



Insurance, Business & Financial Affairs Policy Committee

**Wednesday, March 17, 2010
2:15 PM
212 Knott Bldg.**

**Larry Cretul
Speaker**

**Pat Patterson
Chair**



The Florida House of Representatives
General Government Policy Council
Insurance, Business & Financial Affairs Policy Committee

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AGENDA

March 17, 2010
212 Knott Building

I. Opening Remarks by Chair

II. Consideration of the following bill(s):

CS/HB 337 – Condominiums by Civil Justice & Courts Policy Committee, Roberson, Y.

HB 447 – Residential Property Insurance by Rep. Proctor

HB 751 – Automatic Renewal of Service Contracts by Rep. McBurney

HB 885 – Life Insurance by Rep. Tobia

HB 1049 – City of Eustis, Lake County by Rep. Hays

HB 1051 – City of Tavares, Lake County by Rep. Hays

CS/HB 1247 – Hillsborough County by Military & Local Affairs Policy Committee,
Ambler

HB 1253 – Continuing Care Facilities by Rep. Proctor

III. Meeting Adjourned

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association.

The governing documents of a condominium association may impose certain penalties or restrictions upon a unit owner who is delinquent in payment of assessments. Condominium law provides that a unit owner may not file to run for a seat on the board of directors if the unit owner is delinquent, s. 718.112(2)(d), F.S., and an officer or director who falls 90 days delinquent is removed from office, s. 718.112(2)(n), F.S.

This bill amends s. 718.116, to require that a notice of delinquency must provide a unit owner with the date, principal balance, affiliated late fees or collection charges, and total of all assessments due.

This bill also provides that no restriction or condition upon a unit owner may go into effect until 20 days after the unit owner receives the detailed notice of delinquency. If the unit owner objects to the claim within the 20 day period and shows that the owner has paid the disputed amount, the restriction or condition may not go into effect until the objection is resolved.

B. SECTION DIRECTORY:

Section 1 amends s. 718.116, F.S., regarding notice of delinquency for unpaid assessments.

Section 2 provides an effective date of January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill does not make corresponding changes to the similar laws on cooperatives and homeowners associations.

The 20 day notice period in the bill starts upon unit owner receipt of the notice of delinquency. This may be contrasted with notice requirements of intent to foreclose, also found in s. 718.016, F.S., which provides "notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested ... and upon such mailing, the notice shall be deemed to have been given." Requiring the period to begin upon receipt may cause difficulty in practice where a unit owner refuses mail and evades service of process.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill. The amendment requires a unit owner to show proof of payment in order to avoid sanctions while an objection is pending, and moves the effective date back 6 months to January 1, 2011. The bill was then reported favorably as a committee substitute.

1 A bill to be entitled

2 An act relating to condominiums; amending s. 718.116,
 3 F.S.; providing requirements for a notice of delinquency;
 4 prohibiting a condominium association from imposing
 5 certain penalties for delinquency during a notice period
 6 or while an objection made within such notice period and
 7 accompanied by proof of payment of certain assessments or
 8 charges is unresolved; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (11) is added to section 718.116,
 13 Florida Statutes, to read:

14 718.116 Assessments; liability; lien and priority;
 15 interest; collection.—

16 (11) (a) A notice of delinquency sent to a unit owner shall
 17 provide an overall total of assessments claimed and shall
 18 specify each assessment or charge that is claimed by the
 19 association, listing for each assessment or charge the date of
 20 the assessment or charge, the principal balance owed for the
 21 assessment or charge, and affiliated late fees or collection
 22 charges.

23 (b) As to any statute or any provision in the governing
 24 documents that creates a restriction or condition upon a unit
 25 owner related to delinquency in the payment of moneys owed to
 26 the association, no such restriction or condition shall be in
 27 effect until 20 days after receipt of the delinquency notice by
 28 the unit owner. If the unit owner objects to the amount claimed

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29 within the 20-day period and provides proof of payment of the
30 assessments or charges specified in the notice provided in
31 paragraph (a), no restriction or condition shall be enforced
32 until the objection is resolved. For purposes of this paragraph,
33 a "restriction or condition" includes any restriction on running
34 for office, holding office, serving on a committee, leasing the
35 unit, or using common areas.

36 Section 2. This act shall take effect January 1, 2011.

**INSURANCE, BUSINESS &
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 337 by Rep. Y. Roberson
Condominiums**

AMENDMENT SUMMARY

March 17, 2010

Amendment 1 (**lines 22-27**) by Rep. Jenne – Adds a requirement for a notice of delinquency to be delivered to the unit owner by hand or by certified or registered mail. Provides that the 20 day period begins to run upon the notice being given, rather than received.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee
3 Representative(s) Jenne offered the following:
4

5 **Amendment**

6 Remove lines 22-27 and insert:
7 charges. The notice must be given by delivery of a copy of it to
8 the unit owner or by certified or registered mail, return
9 receipt requested, addressed to the unit owner at his or her
10 last known address; and, upon such mailing, the notice shall be
11 deemed to have been given.

12 (b) As to any statute or any provision in the governing
13 documents that creates a restriction or condition upon a unit
14 owner related to delinquency in the payment of moneys owed to
15 the association, no such restriction or condition shall be in
16 effect until 20 days after the delinquency notice is given to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 447 Residential Property Insurance

SPONSOR(S): Proctor and others

TIED BILLS: IDEN./SIM. BILLS: SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Callaway <i>hlc</i>	Cooper <i>[Signature]</i>
2) General Government Policy Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill allows insurers meeting specified criteria to use a rate for personal lines residential and commercial lines residential property insurance that is different than the insurer's filed rate. In order to qualify to use rates different than the filed rate, an insurer must hold a certificate of authority to write property insurance in Florida and not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options. Under the bill, residential property insurance policies that exclude windstorm coverage or are depopulated from Citizens Property Insurance Corporation (Citizens) cannot have rates different than the insurer's filed rate. The Office of Insurance Regulation (OIR) is only authorized to disapprove a rate different than an insurer's filed rate if the rate is inadequate or uses rating factors that discriminate on the basis of race, color, creed, marital status, sex, or national origin.

The bill requires policyholder notification and acknowledgement before an insurance company can charge rates different than the company's filed rates. Policyholders must also be given a premium estimate for the premium charged by Citizens when offered a policy with rates different than an insurer's filed rates. Insurance companies must give policyholders 180 days' notice of nonrenewal if the company nonrenews a policy which charges rates different than the insurer's filed rates.

The bill makes policyholders insured by Citizens on the day a Citizens Policyholder Surcharge is levied responsible for paying the surcharge when their policy is renewed or cancelled or when they obtain a new policy. Policyholders who obtain insurance from Citizens within 12 months of Citizens' levy of its surcharge or within the surcharge collection period must also pay the surcharge. The bill requires existing or potential Citizen's policyholders to sign an acknowledgment related to potential surcharges that can be imposed on their property insurance policy by Citizens.

The fiscal impact on the private sector is indeterminate because the impact is primarily dependent on the insurance policy rate change resulting from the bill. It is likely insurance policies offered in accordance with the bill will have higher premiums than policies with rates that are fully regulated by the OIR. The private sector fiscal impact is also dependent on the willingness of the voluntary insurance market to assume some of the risks currently insured by Citizens and is dependent on policyholder behavior to the offer of insurance policies with rates different than filed rates. If the bill results in large property insurance premium increases, then Citizens is likely to grow as policyholders opt to move from an insurer in the voluntary market to Citizens due to the policy premium difference. (See Fiscal Analysis for additional information).

There is no fiscal impact on local governments. The OIR does not believe the bill has a fiscal impact on the agency. (See Fiscal Analysis for additional information).

The bill is effective on January 1, 2011.

HOUSE PRINCIPLES

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- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- Personal lines residential coverage - homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's and similar policies,
- Commercial lines residential coverage - coverage provided by condominium association, cooperative association, apartment building and similar policies, and
- Commercial nonresidential coverage - coverage provided by commercial business policies.¹

Generally, residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The Rating Law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the Rating Law is to ensure insurance rates are not excessive, inadequate, or unfairly discriminatory. This standard applies to every property insurance rate.

Section 627.0645, F.S., requires every property insurance company to make a rate filing with the Office of Insurance Regulation (OIR) each year. The rate filing contains the insurance company's proposed rates. The OIR reviews the rate filing and either approves or disapproves the proposed rates. If an insurance company does not want to change its rates one year, instead of a rate filing, the insurer can file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the OIR uses the following statutory factors.²

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.

¹ s. 627.4025, F.S.

² s. 627.062(2), F.S.

- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

Excess Rates

The consent to rate law (s. 627.171, F.S.) permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

Effect of Proposed Changes Relating to Use of Rates In Excess of an Insurer's Filed Rate

Eligibility For Use

The bill allows insurers meeting specified criteria to use a rate for personal lines residential and commercial lines residential property insurance³ that is different than the insurer's filed rate. The bill does not allow insurance companies to charge rates different than filed rates for commercial nonresidential property insurance policies (i.e. property insurance covering businesses). Rates different than an insurer's filed rate used in accordance with the bill will not count in the insurer's five percent consent to rate limitation.

In order to qualify to use rates different than the filed rate, an insurer must:

- hold a certificate of authority to write property insurance in Florida and
- not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options (TICL options).⁴

Citizens Property Insurance Corporation (Citizens) will not be able to offer property policies with rates different than the rate filed and approved by OIR because Citizens does not hold a certificate of authority, one of the conditions of eligibility provided in the bill for insurers to use rates higher than their filed rates.⁵

Even if an insurance company meets the eligibility provided in the bill to offer rates different than the insurer's filed rates, not every residential property policy written by the insurer will qualify for these rates. Under the bill, residential property insurance policies that exclude windstorm coverage⁶ or are

³ Personal lines residential property insurance policies include homeowner, mobile homeowner, dwelling, tenant's, condominium unit owner's, and cooperative unit owner's policies. Commercial lines residential property insurance policies include condominium association, cooperative association, apartment building and similar policies.

⁴ The TICL options allow insurers to purchase reinsurance through the Florida Hurricane Catastrophe Fund in an amount up to \$10 billion in excess of the reinsurance required by law to be purchased through the Fund.

⁵ Citizens is a governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not an insurance company and thus not required to obtain a certificate of insurance in order to transact insurance. (s. 627.3351(6)(a)1., F.S.)

⁶ Insurance companies in the private market are only allowed to write property insurance policies that exclude windstorm coverage in the wind-zone areas of Citizens. In these areas, Citizens writes the windstorm coverage and an insurance company in the voluntary market writes the non-windstorm (or other peril) coverage. Insurance companies in the private market are also allowed to write property insurance policies in areas outside the wind-zone areas only if the policyholder opts to exclude windstorm coverage in accordance with s. 627.712(2), F.S. (i.e. written request to exclude windstorm coverage and approval of the property mortgage or lien holder, if any)

depopulated from Citizens⁷ cannot have rates different than the insurer's filed rate. Thus, rates on these types of property insurance policies must be approved by the OIR as under current law.

The bill does not require an insurance company to offer property insurance policies with rates different than the insurer's filed rate; the company has the option to offer this type of policy. And if offered by the insurer, the bill does not require the consumer to purchase the policy. The bill, however, also does not require an insurance company to offer policies with regulated rates. Accordingly, it is possible every insurer in the private market eligible to offer policies with rates different than filed rates will do so and will not offer any policies with regulated rates. However, it is also possible no insurer in the private market eligible to offer policies with rates different than their filed rates will offer these policies and all eligible insurers will offer policies with regulated rates. And, it is possible eligible insurers in the private market will offer a number of policies with rates different than their filed rates and a number of policies with regulated rates. Citizens, however, will always offer policies with regulated rates as they are not eligible to offer policies with rates different than their filed rates under the bill and explained previously.

Review of Rates by the OIR

Although the rates allowed by the bill must be filed with the OIR, the bill does not make these rates subject to the same rate regulation as residential property insurance policies with rates filed with and approved by the OIR. Rather, the OIR is only authorized to disapprove a rate for residential property policies different than the insurer's filed rate if the OIR determines the rate is inadequate or uses rating factors that discriminate on the basis of race, color, creed, marital status, sex, or national origin. It cannot disapprove the rate because the rate is excessive or unfairly discriminatory on the basis of other factors.⁸

Policyholder Notification and Acknowledgement

Before a property insurance policy with a rate different than the insurer's filed rate can be issued or renewed by an insurer, the insurer must provide notice to the applicant or policyholder in 12-point boldfaced type the policy's rate is not fully regulated by the OIR and may have a higher rate than a policy with a rate that is regulated and approved by the OIR. The notice must also indicate a policy subject to full rate regulation may be purchased. The bill specifies how this notice must be given for policy renewals.

An insurance company writing a policy with a rate different than their filed rate must provide an applicant for new coverage with a premium estimate for a similar policy written by Citizens. This estimate must be given before the effective date of the new policy. Likewise, a premium estimate for a similar policy written by Citizens must be given before renewal to an existing policyholder whose policy is going to have a rate different than the insurer's filed rate at renewal.

An applicant or renewal policyholder must also sign an acknowledgement form relating to review of the required disclosures and premium comparison, an acknowledgement about the deregulated rate applicable to the policy and the availability of a policy with a regulated rate, and a notification about the assessability of the policy for deficits in Citizens. This acknowledgment form must be retained by the insurance company or insurance agent for at least three years. If an insurance company receives a premium payment for a policy with a rate different than the filed rate, the insurer is deemed to comply with the acknowledgment form and premium estimate requirements as long as the company provided the acknowledgment form and premium estimate to the policyholder before the premium payment was remitted.

Policy Nonrenewal Notification

The bill requires a property insurance company to give a policyholder 180 days written notice of nonrenewal if the policyholder has a policy with the insurer with a rate that is different than the insurer's filed rate. Current law⁹ requires a 100 day written notice, or notice by June 1st, whichever is earlier, for

⁷ Section 627.351(6)(q)3., F.S., requires Citizens to adopt a program to reduce new and renewal writings in Citizens (i.e. a depopulation program). The depopulation process for Citizens is further governed by s. 627.3511, F.S.

⁸ Section 627.062(2)(e), F.S., enumerates what standards the OIR can use under current law to find a rate filing is excessive, inadequate, or unfairly discriminatory.

⁹ s. 627.4133(2), F.S.

property insurance policies with rates approved by the OIR and 180 days written notice for policyholders insured by the insurer for the previous five years.

Policy Cancellation

Insurers cancelling property insurance policies with rates different than the insurer's filed rate must follow the cancellation protocol listed in current law (s. 627.4133, F.S.) Generally, this protocol requires written notice of cancellation 100 days before the cancellation is effective or by June 1st, whichever is earlier, or written notice 180 days before the cancellation's effective date if the policyholder has been insured with the company for the prior five years. Cancellation of a policy for nonpayment of premium only requires a 10 day written notice.

Citizens Property Insurance Corporation (Citizens)

Background

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹⁰ It is not a private insurance company.¹¹ Citizens' book of business is divided into three separate accounts¹²:

1. **Personal Lines Account (PLA) – Multiperil Policies¹³**
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property from windstorm and from other perils.
2. **Commercial Lines Account (CLA) – Multiperil Policies**
Consists of condominium association, apartment building and homeowner's association policies covering damage to property from windstorm and from other perils.
3. **High-Risk Account (HRA) – Wind-only¹⁴ and Multiperil Policies**
Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and therefore has separate calculations of surplus and deficits. By statute, assets of each account may not be commingled or used to fund losses in another account.¹⁵

Assessments

In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.¹⁶ The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Surcharges:¹⁷ If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit for a maximum total of 45%. This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written

¹⁰ Admitted market means insurance companies licensed to transact insurance in Florida.

¹¹ s. 627.351(6)(a)1., F.S.

¹² s. 627.351(6)(b)2., F.S.

¹³ A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

¹⁴ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

¹⁵ s. 627.351(6)(b)2.b., F.S.

¹⁶ s. 627.351(6)(b)3.a., d., and i., F.S.

¹⁷ s. 627.351(6)(b)3.i., F.S.

or at renewal of an existing Citizens' policy. Thus, a policyholder that is insured by Citizens would be subject to the Citizens Policyholder Surcharge only if the policyholder renewed with Citizens during the 12 month collection period.

*Regular Assessments:*¹⁸ Upon the exhaustion of the Citizens Policyholder Surcharge for a particular account, Citizens may levy a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state but is not levied on Citizens' policies.¹⁹ Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.

*Emergency Assessments:*²⁰ Upon the exhaustion of the Citizens Policyholder Surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.²¹ Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Effect of Proposed Changes to Citizens Policyholder Surcharges

The bill requires insurance agents issuing property insurance in Citizens to obtain an acknowledgement signed by the applicant for insurance relating to the potential surcharges imposed on the policy by Citizens. The agent is also required to obtain the same acknowledgement form for existing Citizens policies before the policy renews with Citizens. Thus, potential and current policyholders of Citizens will be informed about the potential surcharges that can be imposed on their policy. The signed acknowledgement creates a conclusive presumption the potential or current policyholder understood and accepted the Citizens' surcharge liability. Citizens is required to keep a copy of the signed acknowledgement.

The bill makes policyholders insured by Citizens on the day a Citizens Policyholder Surcharge is levied responsible for paying the surcharge when their policy is renewed or cancelled or when they obtain a new policy.²² Current law requires Citizens to collect the surcharge over 12 months, but does not specify Citizens' policyholders are responsible for paying the surcharge. Current law also does not use the date of the surcharge levy as the date establishing who is responsible for paying the surcharge. Policyholders who renew a Citizens' policy during the 12 month surcharge collection period and policyholders who obtain insurance in Citizens during the 12 month surcharge collection period are responsible for paying the Citizens Policyholder Surcharge.

Under current law, policyholders of Citizens can avoid paying a Citizens Policyholder Surcharge by nonrenewing their Citizens policy during the 12 month surcharge collection period and obtaining property insurance from an insurer in the voluntary market. The bill prevents the avoidance of surcharge payment in this manner by making Citizens' policyholders at the time the surcharge is levied responsible for payment of the surcharge. Citizens can collect the surcharge from unearned premium on the policy for policies that are cancelled by the policyholder before the expiration of the policy term so it is likely Citizens will be able to obtain payment of the surcharge under this circumstance.²³

¹⁸ s. 627.351(6)(b)3.a. and b., F.S.

¹⁹ The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

²⁰ s. 627.352(6)(b)3.d., F.S.

²¹ This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

²² The date the surcharge is levied will not be the date the surcharge starts to be collected and will occur prior to the collection start.

²³ Unearned premium is the portion of a premium already received by the insurer under which protection has not yet been provided. The entire premium is not earned until the policy period expires, even though premiums are typically paid in advance. (<http://www2.iii.org/glossary/>)

The bill maintains Citizens' ability to collect a Citizens Policyholder Surcharge from new Citizens' policyholders. Under the bill, policyholders who are not insured by Citizens on the day the surcharge is levied are still responsible for paying the surcharge if they acquire insurance with Citizens within one year of the Citizens' surcharge levy or within the surcharge collection period. Current law is similar in that it allows Citizens to charge new policyholders the surcharge but the time period for charging the new policyholders is different than under the bill. Currently, Citizens is required to collect the surcharge from new Citizens' policyholders for 12 months *after the surcharge begins to be collected*, whereas, the bill requires the surcharge collection for new policyholders for 12 months *after the surcharge is levied*.²⁴

Effect of Proposed Changes to Regular Assessments

The bill also clarifies current law relating to the timing of Citizens' levy of regular assessments against insurance companies. The bill does not allow Citizens to levy regular assessments against insurance companies until Citizens levies a Citizens Policyholder Surcharge in the maximum statutorily allowed amount against Citizens' policyholders. According to a representative of Citizens, this is consistent with how Citizens currently levies regular assessments.²⁵

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062, F.S. relating to rate standards.

Section 2: Amends s. 627.351, F.S. relating to Citizens Property Insurance Corporation.

Section 3: Creates s. 627.7031, F.S. relating to residential property insurance option.

Section 4: Provides an effective date of January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The OIR submitted the following comments regarding the fiscal impact of the bill on the agency:

HB 447 is proposing to allow, with certain restrictions, an insurer to use a rate for residential property insurance different from an otherwise applicable filed rate. The rate that an insurer used shall be filed with the Office as a separate filing. The Office is given the authority to disapprove a rate for being inadequate or for charging any insured or applicant a higher premium solely because of the race, color, creed, marital status, sex or national origin of the insured or applicant. The Office would not have the authority to disapprove the rate for being excessive or unfairly discriminatory or for violations of other provisions of Florida Statutes, such as the Unfair Insurance Trade Practices Act (other than as stated above). In addition, an insurer would not be subject to the limitations imposed on excess rating by s. 627.171(2) and if an insurer chooses to rate insureds under this new limited-regulation option, they would not qualify to purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option.

The proposed s. 627.062(2)(1)1. states that an insurer may use a rate "different from the otherwise applicable filed rate". This implies that the

²⁴ The surcharge levy date will always be earlier than the date in which the surcharges begin to be collected because surcharges have to be levied before they can be collected. Thus, the bill makes the surcharge collection period start earlier than under current law.

²⁵ Conversation with a representative of Citizens on March 9, 2010.

insurer would have to have a filed and approved rating plan (under full rate regulation) in place from which they would be deviating. When they wish to deviate, they would also have to file the new rates to the Office for a “less regulated” review. This may result in an increased workload rather than decreasing the workload of the Office since both the full rate regulation rates and limited regulation rates would have to be filed for each insurer.

