otherwise provided in this paragraph. The  
1512 corporation shall file its recommended rates with the office at  
1513 least annually. The corporation shall provide any additional  
1514 information regarding the rates which the office requires. The  
1515 office shall consider the recommendations of the board and issue  
1516 a final order establishing the rates for the corporation within  
1517 45 days after the recommended rates are filed. The corporation  
1518 may not pursue an administrative challenge or judicial review of  
1519 the final order of the office.

1520 2. In addition to the rates otherwise determined pursuant  
1521 to this paragraph, the corporation shall impose and collect an  
1522 amount equal to the premium tax provided for in s. 624.509 to  
1523 augment the financial resources of the corporation.

1524 3. After the public hurricane loss-projection model under  
1525 s. 627.06281 has been found to be accurate and reliable by the  
1526 Florida Commission on Hurricane Loss Projection Methodology,  
1527 that model shall serve as the minimum benchmark for determining  
1528 the windstorm portion of the corporation's rates. This  
1529 subparagraph does not require or allow the corporation to adopt  
1530 rates lower than the rates otherwise required or allowed by this  
1531 paragraph.

1532 4. The rate filings for the corporation which were approved  
1533 by the office and which took effect January 1, 2007, are  
1534 rescinded, except for those rates that were lowered. As soon as  
1535 possible, the corporation shall begin using the lower rates that  
1536 were in effect on December 31, 2006, and shall provide refunds  
1537 to policyholders who have paid higher rates as a result of that

597-04422-09

20091950c1

1538 rate filing. The rates in effect on December 31, 2006, shall  
1539 remain in effect for the 2007 and 2008 calendar years except for  
1540 any rate change that results in a lower rate. The next rate  
1541 change that may increase rates shall take effect pursuant to a  
1542 new rate filing recommended by the corporation and established  
1543 by the office, subject to the requirements of this paragraph.

1544 5. Beginning on July 15, 2009, and each year thereafter,  
1545 the corporation must make a recommended actuarially sound rate  
1546 filing for each personal and commercial line of business it  
1547 writes, to be effective no earlier than January 1, 2010.

1548 6. Notwithstanding the board's recommended rates and the  
1549 office's final order regarding the corporation's filed rates  
1550 under subparagraph 1., the corporation shall implement a rate  
1551 increase each year which does not exceed 10 percent for any  
1552 single policy issued by the corporation, excluding coverage  
1553 changes and surcharges. The corporation may also implement an  
1554 increase to reflect the effect on the corporation of the cash  
1555 buildup factor pursuant to s. 215.555(5)(b).

1556 7. The corporation's implementation of rates as prescribed  
1557 in subparagraph 6. shall cease upon the corporation's  
1558 implementation of actuarially sound rates.

1559 8. Beginning January 1, 2010, and each year thereafter, the  
1560 corporation shall transfer 10 percent of the funds received from  
1561 the rate increase prescribed by subparagraph 6. to the General  
1562 Revenue Fund. The corporation's transfer of such funds shall  
1563 cease upon the corporation's implementation of actuarially sound  
1564 rates.

1565 (x) It is the intent of the Legislature that the amendments  
1566 to this subsection enacted in 2002 should, over time, reduce the

597-04422-09

20091950c1

1567 probable maximum windstorm losses in the residual markets and  
1568 should reduce the potential assessments to be levied on property  
1569 insurers and policyholders statewide. In furtherance of this  
1570 intent:

1571 1. The board shall, on or before February 1 of each year,  
1572 provide a report to the President of the Senate and the Speaker  
1573 of the House of Representatives showing the reduction or  
1574 increase in the 100-year probable maximum loss attributable to  
1575 wind-only coverages and the quota share program under this  
1576 subsection combined, as compared to the benchmark 100-year  
1577 probable maximum loss of the Florida Windstorm Underwriting  
1578 Association. For purposes of this paragraph, the benchmark 100-  
1579 year probable maximum loss of the Florida Windstorm Underwriting  
1580 Association shall be the calculation dated February 2001 and  
1581 based on November 30, 2000, exposures. In order to ensure  
1582 comparability of data, the board shall use the same methods for  
1583 calculating its probable maximum loss as were used to calculate  
1584 the benchmark probable maximum loss.