With companies responding to recent legislative changes and to the ever-evolving marketplace, we have seen an unprecedented increase in the number of filings made by insurance companies. In 2008, PCPR²⁶ received 84% more rate filings than were received in 2004, as shown in the chart below.

Year	Rate Filings
2009*	6,132
2008	7,332
2007	7,522
2006	5,635
2005	4,236
2004	3,974
2003	4,431
2002	3,854

*2009 values estimated based on filing counts as of September 3, 2009.

Every year since 2004, PCPR has viewed this increasing workload as a temporary phenomenon. We have recruited employees with other core responsibilities to lend a hand and have postponed carrying out some of our other responsibilities within OIR in order to handle the filing workload. However, although we initially viewed it as temporary, the filing counts continue to increase, indicating that this is not a temporary phenomenon.

Currently PCPR has 24 positions directly responsible for reviewing rate filings, including seven actuaries. Rate analysts reviewed on average 172 filings per year during 2002-2005. During 2006-2008, each rate analyst reviewed 285 filings on average per year. If each analyst handled the same number of filings on average in 2006-2008 as they did in 2002-2005, PCPR would need sixteen additional rate analysts to handle the extra workload.

It is not anticipated that this bill would result in a fiscal impact. Should HB 447 be enacted, there might be a slight reduction in the number of residential property filings subject to full rate regulation but there is also a possibility of an increased workload. Even if the bill were to result in a slightly decreased workload, this would only provide relief for the additional requirements placed on PCPR by the increases in filing counts and may allow PCPR to resume its other responsibilities within OIR, including working with Legal Services (analyzing data and filings to ensure compliance with applicable statutes and rules), Property and Casualty Financial Oversight (collecting and analyzing data to support solvency regulation), Market Investigations and Examinations (reporting suspected issues that arise during filing review for follow-up), and Market Research (providing data to stakeholders and interested parties), as

²⁶ PCPR refers to the Property and Casualty Product Review Unit of the OIR. (footnote added by staff of the Insurance, Business & Financial Affairs Policy Committee)

well as providing risk management and insurance services to other government entities as outlined in law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property policies with rates different than the insurer's filed rates are likely to have higher premiums than those property policies with rates that are fully regulated by the OIR, but some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase as insurer's offer policies with rates different than their filed rates and if the premium increases make the premium for a policy from the insurance company in the voluntary market over 15 percent higher than a comparable policy from Citizens, then some policyholders of insurers in the voluntary market may opt to cancel their existing property insurance policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated as that number is dependent on the premium increases made by voluntary market insurers and the resulting behavior of their policyholders. Policyholders who buy property insurance based solely on price are more likely to move their policy to Citizens under this scenario. However, policyholders who base their property insurance purchase on loyalty to an insurer or being insured by a particular insurer may opt to stay with their insurer in the private market even if that company increases the rate on the policy as allowed by the bill and regardless of the price difference between that policy and a Citizens policy.

The bill may incent insurance companies in the private market to write multi-peril policies²⁷ currently written by Citizens. If the private market insurer determines it is advantageous for the company to write these policies at rates different than their filed rates, then private market insurers will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may choose not move their policy to the private market insurer if that insurer charges more than Citizens does. However, policyholders who base their property insurance purchase on being insured by an insurer in the private market may opt to move to the private market insurer for the multi-peril policy currently written by Citizen even if that company charges more for the policy than the price of the Citizens' policy.

The bill may also incent insurance companies in the private market to assume the wind coverage on wind-only policies²⁸ currently written by Citizens. In this case, the private market insurer will write a multi-peril policy. If the bill's allowance for private market insurers to charge rates different than their filed rates results in insurers in the private market determining it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies currently written by Citizens could be written by the private market. However, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may not move their policy to the private market insurer if that insurer charges more than they currently pay for a policy with non-wind coverage from the insurer plus a policy with wind only coverage from Citizens. However, policyholders who base

²⁷ A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

²⁸ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability is available in a separate policy.

their property insurance purchase on being insured by a particular insurer or that want one property insurance policy may opt to move to the private market insurer for a property insurance policy with wind and non-wind coverage even if that company charges more for the policy than the price of the Citizens wind-only policy added to the price of the private insurer's non-wind coverage.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Citizens' position regarding the bill's provision requiring Citizens' surcharge to attach on the date of levy is that for those policyholders who nonrenew their Citizens' policy during the 12 month period after the surcharge levy and obtain coverage in the voluntary market, this provision requires the insurer in the voluntary market to collect the Citizens Policyholder Surcharge before coverage for the former Citizens policyholder can be issued.²⁹

The OIR submitted the following comments in their agency bill analysis:

The Office is opposed to this proposal.

Reinsurance:

While this legislation does not permit insurers using the rate deregulation provision to purchase coverage under the TICL reinsurance option of the FHCF, the legislation does not prohibit the purchase of FHCF coverage in its entirety.

An insurer exempt from rate regulation and review will benefit from lower cost reinsurance from the FHCF, thus increasing the insurer's profit margin. The purpose of the FHCF is to provide low cost reinsurance to insurers doing business in Florida, thus lowering the premium paid by consumers. To allow insurers to benefit from this reinsurance program and not pass through that savings to policyholders is antithetical to the purpose of this program.

Insurers filing under this provision should be prohibited from purchasing reinsurance from the FHCF to reinsure these policies.

²⁹ The insurance company will also have to remit the surcharge it collects for Citizens to Citizens. Additionally, some sort of notification to insurers in the voluntary market of the names of Citizens' policyholders who nonrenew during the 12 month surcharge collection period would be required.

Impact on Property Insurance Rates:

The Office is concerned that this change will yield dramatic rate increases for consumers – a concern bolstered by previous experience in Florida when motor vehicle insurance rates were “deregulated” in the 1960’s and again when the change to consent to rate laws led to dramatic increases in condominium association rates in the early years of this decade.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to residential property insurance;
 3 amending s. 627.062, F.S.; authorizing certain insurers to
 4 use a rate different from otherwise applicable filed
 5 rates; prohibiting the consideration of certain policies
 6 when making a specified calculation; preserving the
 7 authority of the Office of Insurance Regulation to
 8 disapprove rates as inadequate or disapprove a rate filing
 9 for using certain rating factors; authorizing the office
 10 to direct an insurer to make a specified type of rate
 11 filing under certain circumstances; amending s. 627.351,
 12 F.S.; providing requirements for attachment and payment of
 13 the Citizens policyholder surcharge; prohibiting the
 14 corporation from levying certain regular assessments until
 15 after levying the full amount of a Citizens policyholder
 16 surcharge; requiring the corporation's plan of operation
 17 to require agents to obtain an acknowledgement of
 18 potential surcharge and assessment liability from
 19 applicants and policyholders; requiring the corporation to
 20 permanently retain a copy of such acknowledgments;
 21 specifying that the acknowledgement creates a conclusive
 22 presumption of understanding and acceptance by the
 23 policyholder; creating s. 627.7031, F.S.; authorizing
 24 certain insurers to offer or renew policies at rates
 25 established under certain circumstances; prohibiting
 26 certain insurers from purchasing TICL option coverage from
 27 the Florida Hurricane Catastrophe Fund under certain
 28 circumstances; requiring that certain policies contain a

29 specified rate notice; requiring insurers to offer
 30 applicants or insureds an estimate of the premium for a
 31 policy from Citizens Property Insurance Corporation
 32 reflecting similar coverage, limits, and deductibles;
 33 requiring applicants or insureds to provide a signed
 34 premium comparison acknowledgement; specifying criteria
 35 for insurer compliance with certain requirements;
 36 specifying acknowledgement contents; requiring insurers
 37 and agents to retain a copy of the acknowledgement for a
 38 specified time; specifying a presumption created by a
 39 signed acknowledgement; specifying types of residential
 40 property insurance policies that are not eligible for
 41 certain rates or subject to other requirements; requiring
 42 written notice of certain nonrenewals; preserving insurer
 43 authority to cancel policies; specifying a criterion for
 44 what constitutes an offer to renew a policy; providing an
 45 effective date.

46

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

48

49 Section 1. Paragraph (1) is added to subsection (2) of
 50 section 627.062, Florida Statutes, to read:

51

627.062 Rate standards.—

52

(2) As to all such classes of insurance:

53

(1)1. An insurer complying with the requirements of s.

54

627.7031 may use a rate for residential property insurance, as

55

defined in s. 627.4025, different from the otherwise applicable

56

filed rate as provided in this paragraph.

57 | 2. Policies subject to this paragraph may not be counted
 58 | in the calculation under s. 627.171(2).

59 | 3. Such rates shall be filed with the office as a separate
 60 | filing.

61 | 4. This paragraph does not affect the authority of the
 62 | office to disapprove a rate as inadequate or to disapprove a
 63 | rate filing for charging any insured or applicant a higher
 64 | premium solely because of the insured's or applicant's race,
 65 | color, creed, marital status, sex, or national origin. Upon
 66 | finding that an insurer has used any such factor in charging an
 67 | insured or applicant a higher premium, the office may direct the
 68 | insurer to make a new filing for a new rate that does not use
 69 | such factor.

70 |
 71 | The provisions of this subsection shall not apply to workers'
 72 | compensation and employer's liability insurance and to motor
 73 | vehicle insurance.

74 | Section 2. Paragraphs (g) through (ff) of subsection (6)
 75 | of section 627.351, Florida Statutes, are redesignated as
 76 | paragraphs (f) through (ee), respectively, present paragraph (f)
 77 | of that subsection is redesignated as paragraph (ff), and
 78 | paragraphs (b) and (c) of subsection (6) of section 627.351,
 79 | Florida Statutes, are amended to read:

80 | 627.351 Insurance risk apportionment plans.—

81 | (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

82 | (b)1. All insurers authorized to write one or more subject
 83 | lines of business in this state are subject to assessment by the
 84 | corporation and, for the purposes of this subsection, are

85 referred to collectively as "assessable insurers." Insurers
 86 writing one or more subject lines of business in this state
 87 pursuant to part VIII of chapter 626 are not assessable
 88 insurers, but insureds who procure one or more subject lines of
 89 business in this state pursuant to part VIII of chapter 626 are
 90 subject to assessment by the corporation and are referred to
 91 collectively as "assessable insureds." An authorized insurer's
 92 assessment liability shall begin on the first day of the
 93 calendar year following the year in which the insurer was issued
 94 a certificate of authority to transact insurance for subject
 95 lines of business in this state and shall terminate 1 year after
 96 the end of the first calendar year during which the insurer no
 97 longer holds a certificate of authority to transact insurance
 98 for subject lines of business in this state.

99 2.a. All revenues, assets, liabilities, losses, and
 100 expenses of the corporation shall be divided into three separate
 101 accounts as follows:

102 (I) A personal lines account for personal residential
 103 policies issued by the corporation or issued by the Residential
 104 Property and Casualty Joint Underwriting Association and renewed
 105 by the corporation that provide comprehensive, multiperil
 106 coverage on risks that are not located in areas eligible for
 107 coverage in the Florida Windstorm Underwriting Association as
 108 those areas were defined on January 1, 2002, and for such
 109 policies that do not provide coverage for the peril of wind on
 110 risks that are located in such areas;

111 (II) A commercial lines account for commercial residential
 112 and commercial nonresidential policies issued by the corporation

113 or issued by the Residential Property and Casualty Joint
 114 Underwriting Association and renewed by the corporation that
 115 provide coverage for basic property perils on risks that are not
 116 located in areas eligible for coverage in the Florida Windstorm
 117 Underwriting Association as those areas were defined on January
 118 1, 2002, and for such policies that do not provide coverage for
 119 the peril of wind on risks that are located in such areas; and
 120 (III) A high-risk account for personal residential
 121 policies and commercial residential and commercial
 122 nonresidential property policies issued by the corporation or
 123 transferred to the corporation that provide coverage for the
 124 peril of wind on risks that are located in areas eligible for
 125 coverage in the Florida Windstorm Underwriting Association as
 126 those areas were defined on January 1, 2002. The corporation may
 127 offer policies that provide multiperil coverage and the
 128 corporation shall continue to offer policies that provide
 129 coverage only for the peril of wind for risks located in areas
 130 eligible for coverage in the high-risk account. In issuing
 131 multiperil coverage, the corporation may use its approved policy
 132 forms and rates for the personal lines account. An applicant or
 133 insured who is eligible to purchase a multiperil policy from the
 134 corporation may purchase a multiperil policy from an authorized
 135 insurer without prejudice to the applicant's or insured's
 136 eligibility to prospectively purchase a policy that provides
 137 coverage only for the peril of wind from the corporation. An
 138 applicant or insured who is eligible for a corporation policy
 139 that provides coverage only for the peril of wind may elect to
 140 purchase or retain such policy and also purchase or retain

141 coverage excluding wind from an authorized insurer without
 142 prejudice to the applicant's or insured's eligibility to
 143 prospectively purchase a policy that provides multiperil
 144 coverage from the corporation. It is the goal of the Legislature
 145 that there would be an overall average savings of 10 percent or
 146 more for a policyholder who currently has a wind-only policy
 147 with the corporation, and an ex-wind policy with a voluntary
 148 insurer or the corporation, and who then obtains a multiperil
 149 policy from the corporation. It is the intent of the Legislature
 150 that the offer of multiperil coverage in the high-risk account
 151 be made and implemented in a manner that does not adversely
 152 affect the tax-exempt status of the corporation or
 153 creditworthiness of or security for currently outstanding
 154 financing obligations or credit facilities of the high-risk
 155 account, the personal lines account, or the commercial lines
 156 account. The high-risk account must also include quota share
 157 primary insurance under subparagraph (c)2. The area eligible for
 158 coverage under the high-risk account also includes the area
 159 within Port Canaveral, which is bordered on the south by the
 160 City of Cape Canaveral, bordered on the west by the Banana
 161 River, and bordered on the north by Federal Government property.

162 b. The three separate accounts must be maintained as long
 163 as financing obligations entered into by the Florida Windstorm
 164 Underwriting Association or Residential Property and Casualty
 165 Joint Underwriting Association are outstanding, in accordance
 166 with the terms of the corresponding financing documents. When
 167 the financing obligations are no longer outstanding, in
 168 accordance with the terms of the corresponding financing

169 documents, the corporation may use a single account for all
 170 revenues, assets, liabilities, losses, and expenses of the
 171 corporation. Consistent with the requirement of this
 172 subparagraph and prudent investment policies that minimize the
 173 cost of carrying debt, the board shall exercise its best efforts
 174 to retire existing debt or to obtain approval of necessary
 175 parties to amend the terms of existing debt, so as to structure
 176 the most efficient plan to consolidate the three separate
 177 accounts into a single account. By February 1, 2007, the board
 178 shall submit a report to the Financial Services Commission, the
 179 President of the Senate, and the Speaker of the House of
 180 Representatives which includes an analysis of consolidating the
 181 accounts, the actions the board has taken to minimize the cost
 182 of carrying debt, and its recommendations for executing the most
 183 efficient plan.

184 c. Creditors of the Residential Property and Casualty
 185 Joint Underwriting Association and of the accounts specified in
 186 sub-sub-subparagraphs a.(I) and (II) may have a claim against,
 187 and recourse to, the accounts referred to in sub-sub-
 188 subparagraphs a.(I) and (II) and shall have no claim against, or
 189 recourse to, the account referred to in sub-sub-subparagraph
 190 a.(III). Creditors of the Florida Windstorm Underwriting
 191 Association shall have a claim against, and recourse to, the
 192 account referred to in sub-sub-subparagraph a.(III) and shall
 193 have no claim against, or recourse to, the accounts referred to
 194 in sub-sub-subparagraphs a.(I) and (II).

195 d. Revenues, assets, liabilities, losses, and expenses not
 196 attributable to particular accounts shall be prorated among the
 197 accounts.

198 e. The Legislature finds that the revenues of the
 199 corporation are revenues that are necessary to meet the
 200 requirements set forth in documents authorizing the issuance of
 201 bonds under this subsection.

202 f. No part of the income of the corporation may inure to
 203 the benefit of any private person.

204 3. With respect to a deficit in an account:

205 a. After accounting for the Citizens policyholder
 206 surcharge imposed under sub-subparagraph i., when the remaining
 207 projected deficit incurred in a particular calendar year is not
 208 greater than 6 percent of the aggregate statewide direct written
 209 premium for the subject lines of business for the prior calendar
 210 year, the entire deficit shall be recovered through regular
 211 assessments of assessable insurers under paragraph (p) and
 212 assessable insureds.

213 b. After accounting for the Citizens policyholder
 214 surcharge imposed under sub-subparagraph i., when the remaining
 215 projected deficit incurred in a particular calendar year exceeds
 216 6 percent of the aggregate statewide direct written premium for
 217 the subject lines of business for the prior calendar year, the
 218 corporation shall levy regular assessments on assessable
 219 insurers under paragraph (p) and on assessable insureds in an
 220 amount equal to the greater of 6 percent of the deficit or 6
 221 percent of the aggregate statewide direct written premium for
 222 the subject lines of business for the prior calendar year. Any

223 remaining deficit shall be recovered through emergency
 224 assessments under sub-subparagraph d.

225 c. Each assessable insurer's share of the amount being
 226 assessed under sub-subparagraph a. or sub-subparagraph b. shall
 227 be in the proportion that the assessable insurer's direct
 228 written premium for the subject lines of business for the year
 229 preceding the assessment bears to the aggregate statewide direct
 230 written premium for the subject lines of business for that year.
 231 The assessment percentage applicable to each assessable insured
 232 is the ratio of the amount being assessed under sub-subparagraph
 233 a. or sub-subparagraph b. to the aggregate statewide direct
 234 written premium for the subject lines of business for the prior
 235 year. Assessments levied by the corporation on assessable
 236 insurers under sub-subparagraphs a. and b. shall be paid as
 237 required by the corporation's plan of operation and paragraph
 238 (p). Assessments levied by the corporation on assessable
 239 insureds under sub-subparagraphs a. and b. shall be collected by
 240 the surplus lines agent at the time the surplus lines agent
 241 collects the surplus lines tax required by s. 626.932 and shall
 242 be paid to the Florida Surplus Lines Service Office at the time
 243 the surplus lines agent pays the surplus lines tax to the
 244 Florida Surplus Lines Service Office. Upon receipt of regular
 245 assessments from surplus lines agents, the Florida Surplus Lines
 246 Service Office shall transfer the assessments directly to the
 247 corporation as determined by the corporation.

248 d. Upon a determination by the board of governors that a
 249 deficit in an account exceeds the amount that will be recovered
 250 through regular assessments under sub-subparagraph a. or sub-

251 | subparagraph b., plus the amount that is expected to be
 252 | recovered through surcharges under sub-subparagraph i., as to
 253 | the remaining projected deficit the board shall levy, after
 254 | verification by the office, emergency assessments, for as many
 255 | years as necessary to cover the deficits, to be collected by
 256 | assessable insurers and the corporation and collected from
 257 | assessable insureds upon issuance or renewal of policies for
 258 | subject lines of business, excluding National Flood Insurance
 259 | policies. The amount of the emergency assessment collected in a
 260 | particular year shall be a uniform percentage of that year's
 261 | direct written premium for subject lines of business and all
 262 | accounts of the corporation, excluding National Flood Insurance
 263 | Program policy premiums, as annually determined by the board and
 264 | verified by the office. The office shall verify the arithmetic
 265 | calculations involved in the board's determination within 30
 266 | days after receipt of the information on which the determination
 267 | was based. Notwithstanding any other provision of law, the
 268 | corporation and each assessable insurer that writes subject
 269 | lines of business shall collect emergency assessments from its
 270 | policyholders without such obligation being affected by any
 271 | credit, limitation, exemption, or deferment. Emergency
 272 | assessments levied by the corporation on assessable insureds
 273 | shall be collected by the surplus lines agent at the time the
 274 | surplus lines agent collects the surplus lines tax required by
 275 | s. 626.932 and shall be paid to the Florida Surplus Lines
 276 | Service Office at the time the surplus lines agent pays the
 277 | surplus lines tax to the Florida Surplus Lines Service Office.
 278 | The emergency assessments so collected shall be transferred

279 directly to the corporation on a periodic basis as determined by
 280 the corporation and shall be held by the corporation solely in
 281 the applicable account. The aggregate amount of emergency
 282 assessments levied for an account under this sub-subparagraph in
 283 any calendar year may, at the discretion of the board of
 284 governors, be less than but may not exceed the greater of 10
 285 percent of the amount needed to cover the deficit, plus
 286 interest, fees, commissions, required reserves, and other costs
 287 associated with financing of the original deficit, or 10 percent
 288 of the aggregate statewide direct written premium for subject
 289 lines of business and for all accounts of the corporation for
 290 the prior year, plus interest, fees, commissions, required
 291 reserves, and other costs associated with financing the deficit.

292 e. The corporation may pledge the proceeds of assessments,
 293 projected recoveries from the Florida Hurricane Catastrophe
 294 Fund, other insurance and reinsurance recoverables, policyholder
 295 surcharges and other surcharges, and other funds available to
 296 the corporation as the source of revenue for and to secure bonds
 297 issued under paragraph (p), bonds or other indebtedness issued
 298 under subparagraph (c)3., or lines of credit or other financing
 299 mechanisms issued or created under this subsection, or to retire
 300 any other debt incurred as a result of deficits or events giving
 301 rise to deficits, or in any other way that the board determines
 302 will efficiently recover such deficits. The purpose of the lines
 303 of credit or other financing mechanisms is to provide additional
 304 resources to assist the corporation in covering claims and
 305 expenses attributable to a catastrophe. As used in this
 306 subsection, the term "assessments" includes regular assessments

307 | under sub-subparagraph a., sub-subparagraph b., or subparagraph
 308 | (p)1. and emergency assessments under sub-subparagraph d.
 309 | Emergency assessments collected under sub-subparagraph d. are
 310 | not part of an insurer's rates, are not premium, and are not
 311 | subject to premium tax, fees, or commissions; however, failure
 312 | to pay the emergency assessment shall be treated as failure to
 313 | pay premium. The emergency assessments under sub-subparagraph d.
 314 | shall continue as long as any bonds issued or other indebtedness
 315 | incurred with respect to a deficit for which the assessment was
 316 | imposed remain outstanding, unless adequate provision has been
 317 | made for the payment of such bonds or other indebtedness
 318 | pursuant to the documents governing such bonds or other
 319 | indebtedness.

320 | f. As used in this subsection for purposes of any deficit
 321 | incurred on or after January 25, 2007, the term "subject lines
 322 | of business" means insurance written by assessable insurers or
 323 | procured by assessable insureds for all property and casualty
 324 | lines of business in this state, but not including workers'
 325 | compensation or medical malpractice. As used in the sub-
 326 | subparagraph, the term "property and casualty lines of business"
 327 | includes all lines of business identified on Form 2, Exhibit of
 328 | Premiums and Losses, in the annual statement required of
 329 | authorized insurers by s. 624.424 and any rule adopted under
 330 | this section, except for those lines identified as accident and
 331 | health insurance and except for policies written under the
 332 | National Flood Insurance Program or the Federal Crop Insurance
 333 | Program. For purposes of this sub-subparagraph, the term

334 "workers' compensation" includes both workers' compensation
 335 insurance and excess workers' compensation insurance.

336 g. The Florida Surplus Lines Service Office shall
 337 determine annually the aggregate statewide written premium in
 338 subject lines of business procured by assessable insureds and
 339 shall report that information to the corporation in a form and
 340 at a time the corporation specifies to ensure that the
 341 corporation can meet the requirements of this subsection and the
 342 corporation's financing obligations.

343 h. The Florida Surplus Lines Service Office shall verify
 344 the proper application by surplus lines agents of assessment
 345 percentages for regular assessments and emergency assessments
 346 levied under this subparagraph on assessable insureds and shall
 347 assist the corporation in ensuring the accurate, timely
 348 collection and payment of assessments by surplus lines agents as
 349 required by the corporation.

350 i. (I) If a deficit is incurred in any account in 2008 or
 351 thereafter, the board of governors shall levy a Citizens
 352 policyholder surcharge against all policyholders of the
 353 corporation.

354 (II) The policyholder's liability for the Citizens
 355 policyholder surcharge attaches on the date of the order levying
 356 the surcharge or upon the initial issuance of a policy within
 357 the first 12 months after the date of the order. The Citizens
 358 policyholder surcharge is payable upon cancellation or
 359 termination of the policy, upon renewal of the policy, or upon
 360 issuance of a new policy within the first 12 months after the
 361 date of the levy.

362 (III) The Citizens policyholder surcharge for a 12-month
 363 ~~period, which shall be levied collected at the time of issuance~~
 364 ~~or renewal of a policy,~~ as a uniform percentage of the premium
 365 for the policy of up to 15 percent of such premium, which funds
 366 shall be used to offset the deficit.

367 (IV) The corporation may not levy any regular assessments
 368 under paragraph (q) pursuant to sub-subparagraph a. or sub-
 369 subparagraph b. with respect to a particular year's deficit
 370 until the corporation has first levied a Citizens policyholder
 371 surcharge under this sub-subparagraph in the full amount
 372 authorized by this sub-subparagraph.

373 (V) Citizens policyholder surcharges under this sub-
 374 subparagraph are not considered premium and are not subject to
 375 commissions, fees, or premium taxes. However, failure to pay
 376 such surcharges shall be treated as failure to pay premium.

377 j. If the amount of any assessments or surcharges
 378 collected from corporation policyholders, assessable insurers or
 379 their policyholders, or assessable insureds exceeds the amount
 380 of the deficits, such excess amounts shall be remitted to and
 381 retained by the corporation in a reserve to be used by the
 382 corporation, as determined by the board of governors and
 383 approved by the office, to pay claims or reduce any past,
 384 present, or future plan-year deficits or to reduce outstanding
 385 debt.

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

387 1. Must provide for adoption of residential property and
 388 casualty insurance policy forms and commercial residential and
 389 nonresidential property insurance forms, which forms must be

390 approved by the office prior to use. The corporation shall adopt
 391 the following policy forms:

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

396 b. Basic personal lines policy forms that are policies
 397 similar to an HO-8 policy or a dwelling fire policy that provide
 398 coverage meeting the requirements of the secondary mortgage
 399 market, but which coverage is more limited than the coverage
 400 under a standard policy.

401 c. Commercial lines residential and nonresidential policy
 402 forms that are generally similar to the basic perils of full
 403 coverage obtainable for commercial residential structures and
 404 commercial nonresidential structures in the admitted voluntary
 405 market.

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

411 e. Commercial lines nonresidential property insurance
 412 forms that cover the peril of wind only. The forms are
 413 applicable only to nonresidential properties located in areas
 414 eligible for coverage under the high-risk account referred to in
 415 sub-subparagraph (b)2.a.

416 f. The corporation may adopt variations of the policy
 417 forms listed in sub-subparagraphs a.-e. that contain more
 418 restrictive coverage.

419 2.a. Must provide that the corporation adopt a program in
 420 which the corporation and authorized insurers enter into quota
 421 share primary insurance agreements for hurricane coverage, as
 422 defined in s. 627.4025(2)(a), for eligible risks, and adopt
 423 property insurance forms for eligible risks which cover the
 424 peril of wind only. As used in this subsection, the term:

425 (I) "Quota share primary insurance" means an arrangement
 426 in which the primary hurricane coverage of an eligible risk is
 427 provided in specified percentages by the corporation and an
 428 authorized insurer. The corporation and authorized insurer are
 429 each solely responsible for a specified percentage of hurricane
 430 coverage of an eligible risk as set forth in a quota share
 431 primary insurance agreement between the corporation and an
 432 authorized insurer and the insurance contract. The
 433 responsibility of the corporation or authorized insurer to pay
 434 its specified percentage of hurricane losses of an eligible
 435 risk, as set forth in the quota share primary insurance
 436 agreement, may not be altered by the inability of the other
 437 party to the agreement to pay its specified percentage of
 438 hurricane losses. Eligible risks that are provided hurricane
 439 coverage through a quota share primary insurance arrangement
 440 must be provided policy forms that set forth the obligations of
 441 the corporation and authorized insurer under the arrangement,
 442 clearly specify the percentages of quota share primary insurance
 443 provided by the corporation and authorized insurer, and

444 conspicuously and clearly state that neither the authorized
 445 insurer nor the corporation may be held responsible beyond its
 446 specified percentage of coverage of hurricane losses.

447 (II) "Eligible risks" means personal lines residential and
 448 commercial lines residential risks that meet the underwriting
 449 criteria of the corporation and are located in areas that were
 450 eligible for coverage by the Florida Windstorm Underwriting
 451 Association on January 1, 2002.

452 b. The corporation may enter into quota share primary
 453 insurance agreements with authorized insurers at corporation
 454 coverage levels of 90 percent and 50 percent.

455 c. If the corporation determines that additional coverage
 456 levels are necessary to maximize participation in quota share
 457 primary insurance agreements by authorized insurers, the
 458 corporation may establish additional coverage levels. However,
 459 the corporation's quota share primary insurance coverage level
 460 may not exceed 90 percent.

461 d. Any quota share primary insurance agreement entered
 462 into between an authorized insurer and the corporation must
 463 provide for a uniform specified percentage of coverage of
 464 hurricane losses, by county or territory as set forth by the
 465 corporation board, for all eligible risks of the authorized
 466 insurer covered under the quota share primary insurance
 467 agreement.

468 e. Any quota share primary insurance agreement entered
 469 into between an authorized insurer and the corporation is
 470 subject to review and approval by the office. However, such
 471 agreement shall be authorized only as to insurance contracts

472 entered into between an authorized insurer and an insured who is
 473 already insured by the corporation for wind coverage.

474 f. For all eligible risks covered under quota share
 475 primary insurance agreements, the exposure and coverage levels
 476 for both the corporation and authorized insurers shall be
 477 reported by the corporation to the Florida Hurricane Catastrophe
 478 Fund. For all policies of eligible risks covered under quota
 479 share primary insurance agreements, the corporation and the
 480 authorized insurer shall maintain complete and accurate records
 481 for the purpose of exposure and loss reimbursement audits as
 482 required by Florida Hurricane Catastrophe Fund rules. The
 483 corporation and the authorized insurer shall each maintain
 484 duplicate copies of policy declaration pages and supporting
 485 claims documents.

486 g. The corporation board shall establish in its plan of
 487 operation standards for quota share agreements which ensure that
 488 there is no discriminatory application among insurers as to the
 489 terms of quota share agreements, pricing of quota share
 490 agreements, incentive provisions if any, and consideration paid
 491 for servicing policies or adjusting claims.

492 h. The quota share primary insurance agreement between the
 493 corporation and an authorized insurer must set forth the
 494 specific terms under which coverage is provided, including, but
 495 not limited to, the sale and servicing of policies issued under
 496 the agreement by the insurance agent of the authorized insurer
 497 producing the business, the reporting of information concerning
 498 eligible risks, the payment of premium to the corporation, and
 499 arrangements for the adjustment and payment of hurricane claims

500 incurred on eligible risks by the claims adjuster and personnel
 501 of the authorized insurer. Entering into a quota sharing
 502 insurance agreement between the corporation and an authorized
 503 insurer shall be voluntary and at the discretion of the
 504 authorized insurer.

505 3. May provide that the corporation may employ or
 506 otherwise contract with individuals or other entities to provide
 507 administrative or professional services that may be appropriate
 508 to effectuate the plan. The corporation shall have the power to
 509 borrow funds, by issuing bonds or by incurring other
 510 indebtedness, and shall have other powers reasonably necessary
 511 to effectuate the requirements of this subsection, including,
 512 without limitation, the power to issue bonds and incur other
 513 indebtedness in order to refinance outstanding bonds or other
 514 indebtedness. The corporation may, but is not required to, seek
 515 judicial validation of its bonds or other indebtedness under
 516 chapter 75. The corporation may issue bonds or incur other
 517 indebtedness, or have bonds issued on its behalf by a unit of
 518 local government pursuant to subparagraph (p)2., in the absence
 519 of a hurricane or other weather-related event, upon a
 520 determination by the corporation, subject to approval by the
 521 office, that such action would enable it to efficiently meet the
 522 financial obligations of the corporation and that such
 523 financings are reasonably necessary to effectuate the
 524 requirements of this subsection. The corporation is authorized
 525 to take all actions needed to facilitate tax-free status for any
 526 such bonds or indebtedness, including formation of trusts or
 527 other affiliated entities. The corporation shall have the

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528 authority to pledge assessments, projected recoveries from the
529 Florida Hurricane Catastrophe Fund, other reinsurance
530 recoverables, market equalization and other surcharges, and
531 other funds available to the corporation as security for bonds
532 or other indebtedness. In recognition of s. 10, Art. I of the
533 State Constitution, prohibiting the impairment of obligations of
534 contracts, it is the intent of the Legislature that no action be
535 taken whose purpose is to impair any bond indenture or financing
536 agreement or any revenue source committed by contract to such
537 bond or other indebtedness.

538 4.a. Must require that the corporation operate subject to
539 the supervision and approval of a board of governors consisting
540 of eight individuals who are residents of this state, from
541 different geographical areas of this state. The Governor, the
542 Chief Financial Officer, the President of the Senate, and the
543 Speaker of the House of Representatives shall each appoint two
544 members of the board. At least one of the two members appointed
545 by each appointing officer must have demonstrated expertise in
546 insurance. The Chief Financial Officer shall designate one of
547 the appointees as chair. All board members serve at the pleasure
548 of the appointing officer. All members of the board of governors
549 are subject to removal at will by the officers who appointed
550 them. All board members, including the chair, must be appointed
551 to serve for 3-year terms beginning annually on a date
552 designated by the plan. However, for the first term beginning on
553 or after July 1, 2009, each appointing officer shall appoint one
554 member of the board for a 2-year term and one member for a 3-
555 year term. Any board vacancy shall be filled for the unexpired

556 term by the appointing officer. The Chief Financial Officer
 557 shall appoint a technical advisory group to provide information
 558 and advice to the board of governors in connection with the
 559 board's duties under this subsection. The executive director and
 560 senior managers of the corporation shall be engaged by the board
 561 and serve at the pleasure of the board. Any executive director
 562 appointed on or after July 1, 2006, is subject to confirmation
 563 by the Senate. The executive director is responsible for
 564 employing other staff as the corporation may require, subject to
 565 review and concurrence by the board.

566 b. The board shall create a Market Accountability Advisory
 567 Committee to assist the corporation in developing awareness of
 568 its rates and its customer and agent service levels in
 569 relationship to the voluntary market insurers writing similar
 570 coverage. The members of the advisory committee shall consist of
 571 the following 11 persons, one of whom must be elected chair by
 572 the members of the committee: four representatives, one
 573 appointed by the Florida Association of Insurance Agents, one by
 574 the Florida Association of Insurance and Financial Advisors, one
 575 by the Professional Insurance Agents of Florida, and one by the
 576 Latin American Association of Insurance Agencies; three
 577 representatives appointed by the insurers with the three highest
 578 voluntary market share of residential property insurance
 579 business in the state; one representative from the Office of
 580 Insurance Regulation; one consumer appointed by the board who is
 581 insured by the corporation at the time of appointment to the
 582 committee; one representative appointed by the Florida
 583 Association of Realtors; and one representative appointed by the

584 Florida Bankers Association. All members must serve for 3-year
 585 terms and may serve for consecutive terms. The committee shall
 586 report to the corporation at each board meeting on insurance
 587 market issues which may include rates and rate competition with
 588 the voluntary market; service, including policy issuance, claims
 589 processing, and general responsiveness to policyholders,
 590 applicants, and agents; and matters relating to depopulation.

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

593 a. Subject to the provisions of s. 627.3517, with respect
 594 to personal lines residential risks, if the risk is offered
 595 coverage from an authorized insurer at the insurer's approved
 596 rate under either a standard policy including wind coverage or,
 597 if consistent with the insurer's underwriting rules as filed
 598 with the office, a basic policy including wind coverage, for a
 599 new application to the corporation for coverage, the risk is not
 600 eligible for any policy issued by the corporation unless the
 601 premium for coverage from the authorized insurer is more than 15
 602 percent greater than the premium for comparable coverage from
 603 the corporation. If the risk is not able to obtain any such
 604 offer, the risk is eligible for either a standard policy
 605 including wind coverage or a basic policy including wind
 606 coverage issued by the corporation; however, if the risk could
 607 not be insured under a standard policy including wind coverage
 608 regardless of market conditions, the risk shall be eligible for
 609 a basic policy including wind coverage unless rejected under
 610 subparagraph 8. However, with regard to a policyholder of the
 611 corporation or a policyholder removed from the corporation

612 through an assumption agreement until the end of the assumption
 613 period, the policyholder remains eligible for coverage from the
 614 corporation regardless of any offer of coverage from an
 615 authorized insurer or surplus lines insurer. The corporation
 616 shall determine the type of policy to be provided on the basis
 617 of objective standards specified in the underwriting manual and
 618 based on generally accepted underwriting practices.

619 (I) If the risk accepts an offer of coverage through the
 620 market assistance plan or an offer of coverage through a
 621 mechanism established by the corporation before a policy is
 622 issued to the risk by the corporation or during the first 30
 623 days of coverage by the corporation, and the producing agent who
 624 submitted the application to the plan or to the corporation is
 625 not currently appointed by the insurer, the insurer shall:

626 (A) Pay to the producing agent of record of the policy,
 627 for the first year, an amount that is the greater of the
 628 insurer's usual and customary commission for the type of policy
 629 written or a fee equal to the usual and customary commission of
 630 the corporation; or

631 (B) Offer to allow the producing agent of record of the
 632 policy to continue servicing the policy for a period of not less
 633 than 1 year and offer to pay the agent the greater of the
 634 insurer's or the corporation's usual and customary commission
 635 for the type of policy written.

636
 637 If the producing agent is unwilling or unable to accept
 638 appointment, the new insurer shall pay the agent in accordance
 639 with sub-sub-sub-subparagraph (A).

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

644 (A) Pay to the producing agent of record of the
 645 corporation policy, for the first year, an amount that is the
 646 greater of the insurer's usual and customary commission for the
 647 type of policy written or a fee equal to the usual and customary
 648 commission of the corporation; or

649 (B) Offer to allow the producing agent of record of the
 650 corporation policy to continue servicing the policy for a period
 651 of not less than 1 year and offer to pay the agent the greater
 652 of the insurer's or the corporation's usual and customary
 653 commission for the type of policy written.

654
 655 If the producing agent is unwilling or unable to accept
 656 appointment, the new insurer shall pay the agent in accordance
 657 with sub-sub-sub-subparagraph (A).

658 b. With respect to commercial lines residential risks, for
 659 a new application to the corporation for coverage, if the risk
 660 is offered coverage under a policy including wind coverage from
 661 an authorized insurer at its approved rate, the risk is not
 662 eligible for any policy issued by the corporation unless the
 663 premium for coverage from the authorized insurer is more than 15
 664 percent greater than the premium for comparable coverage from
 665 the corporation. If the risk is not able to obtain any such
 666 offer, the risk is eligible for a policy including wind coverage
 667 issued by the corporation. However, with regard to a

668 policyholder of the corporation or a policyholder removed from
 669 the corporation through an assumption agreement until the end of
 670 the assumption period, the policyholder remains eligible for
 671 coverage from the corporation regardless of any offer of
 672 coverage from an authorized insurer or surplus lines insurer.

673 (I) If the risk accepts an offer of coverage through the
 674 market assistance plan or an offer of coverage through a
 675 mechanism established by the corporation before a policy is
 676 issued to the risk by the corporation or during the first 30
 677 days of coverage by the corporation, and the producing agent who
 678 submitted the application to the plan or the corporation is not
 679 currently appointed by the insurer, the insurer shall:

680 (A) Pay to the producing agent of record of the policy,
 681 for the first year, an amount that is the greater of the
 682 insurer's usual and customary commission for the type of policy
 683 written or a fee equal to the usual and customary commission of
 684 the corporation; or

685 (B) Offer to allow the producing agent of record of the
 686 policy to continue servicing the policy for a period of not less
 687 than 1 year and offer to pay the agent the greater of the
 688 insurer's or the corporation's usual and customary commission
 689 for the type of policy written.

690
 691 If the producing agent is unwilling or unable to accept
 692 appointment, the new insurer shall pay the agent in accordance
 693 with sub-sub-sub-subparagraph (A).

694 (II) When the corporation enters into a contractual
 695 agreement for a take-out plan, the producing agent of record of

696 the corporation policy is entitled to retain any unearned
 697 commission on the policy, and the insurer shall:

698 (A) Pay to the producing agent of record of the
 699 corporation policy, for the first year, an amount that is the
 700 greater of the insurer's usual and customary commission for the
 701 type of policy written or a fee equal to the usual and customary
 702 commission of the corporation; or

703 (B) Offer to allow the producing agent of record of the
 704 corporation policy to continue servicing the policy for a period
 705 of not less than 1 year and offer to pay the agent the greater
 706 of the insurer's or the corporation's usual and customary
 707 commission for the type of policy written.

708
 709 If the producing agent is unwilling or unable to accept
 710 appointment, the new insurer shall pay the agent in accordance
 711 with sub-sub-sub-subparagraph (A).

712 c. For purposes of determining comparable coverage under
 713 sub-subparagraphs a. and b., the comparison shall be based on
 714 those forms and coverages that are reasonably comparable. The
 715 corporation may rely on a determination of comparable coverage
 716 and premium made by the producing agent who submits the
 717 application to the corporation, made in the agent's capacity as
 718 the corporation's agent. A comparison may be made solely of the
 719 premium with respect to the main building or structure only on
 720 the following basis: the same coverage A or other building
 721 limits; the same percentage hurricane deductible that applies on
 722 an annual basis or that applies to each hurricane for commercial
 723 residential property; the same percentage of ordinance and law

724 coverage, if the same limit is offered by both the corporation
 725 and the authorized insurer; the same mitigation credits, to the
 726 extent the same types of credits are offered both by the
 727 corporation and the authorized insurer; the same method for loss
 728 payment, such as replacement cost or actual cash value, if the
 729 same method is offered both by the corporation and the
 730 authorized insurer in accordance with underwriting rules; and
 731 any other form or coverage that is reasonably comparable as
 732 determined by the board. If an application is submitted to the
 733 corporation for wind-only coverage in the high-risk account, the
 734 premium for the corporation's wind-only policy plus the premium
 735 for the ex-wind policy that is offered by an authorized insurer
 736 to the applicant shall be compared to the premium for multiperil
 737 coverage offered by an authorized insurer, subject to the
 738 standards for comparison specified in this subparagraph. If the
 739 corporation or the applicant requests from the authorized
 740 insurer a breakdown of the premium of the offer by types of
 741 coverage so that a comparison may be made by the corporation or
 742 its agent and the authorized insurer refuses or is unable to
 743 provide such information, the corporation may treat the offer as
 744 not being an offer of coverage from an authorized insurer at the
 745 insurer's approved rate.

746 6. Must include rules for classifications of risks and
 747 rates therefor.