1585 2. Beginning February 1, 2013 ~~February 1, 2010~~, if the  
1586 report under subparagraph 1. for any year indicates that the  
1587 100-year probable maximum loss attributable to wind-only  
1588 coverages and the quota share program combined does not reflect  
1589 a reduction of at least 25 percent from the benchmark, the board  
1590 shall reduce the boundaries of the high-risk area eligible for  
1591 wind-only coverages under this subsection in a manner calculated  
1592 to reduce such probable maximum loss to an amount at least 25  
1593 percent below the benchmark.

1594 3. Beginning February 1, 2018 ~~February 1, 2015~~, if the  
1595 report under subparagraph 1. for any year indicates that the

597-04422-09

20091950c1

1596 100-year probable maximum loss attributable to wind-only  
1597 coverages and the quota share program combined does not reflect  
1598 a reduction of at least 50 percent from the benchmark, the  
1599 boundaries of the high-risk area eligible for wind-only  
1600 coverages under this subsection shall be reduced by the  
1601 elimination of any area that is not seaward of a line 1,000 feet  
1602 inland from the Intracoastal Waterway.

1603 Section 6. Section 627.3512, Florida Statutes, is amended  
1604 to read:

1605 627.3512 Recoupment of residual market deficit  
1606 assessments.—

1607 (1) An insurer or insurer group may recoup any assessments  
1608 that have been paid during or after 1995 by the insurer or  
1609 insurer group to defray deficits of an insurance risk  
1610 apportionment plan or assigned risk plan under ss. 627.311 and  
1611 627.351, net of any earnings returned to the insurer or insurer  
1612 group by the association or plan for any year after 1993. The  
1613 insurer or insurer group shall begin the recoupment process  
1614 within 180 days after the date of the assessment as indicated on  
1615 the invoice received by the insurer or insurer group. An insurer  
1616 that fails to begin the recoupment process within 180 days after  
1617 the date of the assessment may not recoup the amount assessed. A  
1618 ~~limited apportionment company as defined in s. 627.351(6)(c) may~~  
1619 ~~recoup any regular assessment that has been levied by, or paid~~  
1620 ~~to, Citizens Property Insurance Corporation.~~

1621 (2) The recoupment shall be made by applying a separate  
1622 recoupment ~~assessment~~ factor on policies of the same line or  
1623 type as were considered by the residual markets in determining  
1624 the assessment liability of the insurer or insurer group. An



597-04422-09

20091950c1

1625 insurer or insurer group shall calculate a separate assessment  
1626 factor for personal lines and commercial lines. ~~The separate~~  
1627 ~~assessment factor shall provide for full recoupment of the~~  
1628 ~~assessments over a period of 1 year, unless the insurer or~~  
1629 ~~insurer group, at its option, elects to recoup the assessments~~  
1630 ~~over a longer period. The assessment factor expires upon~~  
1631 ~~collection of the full amount allowed to be recouped. Amounts~~  
1632 ~~recouped under this section are not subject to premium taxes,~~  
1633 ~~fees, or commissions.~~

1634 ~~(3)-(2)~~ The recoupment assessment factor may ~~must~~ not be  
1635 more than 3 percentage points above the ratio of the deficit  
1636 assessment to the Florida direct written premium for policies  
1637 for the lines or types of business as to which the assessment  
1638 was calculated, ~~as written in the year the deficit assessment~~  
1639 ~~was paid~~. If an insurer or insurer group fails to collect the  
1640 full amount of the deficit assessment within a 1-year period,  
1641 the insurer or insurer group may ~~must~~ carry forward the amount  
1642 of the deficit and adjust the deficit assessment to be recouped  
1643 in the a subsequent year by that amount. The insurer or insurer  
1644 group shall adjust the recoupment factor to be applied for the  
1645 subsequent year. The insurer or insurer group may not apply any  
1646 recoupment factor in a manner that is unfairly discriminatory  
1647 among its policyholders within the same lines, types, or  
1648 sublines of business.