748 7. Must provide that if premium and investment income for
 749 an account attributable to a particular calendar year are in
 750 excess of projected losses and expenses for the account
 751 attributable to that year, such excess shall be held in surplus

752 in the account. Such surplus shall be available to defray
 753 deficits in that account as to future years and shall be used
 754 for that purpose prior to assessing assessable insurers and
 755 assessable insureds as to any calendar year.

756 8. Must provide objective criteria and procedures to be
 757 uniformly applied for all applicants in determining whether an
 758 individual risk is so hazardous as to be uninsurable. In making
 759 this determination and in establishing the criteria and
 760 procedures, the following shall be considered:

761 a. Whether the likelihood of a loss for the individual
 762 risk is substantially higher than for other risks of the same
 763 class; and

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

766
 767 The acceptance or rejection of a risk by the corporation shall
 768 be construed as the private placement of insurance, and the
 769 provisions of chapter 120 shall not apply.

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

774 10. The policies issued by the corporation must provide
 775 that, if the corporation or the market assistance plan obtains
 776 an offer from an authorized insurer to cover the risk at its
 777 approved rates, the risk is no longer eligible for renewal
 778 through the corporation, except as otherwise provided in this
 779 subsection.

780 11. Corporation policies and applications must include a
 781 notice that the corporation policy could, under this section, be
 782 replaced with a policy issued by an authorized insurer that does
 783 not provide coverage identical to the coverage provided by the
 784 corporation. The notice shall also specify that acceptance of
 785 corporation coverage creates a conclusive presumption that the
 786 applicant or policyholder is aware of this potential.

787 12. May establish, subject to approval by the office,
 788 different eligibility requirements and operational procedures
 789 for any line or type of coverage for any specified county or
 790 area if the board determines that such changes to the
 791 eligibility requirements and operational procedures are
 792 justified due to the voluntary market being sufficiently stable
 793 and competitive in such area or for such line or type of
 794 coverage and that consumers who, in good faith, are unable to
 795 obtain insurance through the voluntary market through ordinary
 796 methods would continue to have access to coverage from the
 797 corporation. When coverage is sought in connection with a real
 798 property transfer, such requirements and procedures shall not
 799 provide for an effective date of coverage later than the date of
 800 the closing of the transfer as established by the transferor,
 801 the transferee, and, if applicable, the lender.

802 13. Must provide that, with respect to the high-risk
 803 account, any assessable insurer with a surplus as to
 804 policyholders of \$25 million or less writing 25 percent or more
 805 of its total countrywide property insurance premiums in this
 806 state may petition the office, within the first 90 days of each
 807 calendar year, to qualify as a limited apportionment company. A

808 regular assessment levied by the corporation on a limited
 809 apportionment company for a deficit incurred by the corporation
 810 for the high-risk account in 2006 or thereafter may be paid to
 811 the corporation on a monthly basis as the assessments are
 812 collected by the limited apportionment company from its insureds
 813 pursuant to s. 627.3512, but the regular assessment must be paid
 814 in full within 12 months after being levied by the corporation.
 815 A limited apportionment company shall collect from its
 816 policyholders any emergency assessment imposed under sub-
 817 subparagraph (b)3.d. The plan shall provide that, if the office
 818 determines that any regular assessment will result in an
 819 impairment of the surplus of a limited apportionment company,
 820 the office may direct that all or part of such assessment be
 821 deferred as provided in subparagraph (p)4. However, there shall
 822 be no limitation or deferment of an emergency assessment to be
 823 collected from policyholders under sub-subparagraph (b)3.d.

824 14. Must provide that the corporation appoint as its
 825 licensed agents only those agents who also hold an appointment
 826 as defined in s. 626.015(3) with an insurer who at the time of
 827 the agent's initial appointment by the corporation is authorized
 828 to write and is actually writing personal lines residential
 829 property coverage, commercial residential property coverage, or
 830 commercial nonresidential property coverage within the state.

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

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

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

840 18. May require commercial property to meet specified
 841 hurricane mitigation construction features as a condition of
 842 eligibility for coverage.

843 19.a. Shall require the agent to obtain from any applicant
 844 for coverage the following acknowledgement, signed by the
 845 applicant, and shall require the agent of record to obtain the
 846 following acknowledgment from each corporation policyholder,
 847 signed by the policyholder, prior to the policy's first renewal
 848 after the effective date of this act:

849
 850 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT

851 LIABILITY:

852 1. I UNDERSTAND, AS A CITIZENS PROPERTY
 853 INSURANCE CORPORATION POLICYHOLDER, THAT IF THE
 854 CORPORATION SUSTAINS A DEFICIT AS A RESULT OF
 855 HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY
 856 COULD BE SUBJECT TO CITIZENS POLICYHOLDER SURCHARGES,
 857 WHICH WOULD BE DUE AND PAYABLE UPON RENEWAL,
 858 CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT
 859 THE SURCHARGES COULD BE AS HIGH AS 15 PERCENT OF MY
 860 PREMIUM FOR DEFICITS IN EACH OF THREE CITIZENS
 861 ACCOUNTS, OR A DIFFERENT AMOUNT AS ESTABLISHED BY THE
 862 FLORIDA LEGISLATURE.

863 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO
 864 EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS
 865 POLICYHOLDERS OF OTHER INSURANCE COMPANIES.

866
 867 b. The corporation shall permanently maintain a signed
 868 copy of the signed acknowledgement required by this
 869 subparagraph, and the agent may also retain a copy.

870 c. The signed acknowledgement form creates a conclusive
 871 presumption that the policyholder understood and accepted his or
 872 her potential surcharge and assessment liability as a Citizens
 873 policyholder.

874 Section 3. Section 627.7031, Florida Statutes, is created
 875 to read:

876 627.7031 Residential property insurance option.—

877 (1) An insurer holding a certificate of authority to write
 878 property insurance in this state may offer or renew policies at
 879 rates established in accordance with s. 627.062(2)(1), subject
 880 to all of the requirements and prohibitions of this section.

881 (2) An insurer offering or renewing policies at rates
 882 established in accordance with s. 627.062(2)(1) may not purchase
 883 coverage from the Florida Hurricane Catastrophe Fund under the
 884 temporary increase in coverage limit option under s.
 885 215.555(17).

886 (3)(a) Before the effective date of a newly issued or
 887 renewal policy at rates established in accordance with s.
 888 627.062(2)(1), the applicant or insured must be given the
 889 following notice, printed in at least 12-point boldfaced type:

890

891 THE RATE FOR THIS POLICY IS NOT SUBJECT TO FULL RATE
 892 REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY
 893 BE HIGHER THAN RATES APPROVED BY THAT OFFICE. A RESIDENTIAL
 894 PROPERTY POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY
 895 BE AVAILABLE FROM THIS INSURER, ANOTHER INSURER, OR CITIZENS
 896 PROPERTY INSURANCE CORPORATION. PLEASE DISCUSS YOUR POLICY
 897 OPTIONS WITH AN INSURANCE AGENT WHO CAN PROVIDE A CITIZENS
 898 QUOTE. YOU MAY WISH TO VIEW THE OFFICE OF INSURANCE REGULATION'S
 899 WEBSITE AT WWW.SHOPANDCOMPARERATES.COM FOR MORE INFORMATION
 900 ABOUT CHOICES AVAILABLE TO YOU.

901
 902 (b) For policies renewed at a rate established in
 903 accordance with s. 627.062(2)(1), the notice described in
 904 paragraph (a) must be provided in writing at the same time as
 905 the renewal notice on a document separate from the renewal
 906 notice, but may be contained within the same mailing as the
 907 renewal notice.

908 (4) Before the effective date of a newly issued policy at
 909 rates established in accordance with s. 627.062(2)(1), or before
 910 the effective date of the first renewal at rates established in
 911 accordance with s. 627.062(2)(1) of a policy originally issued
 912 before the effective date of this section, the applicant or
 913 insured must:

914 (a) Be provided or offered, for comparison purposes, an
 915 estimate of the premium for a policy from Citizens Property
 916 Insurance Corporation reflecting substantially similar
 917 coverages, limits, and deductibles to the extent available.

918 (b) Provide the insurer or agent with a signed copy of the

919 following acknowledgement form, which must be retained by the
 920 insurer or agent for at least 3 years. If the acknowledgement
 921 form is signed by the insured or if the insured remits payment
 922 in the amount of the rate established in accordance with s.
 923 627.062(2)(1) after being mailed or otherwise provided the
 924 acknowledgement form specified in this paragraph, and after
 925 being mailed, otherwise provided, or offered the comparison
 926 specified in paragraph (a), an insurer renewing a policy at such
 927 rate shall be deemed to comply with this section, and it is
 928 presumed that the insured has been informed and understands the
 929 information contained in the comparison and acknowledgement
 930 forms:

931
 932 ACKNOWLEDGEMENT

933 1. I HAVE REVIEWED THE REQUIRED DISCLOSURES AND THE
 934 REQUIRED PREMIUM COMPARISON.

935 2. I UNDERSTAND THAT THE RATE FOR THIS RESIDENTIAL
 936 PROPERTY INSURANCE POLICY IS NOT SUBJECT TO FULL RATE REGULATION
 937 BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER
 938 THAN RATES APPROVED BY THAT OFFICE.

939 3. I UNDERSTAND THAT A RESIDENTIAL PROPERTY INSURANCE
 940 POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE
 941 AVAILABLE FROM CITIZENS PROPERTY INSURANCE CORPORATION.

942 4. I UNDERSTAND THAT THE FLORIDA OFFICE OF INSURANCE
 943 REGULATION'S WEBSITE WWW.SHOPANDCOMPARERATES.COM CONTAINS
 944 RESIDENTIAL PROPERTY INSURANCE RATE COMPARISON INFORMATION.

945 5. I UNDERSTAND THAT IF CITIZENS PROPERTY INSURANCE
 946 CORPORATION INCURS A DEFICIT BECAUSE OF HURRICANE LOSSES OR

947 OTHER LOSSES, I MAY BE REQUIRED TO PAY AN ASSESSMENT BASED UPON
 948 THE PREMIUM FOR THIS POLICY AND THAT A POLICYHOLDER OF CITIZENS
 949 PROPERTY INSURANCE CORPORATION MAY BE REQUIRED TO PAY A
 950 DIFFERENT ASSESSMENT.

951
 952 (5) The following types of residential property insurance
 953 policies are not eligible for rates established in accordance
 954 with s. 627.062(2)(1) and are not subject to the other
 955 provisions of this section:

956 (a) Residential property insurance policies that exclude
 957 coverage for the perils of windstorm or hurricane.

958 (b) Residential property insurance policies that are
 959 subject to a consent decree, agreement, understanding, or other
 960 arrangement between the insurer and the office relating to rates
 961 or premiums for policies removed from Citizens Property
 962 Insurance Corporation.

963 (6) Notwithstanding s. 627.4133, an insurer that has
 964 issued a policy under this section shall provide the named
 965 insured written notice of nonrenewal at least 180 days before
 966 the effective date of the nonrenewal as to subsequent
 967 nonrenewals. However, this subsection does not prohibit an
 968 insurer from cancelling a policy as permitted under s. 627.4133.
 969 The offer of a policy at rates authorized by this section
 970 constitutes an offer to renew the policy at the rates specified
 971 in the offer and does not constitute a nonrenewal.

972 Section 4. This act shall take effect January 1, 2011.

INSURANCE, BUSINESS & FINANCIAL AFFAIRS POLICY COMMITTEE

HB 447 by Rep. Proctor

Residential Property Insurance

AMENDMENT SUMMARY

March 17, 2010

Amendment 1 by Rep. Proctor is a strike-all amendment. New provisions are added to the bill on the following issues:

- Extension of the medical malpractice exemption from the assessment base of the Florida Hurricane Catastrophe Fund.
- Increased surplus required for certain property insurance companies to obtain a certificate of insurance to transact insurance.
- Increased surplus required for certain property insurance companies to keep a certificate of insurance to transact insurance.
- Publication date of and contents of insurance company report cards prepared by the Insurance Consumer Advocate.
- Payment of acquisition costs by insurance companies.
- Effect of additional information provided by an insurance company on the required CEO/actuary certification required for rate filings.
- Repeal of specified information on the website of residential property insurance rate filings maintained by the Office of Insurance Regulation.
- Allowance for insurance companies' base rates to account for the impact of mitigation discounts on reductions in revenue of insurance companies.
- Allowance for use of mitigation debits.
- Repeal of the correlation of mitigation discounts to the uniform home grading scale.
- Implementation of a program allowing consumers to compare homeowners' insurance, contingent on an appropriation.
- Reduction of the wind-only zones in Citizens Property Insurance Corporation (Citizens) due to the insufficient reduction in Citizens' probable maximum loss.
- Reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition.
- Procedure and payment timing related to payment of replacement costs to policyholders.
- Venue for collateral actions of delinquency proceedings.
- Repeal of the sinkhole database.

The originally filed version of HB 447 is also included in the strike-all amendment but with the following major change:

- Rates used by insurance companies that are different from the company's filed rates are limited to a 5% statewide average increase over the filed rate for the first year the different rate is used, are limited to a 10% statewide average increase the second year, and a 15% statewide average increase the third year.

Amendment #1A to the Strike-All Amendment by Rep. Nelson (Line 1676): Amends several statutory provisions relating to sinkholes claims. Changes relate to the time frame for policyholders to enter into contracts to repair sinkhole damage, presumption of correctness that applies to sinkhole reports, filing of the sinkhole report and certification with the clerk of court, disclosure of sinkhole claims by property sellers, availability of the sinkhole neutral evaluation process, interaction of the sinkhole neutral evaluation process and the appraisal clause, disqualification of neutral evaluators for cause, use of an additional neutral evaluator, ability of the neutral evaluator to order additional sinkhole testing, contents of the neutral evaluator's report, insurer action required if the insurer agrees with the neutral evaluation report, and insurer's responsibility for attorney's fees.

Amendment #1B to the Strike-All Amendment by Rep. Nelson (Line 1678): Adds a provision allowing insurance companies to change the terms of an insurance policy at renewal if specified conditions are met.

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ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee

3 Representative Proctor offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (b) of subsection (6) of section
8 215.555, Florida Statutes, is amended to read:

9 215.555 Florida Hurricane Catastrophe Fund.—

10 (6) REVENUE BONDS.—

11 (b) Emergency assessments.—

12 1. If the board determines that the amount of revenue
13 produced under subsection (5) is insufficient to fund the
14 obligations, costs, and expenses of the fund and the
15 corporation, including repayment of revenue bonds and that
16 portion of the debt service coverage not met by reimbursement
17 premiums, the board shall direct the Office of Insurance
18 Regulation to levy, by order, an emergency assessment on direct
19 premiums for all property and casualty lines of business in this

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20 state, including property and casualty business of surplus lines
21 insurers regulated under part VIII of chapter 626, but not
22 including any workers' compensation premiums or medical
23 malpractice premiums. As used in this subsection, the term
24 "property and casualty business" includes all lines of business
25 identified on Form 2, Exhibit of Premiums and Losses, in the
26 annual statement required of authorized insurers by s. 624.424
27 and any rule adopted under this section, except for those lines
28 identified as accident and health insurance and except for
29 policies written under the National Flood Insurance Program. The
30 assessment shall be specified as a percentage of direct written
31 premium and is subject to annual adjustments by the board in
32 order to meet debt obligations. The same percentage shall apply
33 to all policies in lines of business subject to the assessment
34 issued or renewed during the 12-month period beginning on the
35 effective date of the assessment.

36 2. A premium is not subject to an annual assessment under
37 this paragraph in excess of 6 percent of premium with respect to
38 obligations arising out of losses attributable to any one
39 contract year, and a premium is not subject to an aggregate
40 annual assessment under this paragraph in excess of 10 percent
41 of premium. An annual assessment under this paragraph shall
42 continue as long as the revenue bonds issued with respect to
43 which the assessment was imposed are outstanding, including any
44 bonds the proceeds of which were used to refund the revenue
45 bonds, unless adequate provision has been made for the payment
46 of the bonds under the documents authorizing issuance of the
47 bonds.

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48 3. Emergency assessments shall be collected from
49 policyholders. Emergency assessments shall be remitted by
50 insurers as a percentage of direct written premium for the
51 preceding calendar quarter as specified in the order from the
52 Office of Insurance Regulation. The office shall verify the
53 accurate and timely collection and remittance of emergency
54 assessments and shall report the information to the board in a
55 form and at a time specified by the board. Each insurer
56 collecting assessments shall provide the information with
57 respect to premiums and collections as may be required by the
58 office to enable the office to monitor and verify compliance
59 with this paragraph.

60 4. With respect to assessments of surplus lines premiums,
61 each surplus lines agent shall collect the assessment at the
62 same time as the agent collects the surplus lines tax required
63 by s. 626.932, and the surplus lines agent shall remit the
64 assessment to the Florida Surplus Lines Service Office created
65 by s. 626.921 at the same time as the agent remits the surplus
66 lines tax to the Florida Surplus Lines Service Office. The
67 emergency assessment on each insured procuring coverage and
68 filing under s. 626.938 shall be remitted by the insured to the
69 Florida Surplus Lines Service Office at the time the insured
70 pays the surplus lines tax to the Florida Surplus Lines Service
71 Office. The Florida Surplus Lines Service Office shall remit the
72 collected assessments to the fund or corporation as provided in
73 the order levied by the Office of Insurance Regulation. The
74 Florida Surplus Lines Service Office shall verify the proper
75 application of such emergency assessments and shall assist the

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76 board in ensuring the accurate and timely collection and
77 remittance of assessments as required by the board. The Florida
78 Surplus Lines Service Office shall annually calculate the
79 aggregate written premium on property and casualty business,
80 other than workers' compensation and medical malpractice,
81 procured through surplus lines agents and insureds procuring
82 coverage and filing under s. 626.938 and shall report the
83 information to the board in a form and at a time specified by
84 the board.

85 5. Any assessment authority not used for a particular
86 contract year may be used for a subsequent contract year. If,
87 for a subsequent contract year, the board determines that the
88 amount of revenue produced under subsection (5) is insufficient
89 to fund the obligations, costs, and expenses of the fund and the
90 corporation, including repayment of revenue bonds and that
91 portion of the debt service coverage not met by reimbursement
92 premiums, the board shall direct the Office of Insurance
93 Regulation to levy an emergency assessment up to an amount not
94 exceeding the amount of unused assessment authority from a
95 previous contract year or years, plus an additional 4 percent
96 provided that the assessments in the aggregate do not exceed the
97 limits specified in subparagraph 2.

98 6. The assessments otherwise payable to the corporation
99 under this paragraph shall be paid to the fund unless and until
100 the Office of Insurance Regulation and the Florida Surplus Lines
101 Service Office have received from the corporation and the fund a
102 notice, which shall be conclusive and upon which they may rely
103 without further inquiry, that the corporation has issued bonds

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104 and the fund has no agreements in effect with local governments
105 under paragraph (c). On or after the date of the notice and
106 until the date the corporation has no bonds outstanding, the
107 fund shall have no right, title, or interest in or to the
108 assessments, except as provided in the fund's agreement with the
109 corporation.

110 7. Emergency assessments are not premium and are not
111 subject to the premium tax, to the surplus lines tax, to any
112 fees, or to any commissions. An insurer is liable for all
113 assessments that it collects and must treat the failure of an
114 insured to pay an assessment as a failure to pay the premium. An
115 insurer is not liable for uncollectible assessments.

116 8. When an insurer is required to return an unearned
117 premium, it shall also return any collected assessment
118 attributable to the unearned premium. A credit adjustment to the
119 collected assessment may be made by the insurer with regard to
120 future remittances that are payable to the fund or corporation,
121 but the insurer is not entitled to a refund.

122 9. When a surplus lines insured or an insured who has
123 procured coverage and filed under s. 626.938 is entitled to the
124 return of an unearned premium, the Florida Surplus Lines Service
125 Office shall provide a credit or refund to the agent or such
126 insured for the collected assessment attributable to the
127 unearned premium prior to remitting the emergency assessment
128 collected to the fund or corporation.

129 10. The exemption of medical malpractice insurance
130 premiums from emergency assessments under this paragraph is
131 repealed May 31, 2013 ~~2010~~, and medical malpractice insurance

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132 premiums shall be subject to emergency assessments attributable
133 to loss events occurring in the contract years commencing on
134 June 1, 2013 ~~2010~~.

135 Section 2. Subsection (1) of section 624.407, Florida
136 Statutes, is amended to read:

137 624.407 Capital funds required; new insurers.—

138 (1) To receive authority to transact any one kind or
139 combinations of kinds of insurance, as defined in part V of this
140 chapter, an insurer applying for its original certificate of
141 authority in this state after the effective date of this section
142 shall possess surplus as to policyholders not less than the
143 greater of:

144 (a) Except as otherwise provided in this subsection, \$5
145 ~~five million dollars~~ for a property and casualty insurer, or
146 \$2.5 million for any other insurer;

147 (b) For life insurers, 4 percent of the insurer's total
148 liabilities;

149 (c) For life and health insurers, 4 percent of the
150 insurer's total liabilities, plus 6 percent of the insurer's
151 liabilities relative to health insurance; ~~or~~

152 (d) For all insurers other than life insurers and life and
153 health insurers, 10 percent of the insurer's total liabilities;
154 or

155 (e) For a domestic insurer initially licensed on or after
156 July 1, 2010, that transacts residential property insurance and
157 is not a wholly owned subsidiary of an insurer domiciled in any
158 other state, \$15 million; however, this paragraph does not apply

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159 to a domestic insurer that is a subsidiary or affiliate of a
160 domestic property insurer that was licensed before July 1, 2010;
161

162 however, a domestic insurer that transacts residential property
163 insurance and is a wholly owned subsidiary of an insurer
164 domiciled in any other state shall possess surplus as to
165 policyholders of at least \$50 million, but no insurer shall be
166 required under this subsection to have surplus as to
167 policyholders greater than \$100 million.