1649 ~~(4)-(3)~~ The insurer or insurer group shall file with the  
1650 office a statement setting forth the amount of the assessment  
1651 factor and an explanation of how the factor will be applied, at  
1652 least 15 days prior to the factor being applied to any policies.  
1653 The statement shall include documentation of the assessment paid

597-04422-09

20091950c1

1654 by the insurer or insurer group and the arithmetic calculations  
1655 supporting the assessment factor. The office shall complete its  
1656 review within 30 ~~15~~ days after receipt of the filing and shall  
1657 limit its review to verification of the arithmetic calculations.  
1658 The insurer or insurer group may use the assessment factor at  
1659 any time after the expiration of the 30-day ~~15-day~~ period unless  
1660 the office has notified the insurer or insurer group in writing  
1661 that the arithmetic calculations are incorrect.

1662 (5) If an insurer or insurer group over-recoups any  
1663 assessment it has, it shall forward all excess recoupment to the  
1664 corporation to be held in a separate account to offset future  
1665 assessments.

1666 (6) A final accounting report documenting the assessment  
1667 recouped shall be submitted to the office within 60 days after  
1668 the recoupment period ends. The chief executive officer or chief  
1669 financial officer must certify under oath and subject to the  
1670 penalty of perjury, on a form approved by the commission, that  
1671 he or she has reviewed the report; that the information in the  
1672 report is true and accurate; and that, based on his or her  
1673 knowledge:

1674 (a) The report does not contain any untrue statement of a  
1675 material fact or omit a material fact necessary in order to make  
1676 the statements not misleading, in light of the circumstances  
1677 under which the statements were made;

1678 (b) The effective dates of the recoupment period are  
1679 correct;

1680 (c) The recoupment factor used is correct;

1681 (d) The direct written premium and associated recoupment  
1682 amounts received each month for the entire recoupment period are

597-04422-09

20091950c1

1683 correct; and

1684 (e) All excess recoupment moneys have been paid to the  
1685 corporation.

1686 (7) Any insurer or insurer group that does not elect to use  
1687 this process to recoup an assessment amount that it has paid is  
1688 prohibited from including this uncollected assessment amount as  
1689 any component in any subsequent rate filing required by s.  
1690 627.062 or s. 627.0651.

1691 (8)~~(4)~~ The commission may adopt rules to implement this  
1692 section.

1693 Section 7. Subsections (1) and (2) of section 627.712,  
1694 Florida Statutes, are amended to read:

1695 627.712 Residential windstorm coverage required;  
1696 availability of exclusions for windstorm or contents.—

1697 (1) An insurer issuing a residential property insurance  
1698 policy must provide windstorm coverage. Except as provided in  
1699 paragraph (2)(c), this section does not apply with respect to  
1700 risks that are eligible for wind-only coverage from Citizens  
1701 Property Insurance Corporation under s. 627.351(6), and with  
1702 respect to risks that are not eligible for coverage from  
1703 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.  
1704 or s. 627.351(6)(a)5. A risk ineligible for Citizens coverage  
1705 under s. 627.351(6)(a)3. or s. 627.351(6)(a)5. is exempt from  
1706 the requirements of this section only if the risk is located  
1707 within the boundaries of the high-risk account of the  
1708 corporation.

1709 (2) A property insurer must make available, at the option  
1710 of the policyholder, an exclusion of windstorm coverage.

1711 (a) The coverage may be excluded only if:

597-04422-09

20091950c1

1712           1. When the policyholder is a natural person, the  
1713 policyholder personally writes and provides to the insurer the  
1714 following statement in his or her own handwriting and signs his  
1715 or her name, which must also be signed by every other named  
1716 insured on the policy, and dated: "I do not want the insurance  
1717 on my (home/mobile home/condominium unit) to pay for damage from  
1718 windstorms. I will pay those costs. My insurance will not."

1719           2. When the policyholder is other than a natural person,  
1720 the policyholder provides to the insurer on the policyholder's  
1721 letterhead the following statement that must be signed by the  
1722 policyholder's authorized representative and dated: "... (Name of  
1723 entity)... does not want the insurance on its ... (type of  
1724 structure)... to pay for damage from windstorms. ... (Name of  
1725 entity)... will be responsible for these costs. ... (Name of  
1726 entity's)... insurance will not."

1727           (b) If the structure insured by the policy is subject to a  
1728 mortgage or lien, the policyholder must provide the insurer with  
1729 a written statement from the mortgageholder or lienholder  
1730 indicating that the mortgageholder or lienholder approves the  
1731 policyholder electing to exclude windstorm coverage or hurricane  
1732 coverage from his or her or its property insurance policy.