168 Section 3. Subsection (1) of section 624.408, Florida
169 Statutes, is amended to read:

170 624.408 Surplus as to policyholders required; new and
171 existing insurers.—

172 (1) ~~(a)~~ To maintain a certificate of authority to transact
173 any one kind or combinations of kinds of insurance, as defined
174 in part V of this chapter, an insurer in this state shall at all
175 times maintain surplus as to policyholders not less than the
176 greater of:

177 (a)1. Except as provided in paragraphs (e) and (f)
178 subparagraph 5. and paragraph (b), \$1.5 million;

179 (b)2. For life insurers, 4 percent of the insurer's total
180 liabilities;

181 (c)3. For life and health insurers, 4 percent of the
182 insurer's total liabilities plus 6 percent of the insurer's
183 liabilities relative to health insurance; ~~or~~

184 (d)4. For all insurers other than mortgage guaranty
185 insurers, life insurers, and life and health insurers, 10
186 percent of the insurer's total liabilities;—

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187 (e)5. Except as provided in paragraph (f), for property
188 and casualty insurers, \$4 million; or-

189 (f) For a domestic insurer initially licensed on or after
190 July 1, 2010, that transacts residential property insurance and
191 is not a wholly owned subsidiary of an insurer domiciled in any
192 other state, \$12 million; however, this paragraph does not apply
193 to a domestic insurer that is a subsidiary or affiliate of a
194 domestic property insurer that was licensed before July 1, 2010.

195 ~~(b) For any property and casualty insurer holding a~~
196 ~~certificate of authority on December 1, 1993, the following~~
197 ~~amounts apply instead of the \$4 million required by subparagraph~~
198 ~~(a)5.:~~

199 ~~1. On December 31, 2001, and until December 30, 2002, \$3~~
200 ~~million.~~

201 ~~2. On December 31, 2002, and until December 30, 2003,~~
202 ~~\$3.25 million.~~

203 ~~3. On December 31, 2003, and until December 30, 2004, \$3.6~~
204 ~~million.~~

205 ~~4. On December 31, 2004, and thereafter, \$4 million.~~

206 Section 4. Subsection (4) of section 627.0613, Florida
207 Statutes, is amended to read:

208 627.0613 Consumer advocate.—The Chief Financial Officer
209 must appoint a consumer advocate who must represent the general
210 public of the state before the department and the office. The
211 consumer advocate must report directly to the Chief Financial
212 Officer, but is not otherwise under the authority of the
213 department or of any employee of the department. The consumer
214 advocate has such powers as are necessary to carry out the

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215 duties of the office of consumer advocate, including, but not
216 limited to, the powers to:

217 (4) (a) By June 1, 2012, and each June 1 thereafter,
218 prepare an annual report card for each authorized personal
219 residential property insurer, on a form and using a letter-grade
220 scale developed by the commission by rule, which objectively
221 grades each insurer based on the following factors:

222 1. (a) The number and nature of valid consumer complaints,
223 as a market share ratio, received by the department against the
224 insurer.

225 2. (b) The disposition of all valid complaints received by
226 the department.

227 3. (c) The average length of time for payment of claims by
228 the insurer.

229 4. (d) Any other measurable and objective factors the
230 commission identifies as capable of assisting policyholders in
231 making informed choices about homeowner's insurance.

232 (b) For purposes of this subsection, the term "valid
233 consumer complaint" means a written communication from a
234 consumer which expresses dissatisfaction with a specific
235 personal residential property insurer whose conduct as described
236 in the communication is found to constitute a violation of the
237 insurance laws of this state by the Division of Consumer
238 Services of the Department of Financial Services.

239 Section 5. Paragraphs (i) and (k) of subsection (2) of
240 section 627.062, Florida Statutes, are amended, paragraph (l) is
241 added to subsection (2), and paragraph (e) is added to
242 subsection (9) of that section, to read:

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243 627.062 Rate standards.—

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

245 (i) 1. Except as otherwise specifically provided in this
246 chapter, the office may ~~shall~~ not, directly or indirectly,
247 prohibit any insurer, including any residual market plan or
248 joint underwriting association, from paying acquisition costs
249 based on the full amount of premium, as defined in s. 627.403,
250 applicable to any policy, or prohibit, directly or indirectly,
251 any such insurer from including the full amount of acquisition
252 costs in a rate filing.

253 2. The office may not, directly or indirectly, impede,
254 abridge, or otherwise compromise an insurer's right to acquire
255 policyholders, advertise, or appoint agents, including, but not
256 limited to, the calculation, manner, or amount of such agent
257 commissions, if any.

258 (k) 1. An insurer may make a separate filing limited solely
259 to an adjustment of its rates for reinsurance or financing costs
260 incurred in the purchase of reinsurance or financing products to
261 replace or finance the payment of the amount covered by the
262 Temporary Increase in Coverage Limits (TICL) portion of the
263 Florida Hurricane Catastrophe Fund including replacement
264 reinsurance for the TICL reductions made pursuant to s.
265 215.555(17)(e); the actual cost paid due to the application of
266 the TICL premium factor pursuant to s. 215.555(17)(f); and the
267 actual cost paid due to the application of the cash build-up
268 factor pursuant to s. 215.555(5)(b) if the insurer:

269 a. Elects to purchase financing products such as a
270 liquidity instrument or line of credit, in which case the cost

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271 included in the filing for the liquidity instrument or line of
272 credit may not result in a premium increase exceeding 3 percent
273 for any individual policyholder. All costs contained in the
274 filing may not result in an overall premium increase of more
275 than 10 percent for any individual policyholder.

276 b. Includes in the filing a copy of all of its
277 reinsurance, liquidity instrument, or line of credit contracts;
278 proof of the billing or payment for the contracts; and the
279 calculation upon which the proposed rate change is based
280 demonstrates that the costs meet the criteria of this section
281 ~~and are not loaded for expenses or profit for the insurer making~~
282 ~~the filing.~~

283 c. Includes no other changes to its rates in the filing.

284 d. Has not implemented a rate increase within the 6 months
285 immediately preceding the filing.

286 e. Does not file for a rate increase under any other
287 paragraph within 6 months after making a filing under this
288 paragraph.

289 f. That purchases reinsurance or financing products from
290 an affiliated company in compliance with this paragraph does so
291 only if the costs for such reinsurance or financing products are
292 charged at or below charges made for comparable coverage by
293 nonaffiliated reinsurers or financial entities making such
294 coverage or financing products available in this state.

295 2. An insurer may only make one filing in any 12-month
296 period under this paragraph.

297 3. An insurer that elects to implement a rate change under
298 this paragraph must file its rate filing with the office at

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299 least 45 days before the effective date of the rate change.

300 After an insurer submits a complete filing that meets all of the
301 requirements of this paragraph, the office has 45 days after the
302 date of the filing to review the rate filing and determine if
303 the rate is excessive, inadequate, or unfairly discriminatory.

304 (1)1. On or after January 1, 2011, an insurer complying
305 with the requirements of s. 627.7031 may use a rate for
306 residential property insurance, as defined in s. 627.4025,
307 different from the otherwise applicable filed rate as provided
308 in this paragraph.

309 2. Policies subject to this paragraph may not be counted
310 in the calculation under s. 627.171(2).

311 3. Such rates shall be filed with the office as a separate
312 filing. The initial rates used by an insurer under this
313 paragraph may not provide for rates that represent more than a
314 5-percent statewide average rate increase over the most recently
315 filed and approved rate. A rate filing under this paragraph
316 submitted in the first year following the year of implementation
317 of such initial rates may not provide for rates that represent
318 more than a 10-percent statewide average rate increase in a year
319 over the rates in effect under this paragraph at the time of the
320 filing. A rate filing under this paragraph submitted in the
321 second year following the year of implementation of such initial
322 rates or in a subsequent year may not provide for rates that
323 represent more than a 15-percent statewide average rate increase
324 in a year over the rates in effect under this paragraph at the
325 time of the filing.

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326 4. This paragraph does not affect the authority of the
327 office to disapprove a rate as inadequate or to disapprove a
328 rate filing for charging any insured or applicant a higher
329 premium solely because of the insured's or applicant's race,
330 color, creed, marital status, sex, or national origin. Upon
331 finding that an insurer has used any such factor in charging an
332 insured or applicant a higher premium, the office may direct the
333 insurer to make a new filing for a new rate that does not use
334 such factor.

335

336 The provisions of this subsection shall not apply to workers'
337 compensation and employer's liability insurance and to motor
338 vehicle insurance.

339 (9)

340 (e) A certification under this subsection is not rendered
341 false when, after making the subject rate filing, the insurer
342 provides the office with additional or supplementary information
343 or clarification pursuant to a formal or informal request from
344 the office or for any other reason.

345 Section 6. Section 627.0621, Florida Statutes, is amended
346 to read:

347 627.0621 Transparency in rate regulation.—

348 ~~(1) DEFINITIONS. As used in this section, the term:~~

349 ~~(a) "Rate filing" means any original or amended rate~~
350 ~~residential property insurance filing.~~

351 ~~(b) "Recommendation" means any proposed, preliminary, or~~
352 ~~final recommendation from an office actuary reviewing a rate~~
353 ~~filing with respect to the issue of approval or disapproval of~~

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354 ~~the rate filing or with respect to rate indications that the~~
355 ~~office would consider acceptable.~~

356 ~~(2) WEBSITE FOR PUBLIC ACCESS TO RATE FILING INFORMATION.~~

357 (1)(a) With respect to any residential property rate
358 filing, the office shall provide the following information on a
359 publicly accessible Internet website:

360 (a)1. The overall rate change requested by the insurer.

361 (b)2. The rate change approved by the office along with
362 all of the actuary's assumptions and recommendations forming the
363 basis of the office's decision.

364 ~~3. Certification by the office's actuary that, based on~~
365 ~~the actuary's knowledge, his or her recommendations are~~
366 ~~consistent with accepted actuarial principles.~~

367 (2)(b) For any rate filing, whether or not the filing is
368 subject to a public hearing, the office shall provide on its
369 website a means for any policyholder who may be affected by a
370 proposed rate change to send an e-mail regarding the proposed
371 rate change. Such e-mail must be accessible to the actuary
372 assigned to review the rate filing.

373 Section 7. Subsections (1) and (5) of section 627.0629,
374 Florida Statutes, are amended, and subsection (10) is added to
375 that section, to read:

376 627.0629 Residential property insurance; rate filings.—

377 (1)(a) It is the intent of the Legislature that insurers
378 ~~must~~ provide the most accurate pricing signals available ~~savings~~
379 to encourage consumers who install or implement windstorm damage
380 mitigation techniques, alterations, or solutions to their
381 properties to prevent windstorm losses. It is also the intent of

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382 the Legislature that implementation of mitigation discounts not
383 result in a loss of income to the insurers granting the
384 discounts, so that the aggregate of mitigation discounts should
385 not exceed the aggregate of the expected reduction in loss that
386 is attributable to the mitigation efforts for which discounts
387 are granted. A rate filing for residential property insurance
388 must include actuarially reasonable discounts, credits, debits,
389 or other rate differentials, or appropriate reductions in
390 deductibles, that provide the proper pricing for all properties.
391 The rate filing must take into account the presence or absence
392 of ~~on which~~ fixtures or construction techniques demonstrated to
393 reduce the amount of loss in a windstorm have been installed or
394 implemented. The fixtures or construction techniques shall
395 include, but not be limited to, fixtures or construction
396 techniques that ~~which~~ enhance roof strength, roof covering
397 performance, roof-to-wall strength, wall-to-floor-to-foundation
398 strength, opening protection, and window, door, and skylight
399 strength. Credits, debits, discounts, or other rate
400 differentials, or appropriate reductions or increases in
401 deductibles, that recognize the presence or absence of ~~for~~
402 fixtures and construction techniques that ~~which~~ meet the minimum
403 requirements of the Florida Building Code must be included in
404 the rate filing. If an insurer demonstrates that the aggregate
405 of its mitigation discounts results in a reduction to revenue
406 that exceeds the reduction of the aggregate loss that is
407 expected to result from the mitigation, the insurer may recover
408 the lost revenue through an increase in its base rates. ~~All~~
409 insurance companies must make a rate filing which includes the

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410 ~~credits, discounts, or other rate differentials or reductions in~~
411 ~~deductibles by February 28, 2003.~~ By July 1, 2007, the office
412 shall reevaluate the discounts, credits, other rate
413 differentials, and appropriate reductions in deductibles for
414 fixtures and construction techniques that meet the minimum
415 requirements of the Florida Building Code, based upon actual
416 experience or any other loss relativity studies available to the
417 office. The office shall determine the discounts, credits,
418 debits, other rate differentials, and appropriate reductions or
419 increases in deductibles that reflect the full actuarial value
420 of such revaluation, which may be used by insurers in rate
421 filings.

422 ~~(b) By February 1, 2011, the Office of Insurance~~
423 ~~Regulation, in consultation with the Department of Financial~~
424 ~~Services and the Department of Community Affairs, shall develop~~
425 ~~and make publicly available a proposed method for insurers to~~
426 ~~establish discounts, credits, or other rate differentials for~~
427 ~~hurricane mitigation measures which directly correlate to the~~
428 ~~numerical rating assigned to a structure pursuant to the uniform~~
429 ~~home grading scale adopted by the Financial Services Commission~~
430 ~~pursuant to s. 215.55865, including any proposed changes to the~~
431 ~~uniform home grading scale. By October 1, 2011, the commission~~
432 ~~shall adopt rules requiring insurers to make rate filings for~~
433 ~~residential property insurance which revise insurers' discounts,~~
434 ~~credits, or other rate differentials for hurricane mitigation~~
435 ~~measures so that such rate differentials correlate directly to~~
436 ~~the uniform home grading scale. The rules may include such~~
437 ~~changes to the uniform home grading scale as the commission~~

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438 ~~determines are necessary, and may specify the minimum required~~
439 ~~discounts, credits, or other rate differentials. Such rate~~
440 ~~differentials must be consistent with generally accepted~~
441 ~~actuarial principles and wind loss mitigation studies. The rules~~
442 ~~shall allow a period of at least 2 years after the effective~~
443 ~~date of the revised mitigation discounts, credits, or other rate~~
444 ~~differentials for a property owner to obtain an inspection or~~
445 ~~otherwise qualify for the revised credit, during which time the~~
446 ~~insurer shall continue to apply the mitigation credit that was~~
447 ~~applied immediately prior to the effective date of the revised~~
448 ~~credit. Discounts, credits, and other rate differentials~~
449 ~~established for rate filings under this paragraph shall~~
450 ~~supersede, after adoption, the discounts, credits, and other~~
451 ~~rate differentials included in rate filings under paragraph (a).~~

452 (5) In order to provide an appropriate transition period,
453 an insurer may, in its sole discretion, implement an approved
454 rate filing for residential property insurance over a period of
455 years. An insurer electing to phase in its rate filing must
456 provide an informational notice to the office setting out its
457 schedule for implementation of the phased-in rate filing. An
458 insurer may include in its rate the actual cost of private
459 market reinsurance that corresponds to available coverage of the
460 Temporary Increase in Coverage Limits, TICL, from the Florida
461 Hurricane Catastrophe Fund. The insurer may also include the
462 cost of reinsurance to replace the TICL reduction implemented
463 pursuant to s. 215.555(17)(d)9. However, this cost for
464 reinsurance may not ~~include any expense or profit load or result~~
465 in a total annual base rate increase in excess of 10 percent.

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466 (10) (a) Contingent upon specific appropriations made to
467 implement this subsection, in order to enhance the ability of
468 consumers to compare premiums and to increase the accuracy and
469 usefulness of rate and product comparison information for
470 homeowners' insurance, the office shall develop or contract with
471 a private entity to develop a comprehensive program for
472 providing the consumer with all available information necessary
473 to make an informed purchase of the insurance product that best
474 serves the needs of the individual.

475 (b) In developing the comprehensive program, the office
476 shall rely as much as is practical on information that is
477 currently available and shall consider:

478 1. The most efficient means for developing, hosting, and
479 operating a separate website that consolidates all consumer
480 information for price comparisons, filed complaints, financial
481 strength, underwriting, and receivership information and other
482 data useful to consumers.

483 2. Whether all admitted insurers should be required to
484 submit additional information to populate the composite website
485 and how often such submissions must be made.

486 3. Whether all admitted insurers should be required to
487 provide links from the website into each individual insurer's
488 website in order to enable consumers to access product rate
489 information and apply for quotations.

490 4. Developing a plan to publicize the existence,
491 availability, and value of the website.

492 5. Any other provision that would make relevant
493 homeowners' insurance information more readily available so that

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494 consumers can make informed product comparisons and purchasing
495 decisions.

496 (c) Before establishing the program or website, the office
497 shall conduct a cost-benefit analysis to determine the most
498 effective approach for establishing and operating the program
499 and website. Based on the results of the analysis, the office
500 shall submit a proposed implementation plan for review and
501 approval by the Financial Services Commission. The
502 implementation plan shall include an estimated timeline for
503 establishing the program and website; a description of the data
504 and functionality to be provided by the site; a strategy for
505 publicizing the website to consumers; a recommended approach for
506 developing, hosting, and operating the website; and an estimate
507 of all major nonrecurring and recurring costs required to
508 establish and operate the website. Upon approval of the plan,
509 the office may initiate the establishment of the program.

510 Section 8. Paragraphs (b), (c), (y), (z), (aa), (bb),
511 (cc), (dd), (ee), and (ff) of subsection (6) of section 627.351,
512 Florida Statutes, are amended to read:

513 627.351 Insurance risk apportionment plans.—

514 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

515 (b)1. All insurers authorized to write one or more subject
516 lines of business in this state are subject to assessment by the
517 corporation and, for the purposes of this subsection, are
518 referred to collectively as "assessable insurers." Insurers
519 writing one or more subject lines of business in this state
520 pursuant to part VIII of chapter 626 are not assessable
521 insurers, but insureds who procure one or more subject lines of

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522 business in this state pursuant to part VIII of chapter 626 are
523 subject to assessment by the corporation and are referred to
524 collectively as "assessable insureds." An authorized insurer's
525 assessment liability shall begin on the first day of the
526 calendar year following the year in which the insurer was issued
527 a certificate of authority to transact insurance for subject
528 lines of business in this state and shall terminate 1 year after
529 the end of the first calendar year during which the insurer no
530 longer holds a certificate of authority to transact insurance
531 for subject lines of business in this state.

532 2.a. All revenues, assets, liabilities, losses, and
533 expenses of the corporation shall be divided into three separate
534 accounts as follows:

535 (I) A personal lines account for personal residential
536 policies issued by the corporation or issued by the Residential
537 Property and Casualty Joint Underwriting Association and renewed
538 by the corporation that provide comprehensive, multiperil
539 coverage on risks that are not located in areas eligible for
540 coverage in the Florida Windstorm Underwriting Association as
541 those areas were defined on January 1, 2002, and for such
542 policies that do not provide coverage for the peril of wind on
543 risks that are located in such areas;

544 (II) A commercial lines account for commercial residential
545 and commercial nonresidential policies issued by the corporation
546 or issued by the Residential Property and Casualty Joint
547 Underwriting Association and renewed by the corporation that
548 provide coverage for basic property perils on risks that are not
549 located in areas eligible for coverage in the Florida Windstorm

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550 Underwriting Association as those areas were defined on January
551 1, 2002, and for such policies that do not provide coverage for
552 the peril of wind on risks that are located in such areas; and
553 (III) A high-risk account for personal residential
554 policies and commercial residential and commercial
555 nonresidential property policies issued by the corporation or
556 transferred to the corporation that provide coverage for the
557 peril of wind on risks that are located in areas eligible for
558 coverage in the Florida Windstorm Underwriting Association as
559 those areas were defined on January 1, 2002. The corporation may
560 offer policies that provide multiperil coverage and the
561 corporation shall continue to offer policies that provide
562 coverage only for the peril of wind for risks located in areas
563 eligible for coverage in the high-risk account. In issuing
564 multiperil coverage, the corporation may use its approved policy
565 forms and rates for the personal lines account. An applicant or
566 insured who is eligible to purchase a multiperil policy from the
567 corporation may purchase a multiperil policy from an authorized
568 insurer without prejudice to the applicant's or insured's
569 eligibility to prospectively purchase a policy that provides
570 coverage only for the peril of wind from the corporation. An
571 applicant or insured who is eligible for a corporation policy
572 that provides coverage only for the peril of wind may elect to
573 purchase or retain such policy and also purchase or retain
574 coverage excluding wind from an authorized insurer without
575 prejudice to the applicant's or insured's eligibility to
576 prospectively purchase a policy that provides multiperil
577 coverage from the corporation. It is the goal of the Legislature

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578 that there would be an overall average savings of 10 percent or
579 more for a policyholder who currently has a wind-only policy
580 with the corporation, and an ex-wind policy with a voluntary
581 insurer or the corporation, and who then obtains a multiperil
582 policy from the corporation. It is the intent of the Legislature
583 that the offer of multiperil coverage in the high-risk account
584 be made and implemented in a manner that does not adversely
585 affect the tax-exempt status of the corporation or
586 creditworthiness of or security for currently outstanding
587 financing obligations or credit facilities of the high-risk
588 account, the personal lines account, or the commercial lines
589 account. The high-risk account must also include quota share
590 primary insurance under subparagraph (c)2. The area eligible for
591 coverage under the high-risk account also includes the area
592 within Port Canaveral, which is bordered on the south by the
593 City of Cape Canaveral, bordered on the west by the Banana
594 River, and bordered on the north by Federal Government property.

595 b. The three separate accounts must be maintained as long
596 as financing obligations entered into by the Florida Windstorm
597 Underwriting Association or Residential Property and Casualty
598 Joint Underwriting Association are outstanding, in accordance
599 with the terms of the corresponding financing documents. When
600 the financing obligations are no longer outstanding, in
601 accordance with the terms of the corresponding financing
602 documents, the corporation may use a single account for all
603 revenues, assets, liabilities, losses, and expenses of the
604 corporation. Consistent with the requirement of this
605 subparagraph and prudent investment policies that minimize the

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606 cost of carrying debt, the board shall exercise its best efforts
607 to retire existing debt or to obtain approval of necessary
608 parties to amend the terms of existing debt, so as to structure
609 the most efficient plan to consolidate the three separate
610 accounts into a single account. By February 1, 2007, the board
611 shall submit a report to the Financial Services Commission, the
612 President of the Senate, and the Speaker of the House of
613 Representatives which includes an analysis of consolidating the
614 accounts, the actions the board has taken to minimize the cost
615 of carrying debt, and its recommendations for executing the most
616 efficient plan.

617 c. Creditors of the Residential Property and Casualty
618 Joint Underwriting Association and of the accounts specified in
619 sub-sub-subparagraphs a.(I) and (II) may have a claim against,
620 and recourse to, the accounts referred to in sub-sub-
621 subparagraphs a.(I) and (II) and shall have no claim against, or
622 recourse to, the account referred to in sub-sub-subparagraph
623 a.(III). Creditors of the Florida Windstorm Underwriting
624 Association shall have a claim against, and recourse to, the
625 account referred to in sub-sub-subparagraph a.(III) and shall
626 have no claim against, or recourse to, the accounts referred to
627 in sub-sub-subparagraphs a.(I) and (II).

628 d. Revenues, assets, liabilities, losses, and expenses not
629 attributable to particular accounts shall be prorated among the
630 accounts.

631 e. The Legislature finds that the revenues of the
632 corporation are revenues that are necessary to meet the

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633 requirements set forth in documents authorizing the issuance of
634 bonds under this subsection.

635 f. No part of the income of the corporation may inure to
636 the benefit of any private person.

637 3. With respect to a deficit in an account:

638 a. After accounting for the Citizens policyholder
639 surcharge imposed under sub-subparagraph i., when the remaining
640 projected deficit incurred in a particular calendar year is not
641 greater than 6 percent of the aggregate statewide direct written
642 premium for the subject lines of business for the prior calendar
643 year, the entire deficit shall be recovered through regular
644 assessments of assessable insurers under paragraph (p) and
645 assessable insureds.

646 b. After accounting for the Citizens policyholder
647 surcharge imposed under sub-subparagraph i., when the remaining
648 projected deficit incurred in a particular calendar year exceeds
649 6 percent of the aggregate statewide direct written premium for
650 the subject lines of business for the prior calendar year, the
651 corporation shall levy regular assessments on assessable
652 insurers under paragraph (p) and on assessable insureds in an
653 amount equal to the greater of 6 percent of the deficit or 6
654 percent of the aggregate statewide direct written premium for
655 the subject lines of business for the prior calendar year. Any
656 remaining deficit shall be recovered through emergency
657 assessments under sub-subparagraph d.

658 c. Each assessable insurer's share of the amount being
659 assessed under sub-subparagraph a. or sub-subparagraph b. shall
660 be in the proportion that the assessable insurer's direct

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661 written premium for the subject lines of business for the year
662 preceding the assessment bears to the aggregate statewide direct
663 written premium for the subject lines of business for that year.
664 The assessment percentage applicable to each assessable insured
665 is the ratio of the amount being assessed under sub-subparagraph
666 a. or sub-subparagraph b. to the aggregate statewide direct
667 written premium for the subject lines of business for the prior
668 year. Assessments levied by the corporation on assessable
669 insurers under sub-subparagraphs a. and b. shall be paid as
670 required by the corporation's plan of operation and paragraph
671 (p). Assessments levied by the corporation on assessable
672 insureds under sub-subparagraphs a. and b. shall be collected by
673 the surplus lines agent at the time the surplus lines agent
674 collects the surplus lines tax required by s. 626.932 and shall
675 be paid to the Florida Surplus Lines Service Office at the time
676 the surplus lines agent pays the surplus lines tax to the
677 Florida Surplus Lines Service Office. Upon receipt of regular
678 assessments from surplus lines agents, the Florida Surplus Lines
679 Service Office shall transfer the assessments directly to the
680 corporation as determined by the corporation.

681 d. Upon a determination by the board of governors that a
682 deficit in an account exceeds the amount that will be recovered
683 through regular assessments under sub-subparagraph a. or sub-
684 subparagraph b., plus the amount that is expected to be
685 recovered through surcharges under sub-subparagraph i., as to
686 the remaining projected deficit the board shall levy, after
687 verification by the office, emergency assessments, for as many
688 years as necessary to cover the deficits, to be collected by

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689 assessable insurers and the corporation and collected from
690 assessable insureds upon issuance or renewal of policies for
691 subject lines of business, excluding National Flood Insurance
692 policies. The amount of the emergency assessment collected in a
693 particular year shall be a uniform percentage of that year's
694 direct written premium for subject lines of business and all
695 accounts of the corporation, excluding National Flood Insurance
696 Program policy premiums, as annually determined by the board and
697 verified by the office. The office shall verify the arithmetic
698 calculations involved in the board's determination within 30
699 days after receipt of the information on which the determination
700 was based. Notwithstanding any other provision of law, the
701 corporation and each assessable insurer that writes subject
702 lines of business shall collect emergency assessments from its
703 policyholders without such obligation being affected by any
704 credit, limitation, exemption, or deferment. Emergency
705 assessments levied by the corporation on assessable insureds
706 shall be collected by the surplus lines agent at the time the
707 surplus lines agent collects the surplus lines tax required by
708 s. 626.932 and shall be paid to the Florida Surplus Lines
709 Service Office at the time the surplus lines agent pays the
710 surplus lines tax to the Florida Surplus Lines Service Office.
711 The emergency assessments so collected shall be transferred
712 directly to the corporation on a periodic basis as determined by
713 the corporation and shall be held by the corporation solely in
714 the applicable account. The aggregate amount of emergency
715 assessments levied for an account under this sub-subparagraph in
716 any calendar year may, at the discretion of the board of

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717 | governors, be less than but may not exceed the greater of 10
718 | percent of the amount needed to cover the deficit, plus
719 | interest, fees, commissions, required reserves, and other costs
720 | associated with financing of the original deficit, or 10 percent
721 | of the aggregate statewide direct written premium for subject
722 | lines of business and for all accounts of the corporation for
723 | the prior year, plus interest, fees, commissions, required
724 | reserves, and other costs associated with financing the deficit.

725 | e. The corporation may pledge the proceeds of assessments,
726 | projected recoveries from the Florida Hurricane Catastrophe
727 | Fund, other insurance and reinsurance recoverables, policyholder
728 | surcharges and other surcharges, and other funds available to
729 | the corporation as the source of revenue for and to secure bonds
730 | issued under paragraph (p), bonds or other indebtedness issued
731 | under subparagraph (c)3., or lines of credit or other financing
732 | mechanisms issued or created under this subsection, or to retire
733 | any other debt incurred as a result of deficits or events giving
734 | rise to deficits, or in any other way that the board determines
735 | will efficiently recover such deficits. The purpose of the lines
736 | of credit or other financing mechanisms is to provide additional
737 | resources to assist the corporation in covering claims and
738 | expenses attributable to a catastrophe. As used in this
739 | subsection, the term "assessments" includes regular assessments
740 | under sub-subparagraph a., sub-subparagraph b., or subparagraph
741 | (p)1. and emergency assessments under sub-subparagraph d.
742 | Emergency assessments collected under sub-subparagraph d. are
743 | not part of an insurer's rates, are not premium, and are not
744 | subject to premium tax, fees, or commissions; however, failure

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745 to pay the emergency assessment shall be treated as failure to
746 pay premium. The emergency assessments under sub-subparagraph d.
747 shall continue as long as any bonds issued or other indebtedness
748 incurred with respect to a deficit for which the assessment was
749 imposed remain outstanding, unless adequate provision has been
750 made for the payment of such bonds or other indebtedness
751 pursuant to the documents governing such bonds or other
752 indebtedness.

753 f. As used in this subsection for purposes of any deficit
754 incurred on or after January 25, 2007, the term "subject lines
755 of business" means insurance written by assessable insurers or
756 procured by assessable insureds for all property and casualty
757 lines of business in this state, but not including workers'
758 compensation or medical malpractice. As used in the sub-
759 subparagraph, the term "property and casualty lines of business"
760 includes all lines of business identified on Form 2, Exhibit of
761 Premiums and Losses, in the annual statement required of
762 authorized insurers by s. 624.424 and any rule adopted under
763 this section, except for those lines identified as accident and
764 health insurance and except for policies written under the
765 National Flood Insurance Program or the Federal Crop Insurance
766 Program. For purposes of this sub-subparagraph, the term
767 "workers' compensation" includes both workers' compensation
768 insurance and excess workers' compensation insurance.

769 g. The Florida Surplus Lines Service Office shall
770 determine annually the aggregate statewide written premium in
771 subject lines of business procured by assessable insureds and
772 shall report that information to the corporation in a form and

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773 at a time the corporation specifies to ensure that the
774 corporation can meet the requirements of this subsection and the
775 corporation's financing obligations.

776 h. The Florida Surplus Lines Service Office shall verify
777 the proper application by surplus lines agents of assessment
778 percentages for regular assessments and emergency assessments
779 levied under this subparagraph on assessable insureds and shall
780 assist the corporation in ensuring the accurate, timely
781 collection and payment of assessments by surplus lines agents as
782 required by the corporation.

783 i. (I) If a deficit is incurred in any account in 2008 or
784 thereafter, the board of governors shall levy a Citizens
785 policyholder surcharge against all policyholders of the
786 corporation.

787 (II) The policyholder's liability for the Citizens
788 policyholder surcharge attaches on the date of the order levying
789 the surcharge. The Citizens policyholder surcharge is payable
790 upon cancellation or termination of the policy, upon renewal of
791 the policy, or upon issuance of a new policy by Citizens within
792 the first 12 months after the date of the levy or the period of
793 time necessary to fully collect the Citizens policyholder
794 surcharge amount.

795 (III) The Citizens policyholder surcharge for a 12-month
796 period, which shall be levied collected at the time of issuance
797 or renewal of a policy, as a uniform percentage of the premium
798 for the policy of up to 15 percent of such premium, which funds
799 shall be used to offset the deficit.

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800 (IV) The corporation may not levy any regular assessments
801 under sub-subparagraph a. or sub-subparagraph b. with respect to
802 a particular year's deficit until the corporation has first
803 levied a Citizens policyholder surcharge under this sub-
804 subparagraph in the full amount authorized by this sub-
805 subparagraph.

806 (V) Citizens policyholder surcharges under this sub-
807 subparagraph are not considered premium and are not subject to
808 commissions, fees, or premium taxes. However, failure to pay
809 such surcharges shall be treated as failure to pay premium.

810 j. If the amount of any assessments or surcharges
811 collected from corporation policyholders, assessable insurers or
812 their policyholders, or assessable insureds exceeds the amount
813 of the deficits, such excess amounts shall be remitted to and
814 retained by the corporation in a reserve to be used by the
815 corporation, as determined by the board of governors and
816 approved by the office, to pay claims or reduce any past,
817 present, or future plan-year deficits or to reduce outstanding
818 debt.

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

820 1. Must provide for adoption of residential property and
821 casualty insurance policy forms and commercial residential and
822 nonresidential property insurance forms, which forms must be
823 approved by the office prior to use. The corporation shall adopt
824 the following policy forms:

825 a. Standard personal lines policy forms that are
826 comprehensive multiperil policies providing full coverage of a

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827 residential property equivalent to the coverage provided in the
828 private insurance market under an HO-3, HO-4, or HO-6 policy.

829 b. Basic personal lines policy forms that are policies
830 similar to an HO-8 policy or a dwelling fire policy that provide
831 coverage meeting the requirements of the secondary mortgage
832 market, but which coverage is more limited than the coverage
833 under a standard policy.

834 c. Commercial lines residential and nonresidential policy
835 forms that are generally similar to the basic perils of full
836 coverage obtainable for commercial residential structures and
837 commercial nonresidential structures in the admitted voluntary
838 market.

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

844 e. Commercial lines nonresidential property insurance
845 forms that cover the peril of wind only. The forms are
846 applicable only to nonresidential properties located in areas
847 eligible for coverage under the high-risk account referred to in
848 sub-subparagraph (b)2.a.

849 f. The corporation may adopt variations of the policy
850 forms listed in sub-subparagraphs a.-e. that contain more
851 restrictive coverage.

852 2.a. Must provide that the corporation adopt a program in
853 which the corporation and authorized insurers enter into quota
854 share primary insurance agreements for hurricane coverage, as

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855 defined in s. 627.4025(2)(a), for eligible risks, and adopt
856 property insurance forms for eligible risks which cover the
857 peril of wind only. As used in this subsection, the term:

858 (I) "Quota share primary insurance" means an arrangement
859 in which the primary hurricane coverage of an eligible risk is
860 provided in specified percentages by the corporation and an
861 authorized insurer. The corporation and authorized insurer are
862 each solely responsible for a specified percentage of hurricane
863 coverage of an eligible risk as set forth in a quota share
864 primary insurance agreement between the corporation and an
865 authorized insurer and the insurance contract. The
866 responsibility of the corporation or authorized insurer to pay
867 its specified percentage of hurricane losses of an eligible
868 risk, as set forth in the quota share primary insurance
869 agreement, may not be altered by the inability of the other
870 party to the agreement to pay its specified percentage of
871 hurricane losses. Eligible risks that are provided hurricane
872 coverage through a quota share primary insurance arrangement
873 must be provided policy forms that set forth the obligations of
874 the corporation and authorized insurer under the arrangement,
875 clearly specify the percentages of quota share primary insurance
876 provided by the corporation and authorized insurer, and
877 conspicuously and clearly state that neither the authorized
878 insurer nor the corporation may be held responsible beyond its
879 specified percentage of coverage of hurricane losses.

880 (II) "Eligible risks" means personal lines residential and
881 commercial lines residential risks that meet the underwriting
882 criteria of the corporation and are located in areas that were

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883 eligible for coverage by the Florida Windstorm Underwriting
884 Association on January 1, 2002.

885 b. The corporation may enter into quota share primary
886 insurance agreements with authorized insurers at corporation
887 coverage levels of 90 percent and 50 percent.

888 c. If the corporation determines that additional coverage
889 levels are necessary to maximize participation in quota share
890 primary insurance agreements by authorized insurers, the
891 corporation may establish additional coverage levels. However,
892 the corporation's quota share primary insurance coverage level
893 may not exceed 90 percent.

894 d. Any quota share primary insurance agreement entered
895 into between an authorized insurer and the corporation must
896 provide for a uniform specified percentage of coverage of
897 hurricane losses, by county or territory as set forth by the
898 corporation board, for all eligible risks of the authorized
899 insurer covered under the quota share primary insurance
900 agreement.

901 e. Any quota share primary insurance agreement entered
902 into between an authorized insurer and the corporation is
903 subject to review and approval by the office. However, such
904 agreement shall be authorized only as to insurance contracts
905 entered into between an authorized insurer and an insured who is
906 already insured by the corporation for wind coverage.

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

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911 Fund. For all policies of eligible risks covered under quota
912 share primary insurance agreements, the corporation and the
913 authorized insurer shall maintain complete and accurate records
914 for the purpose of exposure and loss reimbursement audits as
915 required by Florida Hurricane Catastrophe Fund rules. The
916 corporation and the authorized insurer shall each maintain
917 duplicate copies of policy declaration pages and supporting
918 claims documents.

919 g. The corporation board shall establish in its plan of
920 operation standards for quota share agreements which ensure that
921 there is no discriminatory application among insurers as to the
922 terms of quota share agreements, pricing of quota share
923 agreements, incentive provisions if any, and consideration paid
924 for servicing policies or adjusting claims.

925 h. The quota share primary insurance agreement between the
926 corporation and an authorized insurer must set forth the
927 specific terms under which coverage is provided, including, but
928 not limited to, the sale and servicing of policies issued under
929 the agreement by the insurance agent of the authorized insurer
930 producing the business, the reporting of information concerning
931 eligible risks, the payment of premium to the corporation, and
932 arrangements for the adjustment and payment of hurricane claims
933 incurred on eligible risks by the claims adjuster and personnel
934 of the authorized insurer. Entering into a quota sharing
935 insurance agreement between the corporation and an authorized
936 insurer shall be voluntary and at the discretion of the
937 authorized insurer.

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938 3. May provide that the corporation may employ or
939 otherwise contract with individuals or other entities to provide
940 administrative or professional services that may be appropriate
941 to effectuate the plan. The corporation shall have the power to
942 borrow funds, by issuing bonds or by incurring other
943 indebtedness, and shall have other powers reasonably necessary
944 to effectuate the requirements of this subsection, including,
945 without limitation, the power to issue bonds and incur other
946 indebtedness in order to refinance outstanding bonds or other
947 indebtedness. The corporation may, but is not required to, seek
948 judicial validation of its bonds or other indebtedness under
949 chapter 75. The corporation may issue bonds or incur other
950 indebtedness, or have bonds issued on its behalf by a unit of
951 local government pursuant to subparagraph (p)2., in the absence
952 of a hurricane or other weather-related event, upon a
953 determination by the corporation, subject to approval by the
954 office, that such action would enable it to efficiently meet the
955 financial obligations of the corporation and that such
956 financings are reasonably necessary to effectuate the
957 requirements of this subsection. The corporation is authorized
958 to take all actions needed to facilitate tax-free status for any
959 such bonds or indebtedness, including formation of trusts or
960 other affiliated entities. The corporation shall have the
961 authority to pledge assessments, projected recoveries from the
962 Florida Hurricane Catastrophe Fund, other reinsurance
963 recoverables, market equalization and other surcharges, and
964 other funds available to the corporation as security for bonds
965 or other indebtedness. In recognition of s. 10, Art. I of the

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966 State Constitution, prohibiting the impairment of obligations of
967 contracts, it is the intent of the Legislature that no action be
968 taken whose purpose is to impair any bond indenture or financing
969 agreement or any revenue source committed by contract to such
970 bond or other indebtedness.

971 4.a. Must require that the corporation operate subject to
972 the supervision and approval of a board of governors consisting
973 of eight individuals who are residents of this state, from
974 different geographical areas of this state. The Governor, the
975 Chief Financial Officer, the President of the Senate, and the
976 Speaker of the House of Representatives shall each appoint two
977 members of the board. At least one of the two members appointed
978 by each appointing officer must have demonstrated expertise in
979 insurance. The Chief Financial Officer shall designate one of
980 the appointees as chair. All board members serve at the pleasure
981 of the appointing officer. All members of the board of governors
982 are subject to removal at will by the officers who appointed
983 them. All board members, including the chair, must be appointed
984 to serve for 3-year terms beginning annually on a date
985 designated by the plan. However, for the first term beginning on
986 or after July 1, 2009, each appointing officer shall appoint one
987 member of the board for a 2-year term and one member for a 3-
988 year term. Any board vacancy shall be filled for the unexpired
989 term by the appointing officer. The Chief Financial Officer
990 shall appoint a technical advisory group to provide information
991 and advice to the board of governors in connection with the
992 board's duties under this subsection. The executive director and
993 senior managers of the corporation shall be engaged by the board

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994 and serve at the pleasure of the board. Any executive director
995 appointed on or after July 1, 2006, is subject to confirmation
996 by the Senate. The executive director is responsible for
997 employing other staff as the corporation may require, subject to
998 review and concurrence by the board.

999 b. The board shall create a Market Accountability Advisory
1000 Committee to assist the corporation in developing awareness of
1001 its rates and its customer and agent service levels in
1002 relationship to the voluntary market insurers writing similar
1003 coverage. The members of the advisory committee shall consist of
1004 the following 11 persons, one of whom must be elected chair by
1005 the members of the committee: four representatives, one
1006 appointed by the Florida Association of Insurance Agents, one by
1007 the Florida Association of Insurance and Financial Advisors, one
1008 by the Professional Insurance Agents of Florida, and one by the
1009 Latin American Association of Insurance Agencies; three
1010 representatives appointed by the insurers with the three highest
1011 voluntary market share of residential property insurance
1012 business in the state; one representative from the Office of
1013 Insurance Regulation; one consumer appointed by the board who is
1014 insured by the corporation at the time of appointment to the
1015 committee; one representative appointed by the Florida
1016 Association of Realtors; and one representative appointed by the
1017 Florida Bankers Association. All members must serve for 3-year
1018 terms and may serve for consecutive terms. The committee shall
1019 report to the corporation at each board meeting on insurance
1020 market issues which may include rates and rate competition with
1021 the voluntary market; service, including policy issuance, claims

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1022 processing, and general responsiveness to policyholders,
1023 applicants, and agents; and matters relating to depopulation.