1733           ~~(c) If the residential structure is eligible for wind only~~  
1734 ~~coverage from Citizens Property Insurance Corporation, An~~  
1735 insurer nonrenewing a policy and issuing a replacement policy,  
1736 or issuing a new policy, that does not provide wind coverage  
1737 shall provide a notice to the mortgageholder or lienholder  
1738 indicating the policyholder has elected coverage that does not  
1739 cover wind.

1740           Section 8. Subsection (3) of section 631.57, Florida

597-04422-09

20091950c1

1741 Statutes, is amended to read:

1742       631.57 Powers and duties of the association.—

1743       (3) (a) To the extent necessary to secure the funds for the  
1744 respective accounts for the payment of covered claims, to pay  
1745 the reasonable costs to administer the same, and to the extent  
1746 necessary to secure the funds for the account specified in s.  
1747 631.55(2) (c) or to retire indebtedness, including, without  
1748 limitation, the principal, redemption premium, if any, and  
1749 interest on, and related costs of issuance of, bonds issued  
1750 under s. 631.695 and the funding of any reserves and other  
1751 payments required under the bond resolution or trust indenture  
1752 pursuant to which such bonds have been issued, the office, upon  
1753 certification of the board of directors, shall levy assessments  
1754 in the proportion that each insurer's net direct written  
1755 premiums in this state in the classes protected by the account  
1756 bears to the total of said net direct written premiums received  
1757 in this state by all such insurers for the preceding calendar  
1758 year for the kinds of insurance included within such account.  
1759 Assessments shall be remitted to and administered by the board  
1760 of directors in the manner specified by the approved plan. Each  
1761 insurer so assessed shall have at least 30 days' written notice  
1762 as to the date the assessment is due and payable. Every  
1763 assessment shall be made as a uniform percentage applicable to  
1764 the net direct written premiums of each insurer in the kinds of  
1765 insurance included within the account in which the assessment is  
1766 made. The assessments levied against any insurer shall not  
1767 exceed in any one year more than 2 percent of that insurer's net  
1768 direct written premiums in this state for the kinds of insurance  
1769 included within such account during the calendar year next

597-04422-09

20091950c1

1770 preceding the date of such assessments.

1771 (b) If sufficient funds from such assessments, together  
1772 with funds previously raised, are not available in any one year  
1773 in the respective account to make all the payments or  
1774 reimbursements then owing to insurers, the funds available shall  
1775 be prorated and the unpaid portion shall be paid as soon  
1776 thereafter as funds become available.

1777 (c) Assessments shall be included as an appropriate factor  
1778 in the making of rates.

1779 (d) No state funds of any kind shall be allocated or paid  
1780 to said association or any of its accounts.

1781 (e)1.a. In addition to assessments otherwise authorized in  
1782 paragraph (a) and to the extent necessary to secure the funds  
1783 for the account specified in s. 631.55(2)(c) for the direct  
1784 payment of covered claims of insurers rendered insolvent by the  
1785 effects of a hurricane and to pay the reasonable costs to  
1786 administer such claims, or to retire indebtedness, including,  
1787 without limitation, the principal, redemption premium, if any,  
1788 and interest on, and related costs of issuance of, bonds issued  
1789 under s. 631.695 and the funding of any reserves and other  
1790 payments required under the bond resolution or trust indenture  
1791 pursuant to which such bonds have been issued, the office, upon  
1792 certification of the board of directors, shall levy emergency  
1793 assessments upon insurers holding a certificate of authority.  
1794 The emergency assessments payable under this paragraph by any  
1795 insurer shall not exceed in any single year more than 2 percent  
1796 of that insurer's direct written premiums, net of refunds, in  
1797 this state during the preceding calendar year for the kinds of  
1798 insurance within the account specified in s. 631.55(2)(c).