1024 5. Must provide a procedure for determining the
1025 eligibility of a risk for coverage, as follows:

1026 a. Subject to the provisions of s. 627.3517, with respect
1027 to personal lines residential risks, if the risk is offered
1028 coverage from an authorized insurer at the insurer's approved
1029 rate under either a standard policy including wind coverage or,
1030 if consistent with the insurer's underwriting rules as filed
1031 with the office, a basic policy including wind coverage, for a
1032 new application to the corporation for coverage, the risk is not
1033 eligible for any policy issued by the corporation unless the
1034 premium for coverage from the authorized insurer is more than 15
1035 percent greater than the premium for comparable coverage from
1036 the corporation. If the risk is not able to obtain any such
1037 offer, the risk is eligible for either a standard policy
1038 including wind coverage or a basic policy including wind
1039 coverage issued by the corporation; however, if the risk could
1040 not be insured under a standard policy including wind coverage
1041 regardless of market conditions, the risk shall be eligible for
1042 a basic policy including wind coverage unless rejected under
1043 subparagraph 8. However, with regard to a policyholder of the
1044 corporation or a policyholder removed from the corporation
1045 through an assumption agreement until the end of the assumption
1046 period, the policyholder remains eligible for coverage from the
1047 corporation regardless of any offer of coverage from an
1048 authorized insurer or surplus lines insurer. The corporation
1049 shall determine the type of policy to be provided on the basis

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1050 of objective standards specified in the underwriting manual and
1051 based on generally accepted underwriting practices.

1052 (I) If the risk accepts an offer of coverage through the
1053 market assistance plan or an offer of coverage through a
1054 mechanism established by the corporation before a policy is
1055 issued to the risk by the corporation or during the first 30
1056 days of coverage by the corporation, and the producing agent who
1057 submitted the application to the plan or to the corporation is
1058 not currently appointed by the insurer, the insurer shall:

1059 (A) Pay to the producing agent of record of the policy,
1060 for the first year, an amount that is the greater of the
1061 insurer's usual and customary commission for the type of policy
1062 written or a fee equal to the usual and customary commission of
1063 the corporation; or

1064 (B) Offer to allow the producing agent of record of the
1065 policy to continue servicing the policy for a period of not less
1066 than 1 year and offer to pay the agent the greater of the
1067 insurer's or the corporation's usual and customary commission
1068 for the type of policy written.

1069
1070 If the producing agent is unwilling or unable to accept
1071 appointment, the new insurer shall pay the agent in accordance
1072 with sub-sub-sub-subparagraph (A).

1073 (II) When the corporation enters into a contractual
1074 agreement for a take-out plan, the producing agent of record of
1075 the corporation policy is entitled to retain any unearned
1076 commission on the policy, and the insurer shall:

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1077 (A) Pay to the producing agent of record of the
1078 corporation policy, for the first year, an amount that is the
1079 greater of the insurer's usual and customary commission for the
1080 type of policy written or a fee equal to the usual and customary
1081 commission of the corporation; or

1082 (B) Offer to allow the producing agent of record of the
1083 corporation policy to continue servicing the policy for a period
1084 of not less than 1 year and offer to pay the agent the greater
1085 of the insurer's or the corporation's usual and customary
1086 commission for the type of policy written.

1087
1088 If the producing agent is unwilling or unable to accept
1089 appointment, the new insurer shall pay the agent in accordance
1090 with sub-sub-sub-subparagraph (A).

1091 b. With respect to commercial lines residential risks, for
1092 a new application to the corporation for coverage, if the risk
1093 is offered coverage under a policy including wind coverage from
1094 an authorized insurer at its approved rate, the risk is not
1095 eligible for any policy issued by the corporation unless the
1096 premium for coverage from the authorized insurer is more than 15
1097 percent greater than the premium for comparable coverage from
1098 the corporation. If the risk is not able to obtain any such
1099 offer, the risk is eligible for a policy including wind coverage
1100 issued by the corporation. However, with regard to a
1101 policyholder of the corporation or a policyholder removed from
1102 the corporation through an assumption agreement until the end of
1103 the assumption period, the policyholder remains eligible for

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1104 coverage from the corporation regardless of any offer of
1105 coverage from an authorized insurer or surplus lines insurer.

1106 (I) If the risk accepts an offer of coverage through the
1107 market assistance plan or an offer of coverage through a
1108 mechanism established by the corporation before a policy is
1109 issued to the risk by the corporation or during the first 30
1110 days of coverage by the corporation, and the producing agent who
1111 submitted the application to the plan or the corporation is not
1112 currently appointed by the insurer, the insurer shall:

1113 (A) Pay to the producing agent of record of the policy,
1114 for the first year, an amount that is the greater of the
1115 insurer's usual and customary commission for the type of policy
1116 written or a fee equal to the usual and customary commission of
1117 the corporation; or

1118 (B) Offer to allow the producing agent of record of the
1119 policy to continue servicing the policy for a period of not less
1120 than 1 year and offer to pay the agent the greater of the
1121 insurer's or the corporation's usual and customary commission
1122 for the type of policy written.

1123

1124 If the producing agent is unwilling or unable to accept
1125 appointment, the new insurer shall pay the agent in accordance
1126 with sub-sub-sub-subparagraph (A).

1127 (II) When the corporation enters into a contractual
1128 agreement for a take-out plan, the producing agent of record of
1129 the corporation policy is entitled to retain any unearned
1130 commission on the policy, and the insurer shall:

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1131 (A) Pay to the producing agent of record of the
1132 corporation policy, for the first year, an amount that is the
1133 greater of the insurer's usual and customary commission for the
1134 type of policy written or a fee equal to the usual and customary
1135 commission of the corporation; or

1136 (B) Offer to allow the producing agent of record of the
1137 corporation policy to continue servicing the policy for a period
1138 of not less than 1 year and offer to pay the agent the greater
1139 of the insurer's or the corporation's usual and customary
1140 commission for the type of policy written.

1141

1142 If the producing agent is unwilling or unable to accept
1143 appointment, the new insurer shall pay the agent in accordance
1144 with sub-sub-sub-subparagraph (A).

1145 c. For purposes of determining comparable coverage under
1146 sub-subparagraphs a. and b., the comparison shall be based on
1147 those forms and coverages that are reasonably comparable. The
1148 corporation may rely on a determination of comparable coverage
1149 and premium made by the producing agent who submits the
1150 application to the corporation, made in the agent's capacity as
1151 the corporation's agent. A comparison may be made solely of the
1152 premium with respect to the main building or structure only on
1153 the following basis: the same coverage A or other building
1154 limits; the same percentage hurricane deductible that applies on
1155 an annual basis or that applies to each hurricane for commercial
1156 residential property; the same percentage of ordinance and law
1157 coverage, if the same limit is offered by both the corporation
1158 and the authorized insurer; the same mitigation credits, to the

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1159 extent the same types of credits are offered both by the
1160 corporation and the authorized insurer; the same method for loss
1161 payment, such as replacement cost or actual cash value, if the
1162 same method is offered both by the corporation and the
1163 authorized insurer in accordance with underwriting rules; and
1164 any other form or coverage that is reasonably comparable as
1165 determined by the board. If an application is submitted to the
1166 corporation for wind-only coverage in the high-risk account, the
1167 premium for the corporation's wind-only policy plus the premium
1168 for the ex-wind policy that is offered by an authorized insurer
1169 to the applicant shall be compared to the premium for multiperil
1170 coverage offered by an authorized insurer, subject to the
1171 standards for comparison specified in this subparagraph. If the
1172 corporation or the applicant requests from the authorized
1173 insurer a breakdown of the premium of the offer by types of
1174 coverage so that a comparison may be made by the corporation or
1175 its agent and the authorized insurer refuses or is unable to
1176 provide such information, the corporation may treat the offer as
1177 not being an offer of coverage from an authorized insurer at the
1178 insurer's approved rate.

1179 6. Must include rules for classifications of risks and
1180 rates therefor.

1181 7. Must provide that if premium and investment income for
1182 an account attributable to a particular calendar year are in
1183 excess of projected losses and expenses for the account
1184 attributable to that year, such excess shall be held in surplus
1185 in the account. Such surplus shall be available to defray
1186 deficits in that account as to future years and shall be used

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1187 for that purpose prior to assessing assessable insurers and
1188 assessable insureds as to any calendar year.

1189 8. Must provide objective criteria and procedures to be
1190 uniformly applied for all applicants in determining whether an
1191 individual risk is so hazardous as to be uninsurable. In making
1192 this determination and in establishing the criteria and
1193 procedures, the following shall be considered:

1194 a. Whether the likelihood of a loss for the individual
1195 risk is substantially higher than for other risks of the same
1196 class; and

1197 b. Whether the uncertainty associated with the individual
1198 risk is such that an appropriate premium cannot be determined.

1199

1200 The acceptance or rejection of a risk by the corporation shall
1201 be construed as the private placement of insurance, and the
1202 provisions of chapter 120 shall not apply.

1203 9. Must provide that the corporation shall make its best
1204 efforts to procure catastrophe reinsurance at reasonable rates,
1205 to cover its projected 100-year probable maximum loss as
1206 determined by the board of governors.

1207 10. The policies issued by the corporation must provide
1208 that, if the corporation or the market assistance plan obtains
1209 an offer from an authorized insurer to cover the risk at its
1210 approved rates, the risk is no longer eligible for renewal
1211 through the corporation, except as otherwise provided in this
1212 subsection.

1213 11. Corporation policies and applications must include a
1214 notice that the corporation policy could, under this section, be

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1215 replaced with a policy issued by an authorized insurer that does
1216 not provide coverage identical to the coverage provided by the
1217 corporation. The notice shall also specify that acceptance of
1218 corporation coverage creates a conclusive presumption that the
1219 applicant or policyholder is aware of this potential.

1220 12. May establish, subject to approval by the office,
1221 different eligibility requirements and operational procedures
1222 for any line or type of coverage for any specified county or
1223 area if the board determines that such changes to the
1224 eligibility requirements and operational procedures are
1225 justified due to the voluntary market being sufficiently stable
1226 and competitive in such area or for such line or type of
1227 coverage and that consumers who, in good faith, are unable to
1228 obtain insurance through the voluntary market through ordinary
1229 methods would continue to have access to coverage from the
1230 corporation. When coverage is sought in connection with a real
1231 property transfer, such requirements and procedures shall not
1232 provide for an effective date of coverage later than the date of
1233 the closing of the transfer as established by the transferor,
1234 the transferee, and, if applicable, the lender.

1235 13. Must provide that, with respect to the high-risk
1236 account, any assessable insurer with a surplus as to
1237 policyholders of \$25 million or less writing 25 percent or more
1238 of its total countrywide property insurance premiums in this
1239 state may petition the office, within the first 90 days of each
1240 calendar year, to qualify as a limited apportionment company. A
1241 regular assessment levied by the corporation on a limited
1242 apportionment company for a deficit incurred by the corporation

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1243 for the high-risk account in 2006 or thereafter may be paid to
1244 the corporation on a monthly basis as the assessments are
1245 collected by the limited apportionment company from its insureds
1246 pursuant to s. 627.3512, but the regular assessment must be paid
1247 in full within 12 months after being levied by the corporation.
1248 A limited apportionment company shall collect from its
1249 policyholders any emergency assessment imposed under sub-
1250 subparagraph (b)3.d. The plan shall provide that, if the office
1251 determines that any regular assessment will result in an
1252 impairment of the surplus of a limited apportionment company,
1253 the office may direct that all or part of such assessment be
1254 deferred as provided in subparagraph (p)4. However, there shall
1255 be no limitation or deferment of an emergency assessment to be
1256 collected from policyholders under sub-subparagraph (b)3.d.

1257 14. Must provide that the corporation appoint as its
1258 licensed agents only those agents who also hold an appointment
1259 as defined in s. 626.015(3) with an insurer who at the time of
1260 the agent's initial appointment by the corporation is authorized
1261 to write and is actually writing personal lines residential
1262 property coverage, commercial residential property coverage, or
1263 commercial nonresidential property coverage within the state.

1264 15. Must provide, by July 1, 2007, a premium payment plan
1265 option to its policyholders which allows at a minimum for
1266 quarterly and semiannual payment of premiums. A monthly payment
1267 plan may, but is not required to, be offered.

1268 16. Must limit coverage on mobile homes or manufactured
1269 homes built prior to 1994 to actual cash value of the dwelling
1270 rather than replacement costs of the dwelling.

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1271 17. May provide such limits of coverage as the board
1272 determines, consistent with the requirements of this subsection.

1273 18. May require commercial property to meet specified
1274 hurricane mitigation construction features as a condition of
1275 eligibility for coverage.

1276 19.a. Shall require the agent to obtain from any applicant
1277 for coverage the following acknowledgement, signed by the
1278 applicant, and shall require the agent of record to obtain the
1279 following acknowledgment from each corporation policyholder
1280 prior to the policy's first renewal after the effective date of
1281 this act:

1282
1283 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT

1284 LIABILITY:

1285 1. I UNDERSTAND, AS A CITIZENS PROPERTY
1286 INSURANCE CORPORATION POLICYHOLDER, THAT IF THE
1287 CORPORATION SUSTAINS A DEFICIT AS A RESULT OF
1288 HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY
1289 COULD BE SUBJECT TO CITIZENS POLICYHOLDER SURCHARGES,
1290 WHICH WOULD BE DUE AND PAYABLE UPON ISSUANCE, RENEWAL,
1291 CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT
1292 THE SURCHARGES COULD BE AS HIGH AS 15 PERCENT OF MY
1293 PREMIUM FOR DEFICITS IN EACH OF THREE CITIZENS
1294 ACCOUNTS, OR A DIFFERENT AMOUNT AS ESTABLISHED BY THE
1295 FLORIDA LEGISLATURE.

1296 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO
1297 EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS
1298 POLICYHOLDERS OF OTHER INSURANCE COMPANIES.

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1299

1300 b. The corporation shall permanently maintain a signed
1301 copy of the signed acknowledgement required by this
1302 subparagraph, and the agent may also retain a copy.

1303 c. The signed acknowledgement form creates a conclusive
1304 presumption that the policyholder understood and accepted his or
1305 her potential surcharge and assessment liability as a Citizens
1306 policyholder.

1307 ~~(y) It is the intent of the Legislature that the~~
1308 ~~amendments to this subsection enacted in 2002 should, over time,~~
1309 ~~reduce the probable maximum windstorm losses in the residual~~
1310 ~~markets and should reduce the potential assessments to be levied~~
1311 ~~on property insurers and policyholders statewide. In furtherance~~
1312 ~~of this intent:~~

1313 ~~1. The board shall, on or before February 1 of each year,~~
1314 ~~provide a report to the President of the Senate and the Speaker~~
1315 ~~of the House of Representatives showing the reduction or~~
1316 ~~increase in the 100-year probable maximum loss attributable to~~
1317 ~~wind-only coverages and the quota share program under this~~
1318 ~~subsection combined, as compared to the benchmark 100-year~~
1319 ~~probable maximum loss of the Florida Windstorm Underwriting~~
1320 ~~Association. For purposes of this paragraph, the benchmark 100-~~
1321 ~~year probable maximum loss of the Florida Windstorm Underwriting~~
1322 ~~Association shall be the calculation dated February 2001 and~~
1323 ~~based on November 30, 2000, exposures. In order to ensure~~
1324 ~~comparability of data, the board shall use the same methods for~~
1325 ~~calculating its probable maximum loss as were used to calculate~~
1326 ~~the benchmark probable maximum loss.~~

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1327 ~~2. Beginning December 1, 2010, if the report under~~
1328 ~~subparagraph 1. for any year indicates that the 100-year~~
1329 ~~probable maximum loss attributable to wind-only coverages and~~
1330 ~~the quota share program combined does not reflect a reduction of~~
1331 ~~at least 25 percent from the benchmark, the board shall reduce~~
1332 ~~the boundaries of the high-risk area eligible for wind-only~~
1333 ~~coverages under this subsection in a manner calculated to reduce~~
1334 ~~such probable maximum loss to an amount at least 25 percent~~
1335 ~~below the benchmark.~~

1336 ~~3. Beginning February 1, 2015, if the report under~~
1337 ~~subparagraph 1. for any year indicates that the 100-year~~
1338 ~~probable maximum loss attributable to wind-only coverages and~~
1339 ~~the quota share program combined does not reflect a reduction of~~
1340 ~~at least 50 percent from the benchmark, the boundaries of the~~
1341 ~~high-risk area eligible for wind-only coverages under this~~
1342 ~~subsection shall be reduced by the elimination of any area that~~
1343 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~
1344 ~~Waterway.~~

1345 (y) ~~(z)~~ In enacting the provisions of this section, the
1346 Legislature recognizes that both the Florida Windstorm
1347 Underwriting Association and the Residential Property and
1348 Casualty Joint Underwriting Association have entered into
1349 financing arrangements that obligate each entity to service its
1350 debts and maintain the capacity to repay funds secured under
1351 these financing arrangements. It is the intent of the
1352 Legislature that nothing in this section be construed to
1353 compromise, diminish, or interfere with the rights of creditors
1354 under such financing arrangements. It is further the intent of

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1355 the Legislature to preserve the obligations of the Florida
1356 Windstorm Underwriting Association and Residential Property and
1357 Casualty Joint Underwriting Association with regard to
1358 outstanding financing arrangements, with such obligations
1359 passing entirely and unchanged to the corporation and,
1360 specifically, to the applicable account of the corporation. So
1361 long as any bonds, notes, indebtedness, or other financing
1362 obligations of the Florida Windstorm Underwriting Association or
1363 the Residential Property and Casualty Joint Underwriting
1364 Association are outstanding, under the terms of the financing
1365 documents pertaining to them, the governing board of the
1366 corporation shall have and shall exercise the authority to levy,
1367 charge, collect, and receive all premiums, assessments,
1368 surcharges, charges, revenues, and receipts that the
1369 associations had authority to levy, charge, collect, or receive
1370 under the provisions of subsection (2) and this subsection,
1371 respectively, as they existed on January 1, 2002, to provide
1372 moneys, without exercise of the authority provided by this
1373 subsection, in at least the amounts, and by the times, as would
1374 be provided under those former provisions of subsection (2) or
1375 this subsection, respectively, so that the value, amount, and
1376 collectability of any assets, revenues, or revenue source
1377 pledged or committed to, or any lien thereon securing such
1378 outstanding bonds, notes, indebtedness, or other financing
1379 obligations will not be diminished, impaired, or adversely
1380 affected by the amendments made by this act and to permit
1381 compliance with all provisions of financing documents pertaining
1382 to such bonds, notes, indebtedness, or other financing

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1383 obligations, or the security or credit enhancement for them, and
1384 any reference in this subsection to bonds, notes, indebtedness,
1385 financing obligations, or similar obligations, of the
1386 corporation shall include like instruments or contracts of the
1387 Florida Windstorm Underwriting Association and the Residential
1388 Property and Casualty Joint Underwriting Association to the
1389 extent not inconsistent with the provisions of the financing
1390 documents pertaining to them.

1391 (z)~~(aa)~~ The corporation shall not require the securing of
1392 flood insurance as a condition of coverage if the insured or
1393 applicant executes a form approved by the office affirming that
1394 flood insurance is not provided by the corporation and that if
1395 flood insurance is not secured by the applicant or insured in
1396 addition to coverage by the corporation, the risk will not be
1397 covered for flood damage. A corporation policyholder electing
1398 not to secure flood insurance and executing a form as provided
1399 herein making a claim for water damage against the corporation
1400 shall have the burden of proving the damage was not caused by
1401 flooding. Notwithstanding other provisions of this subsection,
1402 the corporation may deny coverage to an applicant or insured who
1403 refuses to execute the form described herein.

1404 (aa)~~(bb)~~ A salaried employee of the corporation who
1405 performs policy administration services subsequent to the
1406 effectuation of a corporation policy is not required to be
1407 licensed as an agent under the provisions of s. 626.112.

1408 (bb)~~(cc)~~ By February 1, 2007, the corporation shall submit
1409 a report to the President of the Senate, the Speaker of the
1410 House of Representatives, the minority party leaders of the

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1411 Senate and the House of Representatives, and the chairs of the
1412 standing committees of the Senate and the House of
1413 Representatives having jurisdiction over matters relating to
1414 property and casualty insurance. In preparing the report, the
1415 corporation shall consult with the Office of Insurance
1416 Regulation, the Department of Financial Services, and any other
1417 party the corporation determines appropriate. The report must
1418 include all findings and recommendations on the feasibility of
1419 requiring authorized insurers that issue and service personal
1420 and commercial residential policies and commercial
1421 nonresidential policies that provide coverage for basic property
1422 perils except for the peril of wind to issue and service for a
1423 fee personal and commercial residential policies and commercial
1424 nonresidential policies providing coverage for the peril of wind
1425 issued by the corporation. The report must include:

1426 1. The expense savings to the corporation of issuing and
1427 servicing such policies as determined by a cost-benefit
1428 analysis.

1429 2. The expenses and liability to authorized insurers
1430 associated with issuing and servicing such policies.

1431 3. The effect on service to policyholders of the
1432 corporation relating to issuing and servicing such policies.

1433 4. The effect on the producing agent of the corporation of
1434 issuing and servicing such policies.

1435 5. Recommendations as to the amount of the fee which
1436 should be paid to authorized insurers for issuing and servicing
1437 such policies.

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1438 6. The effect that issuing and servicing such policies
1439 will have on the corporation's number of policies, total insured
1440 value, and probable maximum loss.

1441 (cc)~~(dd)~~ There shall be no liability on the part of, and
1442 no cause of action of any nature shall arise against, producing
1443 agents of record of the corporation or employees of such agents
1444 for insolvency of any take-out insurer.

1445 (dd)~~(ee)~~ The assets of the corporation may be invested and
1446 managed by the State Board of Administration.