597-04422-09

20091950c1

1799           b. Any emergency assessments authorized under this  
1800 paragraph shall be levied by the office upon insurers referred  
1801 to in sub-subparagraph a., upon certification as to the need for  
1802 such assessments by the board of directors. In the event the  
1803 board of directors participates in the issuance of bonds in  
1804 accordance with s. 631.695, emergency assessments shall be  
1805 levied in each year that bonds issued under s. 631.695 and  
1806 secured by such emergency assessments are outstanding, in such  
1807 amounts up to such 2-percent limit as required in order to  
1808 provide for the full and timely payment of the principal of,  
1809 redemption premium, if any, and interest on, and related costs  
1810 of issuance of, such bonds. The emergency assessments provided  
1811 for in this paragraph are assigned and pledged to the  
1812 municipality, county, or legal entity issuing bonds under s.  
1813 631.695 for the benefit of the holders of such bonds, in order  
1814 to enable such municipality, county, or legal entity to provide  
1815 for the payment of the principal of, redemption premium, if any,  
1816 and interest on such bonds, the cost of issuance of such bonds,  
1817 and the funding of any reserves and other payments required  
1818 under the bond resolution or trust indenture pursuant to which  
1819 such bonds have been issued, without the necessity of any  
1820 further action by the association, the office, or any other  
1821 party. To the extent bonds are issued under s. 631.695 and the  
1822 association determines to secure such bonds by a pledge of  
1823 revenues received from the emergency assessments, such bonds,  
1824 upon such pledge of revenues, shall be secured by and payable  
1825 from the proceeds of such emergency assessments, and the  
1826 proceeds of emergency assessments levied under this paragraph  
1827 shall be remitted directly to and administered by the trustee or

597-04422-09

20091950c1

1828 custodian appointed for such bonds.

1829 c. Emergency assessments under this paragraph may be  
1830 payable in a single payment or, at the option of the  
1831 association, may be payable in 12 monthly installments with the  
1832 first installment being due and payable at the end of the month  
1833 after an emergency assessment is levied and subsequent  
1834 installments being due not later than the end of each succeeding  
1835 month.

1836 d. If emergency assessments are imposed, the report  
1837 required by s. 631.695(7) shall include an analysis of the  
1838 revenues generated from the emergency assessments imposed under  
1839 this paragraph.

1840 e. If emergency assessments are imposed, the references in  
1841 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
1842 assessments levied under paragraph (a) shall include emergency  
1843 assessments imposed under this paragraph.

1844 ~~2. In order to ensure that insurers paying emergency~~  
1845 ~~assessments levied under this paragraph continue to charge rates~~  
1846 ~~that are neither inadequate nor excessive, within 90 days after~~  
1847 ~~being notified of such assessments, each insurer that is to be~~  
1848 ~~assessed pursuant to this paragraph shall submit a rate filing~~  
1849 ~~for coverage included within the account specified in s.~~  
1850 ~~631.55(2)(c) and for which rates are required to be filed under~~  
1851 ~~s. 627.062. If the filing reflects a rate change that, as a~~  
1852 ~~percentage, is equal to the difference between the rate of such~~  
1853 ~~assessment and the rate of the previous year's assessment under~~  
1854 ~~this paragraph, the filing shall consist of a certification so~~  
1855 ~~stating and shall be deemed approved when made. Any rate change~~  
1856 ~~of a different percentage shall be subject to the standards and~~



597-04422-09

20091950c1

1857 ~~procedures of s. 627.062.~~

1858 ~~2.3.~~ In the event the board of directors participates in  
1859 the issuance of bonds in accordance with s. 631.695, an annual  
1860 assessment under this paragraph shall continue while the bonds  
1861 issued with respect to which the assessment was imposed are  
1862 outstanding, including any bonds the proceeds of which were used  
1863 to refund bonds issued pursuant to s. 631.695, unless adequate  
1864 provision has been made for the payment of the bonds in the  
1865 documents authorizing the issuance of such bonds.

1866 ~~3.4.~~ Emergency assessments under this paragraph are not  
1867 premium and are not subject to the premium tax, to any fees, or  
1868 to any commissions. An insurer is liable for all emergency  
1869 assessments that the insurer collects and shall treat the  
1870 failure of an insured to pay an emergency assessment as a  
1871 failure to pay the premium. An insurer is not liable for  
1872 uncollectible emergency assessments.

1873 Section 9. Section 631.64, Florida Statutes, is amended to  
1874 read:

1875 631.64 Recognition of assessments in rates.—

1876 (1) The rates and premiums charged for insurance policies  
1877 to which this part applies may include amounts sufficient to  
1878 recoup a sum equal to the amounts paid to the association by the  
1879 member insurer less any amounts returned to the member insurer  
1880 by the association, and such rates shall not be deemed excessive  
1881 because they contain an amount reasonably calculated to recoup  
1882 assessments paid by the member insurer. The member insurer shall  
1883 begin the recoupment process within 180 days after the date of  
1884 the assessment as indicated on the invoice received by the  
1885 member insurer. A member insurer that fails to begin the

597-04422-09

20091950c1

1886 recoupment process within 180 days after the date of the  
1887 assessment may not recoup the amount assessed.

1888 (2) The recoupment factor may not be more than 2 percentage  
1889 points above the ratio of the deficit assessment to the Florida  
1890 direct written premium for policies for the lines or types of  
1891 business as to which the assessment was calculated. If a member  
1892 insurer fails to collect the full amount of the deficit  
1893 assessment within a 1-year period, the member insurer may carry  
1894 forward the amount of the deficit assessment to be recouped in  
1895 the next subsequent year. The member insurer shall adjust the  
1896 recoupment factor to be applied for the next subsequent year.  
1897 The member insurer may not apply any recoupment factor in a  
1898 manner that is unfairly discriminatory among its policyholders  
1899 within the same lines, types, or sublines of business.

1900 (3) A final accounting report documenting the assessment  
1901 recouped shall be submitted to the office within 60 days after  
1902 the recoupment period ends. The chief executive officer or chief  
1903 financial officer must certify under oath and subject to the  
1904 penalty of perjury, on a form approved by the commission, that  
1905 he or she has reviewed the report; that the information in the  
1906 report is true and accurate; and that, based on his or her  
1907 knowledge:

1908 (a) The report does not contain any untrue statement of a  
1909 material fact or omit to state a material fact necessary in  
1910 order to make the statements not misleading, in light of the  
1911 circumstances under which the statements were made;

1912 (b) The effective dates of the recoupment period are  
1913 correct; and

1914 (c) The direct written premium and associated recoupment

597-04422-09

20091950c1

1915 amounts received each month for the entire recoupment period are  
1916 correct.

1917 (4) If a member insurer over-recoups any assessment it has  
1918 paid, it shall forward all excess recoupment to the association.  
1919 An accounting of the over-recoupment shall be documented in the  
1920 final accounting report.

1921 (5) Any member insurer that does not elect to use this  
1922 process to recoup an assessment amount that it has paid is  
1923 prohibited from including this uncollected assessment amount as  
1924 any component in any subsequent rate filing required by s.  
1925 627.062 or s. 627.0651.

1926 (6) The commission may adopt rules to implement this  
1927 section.

1928 Section 10. Section 631.65, Florida Statutes, is amended to  
1929 read:

1930 631.65 Prohibited advertisement or solicitation.—No person  
1931 shall make, publish, disseminate, circulate, or place before the  
1932 public, or cause, directly or indirectly, to be made, published,  
1933 disseminated, circulated, or placed before the public, in a  
1934 newspaper, magazine, or other publication, or in the form of a  
1935 notice, circular, pamphlet, letter, or poster, or over any radio  
1936 station or television station, or in any other way, any  
1937 advertisement, announcement, or statement which uses the  
1938 existence of the insurance guaranty association for the purpose  
1939 of sales, solicitation, or inducement to purchase any form of  
1940 insurance covered under this part. However, this section does  
1941 not prohibit a duly licensed insurance agent from explaining the  
1942 existence or function of the insurance guaranty association to  
1943 policyholders, prospects, or applicants for coverage.

597-04422-09

20091950c1

1944           Section 11. Upon receipt of funds transferred to the  
1945 General Revenue fund pursuant to s. 627.351(6)(m)8., Florida  
1946 Statutes, the funds transferred are appropriated on a  
1947 nonrecurring basis from the General Revenue Fund to the  
1948 Insurance Regulatory Trust Fund in the Department of Financial  
1949 Services for purposes of the My Safe Florida Home Program  
1950 specified in s. 215.5586, Florida Statutes. The My Safe Florida  
1951 Home Program shall use the funds solely for the provision of  
1952 mitigation grants pursuant to s. 215.5586(2), Florida Statutes,  
1953 for single-family homes insured by the corporation. The  
1954 department shall establish a separate account within the trust  
1955 fund for accounting purposes.

1956           Section 12. This act shall take effect June 1, 2009.