1447 (ee)~~(ff)~~ The office may establish a pilot program to offer
1448 optional sinkhole coverage in one or more counties or other
1449 territories of the corporation for the purpose of implementing
1450 s. 627.706, as amended by s. 30, chapter 2007-1, Laws of
1451 Florida. Under the pilot program, the corporation is not
1452 required to issue a notice of nonrenewal to exclude sinkhole
1453 coverage upon the renewal of existing policies, but may exclude
1454 such coverage using a notice of coverage change.

1455 Section 9. Paragraph (b) of subsection (2) of section
1456 627.4133, Florida Statutes, is amended to read:

1457 627.4133 Notice of cancellation, nonrenewal, or renewal
1458 premium.—

1459 (2) With respect to any personal lines or commercial
1460 residential property insurance policy, including, but not
1461 limited to, any homeowner's, mobile home owner's, farmowner's,
1462 condominium association, condominium unit owner's, apartment
1463 building, or other policy covering a residential structure or
1464 its contents:

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1465 (b) The insurer shall give the named insured written
1466 notice of nonrenewal, cancellation, or termination at least 100
1467 days prior to the effective date of the nonrenewal,
1468 cancellation, or termination. However, the insurer shall give at
1469 least 100 days' written notice, or written notice by June 1,
1470 whichever is earlier, for any nonrenewal, cancellation, or
1471 termination that would be effective between June 1 and November
1472 30. The notice must include the reason or reasons for the
1473 nonrenewal, cancellation, or termination, except that:

1474 1. The insurer shall give the named insured written notice
1475 of nonrenewal, cancellation, or termination at least 180 days
1476 prior to the effective date of the nonrenewal, cancellation, or
1477 termination for a named insured whose residential structure has
1478 been insured by that insurer or an affiliated insurer for at
1479 least a 5-year period immediately prior to the date of the
1480 written notice.

1481 2. When cancellation is for nonpayment of premium, at
1482 least 10 days' written notice of cancellation accompanied by the
1483 reason therefor shall be given. As used in this subparagraph,
1484 the term "nonpayment of premium" means failure of the named
1485 insured to discharge when due any of her or his obligations in
1486 connection with the payment of premiums on a policy or any
1487 installment of such premium, whether the premium is payable
1488 directly to the insurer or its agent or indirectly under any
1489 premium finance plan or extension of credit, or failure to
1490 maintain membership in an organization if such membership is a
1491 condition precedent to insurance coverage. "Nonpayment of
1492 premium" also means the failure of a financial institution to

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1493 honor an insurance applicant's check after delivery to a
1494 licensed agent for payment of a premium, even if the agent has
1495 previously delivered or transferred the premium to the insurer.
1496 If a dishonored check represents the initial premium payment,
1497 the contract and all contractual obligations shall be void ab
1498 initio unless the nonpayment is cured within the earlier of 5
1499 days after actual notice by certified mail is received by the
1500 applicant or 15 days after notice is sent to the applicant by
1501 certified mail or registered mail, and if the contract is void,
1502 any premium received by the insurer from a third party shall be
1503 refunded to that party in full.

1504 3. When such cancellation or termination occurs during the
1505 first 90 days during which the insurance is in force and the
1506 insurance is canceled or terminated for reasons other than
1507 nonpayment of premium, at least 20 days' written notice of
1508 cancellation or termination accompanied by the reason therefor
1509 shall be given except where there has been a material
1510 misstatement or misrepresentation or failure to comply with the
1511 underwriting requirements established by the insurer.

1512 4. The requirement for providing written notice of
1513 nonrenewal by June 1 of any nonrenewal that would be effective
1514 between June 1 and November 30 does not apply to the following
1515 situations, but the insurer remains subject to the requirement
1516 to provide such notice at least 100 days prior to the effective
1517 date of nonrenewal:

1518 a. A policy that is nonrenewed due to a revision in the
1519 coverage for sinkhole losses and catastrophic ground cover

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1520 collapse pursuant to s. 627.706, as amended by s. 30, chapter
1521 2007-1, Laws of Florida.

1522 b. A policy that is nonrenewed by Citizens Property
1523 Insurance Corporation, pursuant to s. 627.351(6), for a policy
1524 that has been assumed by an authorized insurer offering
1525 replacement or renewal coverage to the policyholder.

1526 5. Notwithstanding any other provision of law, an insurer
1527 may cancel or nonrenew a property insurance policy upon a
1528 minimum of 45 days' notice if the office finds that the early
1529 cancellation of some or all of the insurer's policies is
1530 necessary to protect the best interests of the public or
1531 policyholders and the office approves the insurer's plan for
1532 early cancellation or nonrenewal of some or all of its policies.
1533 The office may base such a finding upon the financial condition
1534 of the insurer, lack of adequate reinsurance coverage for
1535 hurricane risk, or other relevant factors. The office may
1536 condition its finding on the consent of the insurer to be placed
1537 in administrative supervision pursuant to s. 624.81 or consent
1538 to the appointment of a receiver under chapter 631.

1539

1540 After the policy has been in effect for 90 days, the policy
1541 shall not be canceled by the insurer except when there has been
1542 a material misstatement, a nonpayment of premium, a failure to
1543 comply with underwriting requirements established by the insurer
1544 within 90 days of the date of effectuation of coverage, or a
1545 substantial change in the risk covered by the policy or when the
1546 cancellation is for all insureds under such policies for a given

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1547 class of insureds. This paragraph does not apply to individually
1548 rated risks having a policy term of less than 90 days.

1549 Section 10. Subsection (3) of section 627.7011, Florida
1550 Statutes, is amended to read:

1551 627.7011 Homeowners' policies; offer of replacement cost
1552 coverage and law and ordinance coverage.—

1553 (3) In the event of a loss for which a dwelling or
1554 personal property is insured on the basis of replacement costs,
1555 the insurer shall initially pay only the depreciated value for
1556 structure and contents repair or replacement, or shall pay 40
1557 percent of the replacement cost value, whichever is higher, and
1558 shall thereafter pay the remaining cost for repair or
1559 replacement of covered property up to the total replacement cost
1560 as the insured submits invoices or receipts for completed
1561 repairs or replacement of covered property the replacement cost
1562 without reservation or holdback of any depreciation in value,
1563 whether or not the insured replaces or repairs the dwelling or
1564 property.

1565 Section 11. Effective January 1, 2011, section 627.7031,
1566 Florida Statutes, is created to read:

1567 627.7031 Residential property insurance option.—

1568 (1) An insurer holding a certificate of authority to write
1569 property insurance in this state may offer or renew policies at
1570 rates established in accordance with s. 627.062(2)(1), subject
1571 to all of the requirements and prohibitions of this section.

1572 (2) An insurer offering or renewing policies at rates
1573 established in accordance with s. 627.062(2)(1) may not purchase
1574 coverage from the Florida Hurricane Catastrophe Fund under the

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1575 temporary increase in coverage limit option under s.
1576 215.555(17).

1577 (3)(a) Before the effective date of a newly issued policy
1578 at rates established in accordance with s. 627.062(2)(l) or
1579 before the effective date of a renewal policy at rates
1580 established in accordance with s. 627.062(2)(k), the applicant
1581 or insured must be given the following notice, printed in at
1582 least 12-point boldfaced type:

1583
1584 THE RATE FOR THIS POLICY IS NOT SUBJECT TO FULL RATE
1585 REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY
1586 BE HIGHER THAN RATES APPROVED BY THAT OFFICE. A RESIDENTIAL
1587 PROPERTY POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY
1588 BE AVAILABLE FROM THIS INSURER, ANOTHER INSURER, OR CITIZENS
1589 PROPERTY INSURANCE CORPORATION. PLEASE DISCUSS YOUR POLICY
1590 OPTIONS WITH AN INSURANCE AGENT WHO CAN PROVIDE A CITIZENS
1591 QUOTE. YOU MAY WISH TO VIEW THE OFFICE OF INSURANCE REGULATION'S
1592 WEBSITE AT WWW.SHOPANDCOMPARERATES.COM FOR MORE INFORMATION
1593 ABOUT CHOICES AVAILABLE TO YOU.

1594
1595 (b) For policies renewed at a rate established in
1596 accordance with s. 627.062(2)(l), the notice described in
1597 paragraph (a) must be provided in writing at the same time as
1598 the renewal notice on a document separate from the renewal
1599 notice, but may be contained within the same mailing as the
1600 renewal notice.

1601 (4) Before the effective date of a newly issued policy at
1602 rates established in accordance with s. 627.062(2)(l), or before

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1603 the effective date of the first renewal at rates established in
1604 accordance with s. 627.062(2)(1) of a policy originally issued
1605 before the effective date of this section, the applicant or
1606 insured must:

1607 (a) Be provided or offered, for comparison purposes, an
1608 estimate of the premium for a policy from Citizens Property
1609 Insurance Corporation reflecting substantially similar
1610 coverages, limits, and deductibles to the extent available.

1611 (b) Provide the insurer or agent with a signed copy of the
1612 following acknowledgement form, which must be retained by the
1613 insurer or agent for at least 3 years. If the acknowledgement
1614 form is signed by the insured or if the insured remits payment
1615 in the amount of the rate established in accordance with s.
1616 627.062(2)(1) after being mailed, otherwise provided, or offered
1617 the comparison specified in paragraph (a), an insurer renewing a
1618 policy at such rate shall be deemed to comply with this section,
1619 and it is presumed that the insured has been informed and
1620 understands the information contained in the comparison and
1621 acknowledgement forms:

1622
1623 ACKNOWLEDGEMENT

1624 1. I HAVE REVIEWED THE REQUIRED DISCLOSURES AND THE
1625 REQUIRED PREMIUM COMPARISON.

1626 2. I UNDERSTAND THAT THE RATE FOR THIS RESIDENTIAL
1627 PROPERTY INSURANCE POLICY IS NOT SUBJECT TO FULL RATE REGULATION
1628 BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER
1629 THAN RATES APPROVED BY THAT OFFICE.

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1630 3. I UNDERSTAND THAT A RESIDENTIAL PROPERTY INSURANCE
1631 POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE
1632 AVAILABLE FROM CITIZENS PROPERTY INSURANCE CORPORATION.

1633 4. I UNDERSTAND THAT THE FLORIDA OFFICE OF INSURANCE
1634 REGULATION'S WEBSITE WWW.SHOPANDCOMPARERATES.COM CONTAINS
1635 RESIDENTIAL PROPERTY INSURANCE RATE COMPARISON INFORMATION.

1636 5. I UNDERSTAND THAT IF CITIZENS PROPERTY INSURANCE
1637 CORPORATION INCURS A DEFICIT BECAUSE OF HURRICANE LOSSES OR
1638 OTHER LOSSES, I MAY BE REQUIRED TO PAY AN ASSESSMENT BASED UPON
1639 THE PREMIUM FOR THIS POLICY AND THAT A POLICYHOLDER OF CITIZENS
1640 PROPERTY INSURANCE CORPORATION MAY BE REQUIRED TO PAY A
1641 DIFFERENT ASSESSMENT.

1642
1643 (5) The following types of residential property insurance
1644 policies are not eligible for rates established in accordance
1645 with s. 627.062(2)(1) and are not subject to the other
1646 provisions of this section:

1647 (a) Residential property insurance policies that exclude
1648 coverage for the perils of windstorm or hurricane.

1649 (b) Residential property insurance policies that are
1650 subject to a consent decree, agreement, understanding, or other
1651 arrangement between the insurer and the office relating to rates
1652 or premiums for policies removed from Citizens Property
1653 Insurance Corporation.

1654 (6) Notwithstanding s. 627.4133, an insurer that has
1655 issued a policy under this section shall provide the named
1656 insured written notice of nonrenewal at least 180 days before
1657 the effective date of the nonrenewal as to subsequent

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1658 nonrenewals. However, this subsection does not prohibit an
1659 insurer from canceling a policy as permitted under s. 627.4133.
1660 The offer of a policy at rates authorized by this section
1661 constitutes an offer to renew the policy at the rates specified
1662 in the offer and does not constitute a nonrenewal.

1663 Section 12. Subsection (2) of section 631.021, Florida
1664 Statutes, is amended to read:

1665 631.021 Jurisdiction of delinquency proceeding; venue;
1666 change of venue; exclusiveness of remedy; appeal.—

1667 (2) The venue of a delinquency proceeding or summary
1668 proceeding against a domestic, foreign, or alien insurer shall
1669 be in the Circuit Court of Leon County. The Circuit Court of
1670 Leon County is also the venue for any collateral actions against
1671 an insurer's affiliate, including, but not limited to, voidable
1672 or fraudulent transfers made by an insurer or affiliate; actions
1673 that constitute a breach of fiduciary duty by an officer,
1674 director, or agent; or misreporting or misrepresenting what is
1675 property, funds, or assets of the insurer, including premium and
1676 unearned commissions.

1677 Section 13. Section 627.7065, Florida Statutes, is
1678 repealed.

1679 Section 14. Except as otherwise specifically provided in
1680 this act, this act shall take effect July 1, 2010.

1681

1682

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1684

1685

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

Remove the entire title and insert:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 447 (2010)

Amendment No.

1686 An act relating to property insurance; amending s. 215.555,
1687 F.S.; extending a repeal date for an exemption of medical
1688 malpractice insurance premiums from emergency assessments;
1689 amending s. 624.407, F.S.; specifying an additional surplus
1690 requirement for certain domestic insurers; amending s. 624.408,
1691 F.S.; specifying an additional surplus requirement for certain
1692 domestic insurers; deleting obsolete surplus requirement
1693 provisions; amending s. 627.0613, F.S.; revising annual
1694 reporting requirements for the consumer advocate; providing a
1695 definition; amending s. 627.062, F.S.; prohibiting the Office of
1696 Insurance Regulation from interfering with certain insurer
1697 rights; revising provisions relating to separate filings limited
1698 to adjustments of rates for reinsurance or financing costs;
1699 authorizing certain insurers to use a rate different from
1700 otherwise applicable filed rates; prohibiting the consideration
1701 of certain policies when making a specified calculation;
1702 preserving the authority of the Office of Insurance Regulation
1703 to disapprove rates as inadequate or disapprove a rate filing
1704 for using certain rating factors; authorizing the office to
1705 direct an insurer to make a specified type of rate filing under
1706 certain circumstances; providing construction relating to
1707 certifications; amending s. 627.0621, F.S.; revising provisions
1708 relating to transparency in rate regulation; amending s.
1709 627.0629, F.S.; revising legislative intent relating to
1710 residential property insurance rate filings; deleting a
1711 requirement that the office develop and make available a method
1712 for insurers to establish discounts, credits, or rate
1713 differentials for certain hurricane mitigation measures;

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1714 revising restrictions relating to including the cost of
1715 reinsurance for certain purposes; requiring the office to
1716 contract with a private entity to develop a comprehensive
1717 consumer information program; specifying program criteria;
1718 requiring the office to conduct a cost benefit analysis on a
1719 program implementation plan; requiring review and approval by
1720 the Financial Services Commission; amending s. 627.351, F.S.;
1721 providing requirements for attachment and payment of the
1722 Citizens policyholder surcharge; prohibiting the corporation
1723 from levying certain regular assessments until after levying the
1724 full amount of a Citizens policyholder surcharge; requiring the
1725 corporation's plan of operation to require agents to obtain an
1726 acknowledgement of potential surcharge and assessment liability
1727 from applicants and policyholders; requiring the corporation to
1728 permanently retain a copy of such acknowledgments; specifying
1729 that the acknowledgement creates a conclusive presumption of
1730 understanding and acceptance by the policyholder; deleting an
1731 obsolete legislative intent provision; amending s. 627.4133,
1732 F.S.; authorizing an insurer to cancel or nonrenew property
1733 insurance policies under certain circumstances; specifying
1734 duties of the office; amending s. 627.7011, F.S.; specifying
1735 criteria for payment of dwelling and personal property
1736 replacement costs; creating s. 627.7031, F.S.; authorizing
1737 certain insurers to offer or renew policies at rates established
1738 under certain circumstances; prohibiting certain insurers from
1739 purchasing TICL option coverage from the Florida Hurricane
1740 Catastrophe Fund under certain circumstances; requiring that
1741 certain policies contain a specified rate notice; requiring

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1742 insurers to offer applicants or insureds an estimate of the
1743 premium for a policy from Citizens Property Insurance
1744 Corporation reflecting similar coverage, limits, and
1745 deductibles; requiring applicants or insureds to provide a
1746 signed premium comparison acknowledgement; specifying criteria
1747 for insurer compliance with certain requirements; specifying
1748 acknowledgement contents; requiring insurers and agents to
1749 retain a copy of the acknowledgement for a specified time;
1750 specifying a presumption created by a signed acknowledgement;
1751 specifying types of residential property insurance policies that
1752 are not eligible for certain rates or subject to other
1753 requirements; requiring written notice of certain nonrenewals;
1754 preserving insurer authority to cancel policies; specifying a
1755 criterion for what constitutes an offer to renew a policy;
1756 amending s. 631.021, F.S.; specifying additional venue criteria
1757 for the Circuit Court of Leon County; repealing s. 627.7065,
1758 F.S., relating to database of information relating to sinkholes,
1759 the Department of Financial Services, and the Department of
1760 Environmental Protection; providing effective dates.

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COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee
3 Representative Nelson offered the following:
4

5 **Amendment to Amendment (32458) by Representative Proctor**
6 **(with title amendment)**

7 Between lines 1676 and 1677, insert:

8 Section 13. Subsection (1), paragraph (b) of subsection
9 (2), and subsections (5), (7), and (8) of section 627.707,
10 Florida Statutes, are amended to read:

11 627.707 Standards for investigation of sinkhole claims by
12 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
13 loss, an insurer must meet the following standards in
14 investigating a claim:

15 (1) The insurer must make an inspection of the insured's
16 premises to determine if there has been physical damage to the
17 structure which is consistent with ~~may be the result of~~ sinkhole
18 loss activity.

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19 (2) Following the insurer's initial inspection, the
20 insurer shall engage a professional engineer or a professional
21 geologist to conduct testing as provided in s. 627.7072 to
22 determine the cause of the loss within a reasonable professional
23 probability and issue a report as provided in s. 627.7073, if:

24 (b) The policyholder demands testing in accordance with
25 this section or s. 627.7072 and coverage under the policy is
26 available if sinkhole loss is verified.

27 (5)(a) Subject to paragraph (b), if a sinkhole loss is
28 verified, the insurer shall pay to stabilize the land and
29 building and repair the foundation in accordance with the
30 recommendations of the professional engineer as provided under
31 s. 627.7073, with notice to ~~and in consultation with~~ the
32 policyholder, subject to the coverage and terms of the policy.
33 The insurer shall pay for other repairs to the structure and
34 contents in accordance with the terms of the policy.

35 (b) The insurer may limit its payment to the actual cash
36 value of the sinkhole loss, not including underpinning or
37 grouting or any other repair technique performed below the
38 existing foundation of the building, until the policyholder
39 enters into a contract for the performance of building
40 stabilization or foundation repairs. After the policyholder
41 enters into the contract, the insurer shall pay the amounts
42 necessary to begin and perform such repairs as the work is
43 performed and the expenses are incurred. The insurer may not
44 require the policyholder to advance payment for such repairs. If
45 repair covered by a personal lines residential property
46 insurance policy has begun and the professional engineer

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47 selected or approved by the insurer determines that the repair
48 cannot be completed within the policy limits, the insurer must
49 either complete the professional engineer's recommended repair
50 or tender the policy limits to the policyholder without a
51 reduction for the repair expenses incurred.

52 1. The policyholder shall enter into such contract for
53 repairs within 90 days after the insurance company approves
54 coverage for a sinkhole loss to prevent additional damage to the
55 building or structure. The 90-day time period may be extended
56 for an additional reasonable time period if the policyholder is
57 unable to find a qualified person or entity to contract for such
58 repairs within the 90-day time period based upon factors beyond
59 the policyholder's control.

60 2. The stabilization and all other repairs to the
61 structure and contents must be completed within 12 months after
62 entering into the contract for repairs as described in
63 subparagraph 1. unless there is a mutual agreement between the
64 insurer and the insured, the stabilization and all other repairs
65 cannot be completed due to factors beyond the control of the
66 insured which reasonably prevent completion, the claim is
67 involved with the neutral evaluation process under s. 627.7074
68 or the claim is in litigation.

69 (c) Upon the insurer's obtaining the written approval of
70 the policyholder and any lienholder, the insurer may make
71 payment directly to the persons selected by the policyholder to
72 perform the land and building stabilization and foundation
73 repairs. The decision by the insurer to make payment to such
74 persons does not hold the insurer liable for the work performed.

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75 (7) If the insurer obtains, pursuant to s. 627.7073,
76 written certification that there is no sinkhole loss ~~or that the~~
77 ~~cause of the damage was not sinkhole activity,~~ and if the
78 policyholder has submitted the sinkhole claim without good faith
79 grounds for submitting such claim, the policyholder shall
80 reimburse the insurer for 50 percent of the actual costs of the
81 analyses and services provided under ss. 627.7072 and 627.7073;
82 however, a policyholder is not required to reimburse an insurer
83 more than \$2,500 with respect to any claim. A policyholder is
84 required to pay reimbursement under this subsection only if the
85 insurer, prior to ordering the analysis under s. 627.7072,
86 informs the policyholder in writing of the policyholder's
87 potential liability for reimbursement and gives the policyholder
88 the opportunity to withdraw the claim.

89 (8) No insurer shall nonrenew any policy of property
90 insurance on the basis of filing of claims for partial loss
91 caused by sinkhole damage or clay shrinkage as long as the total
92 of such payments does not exceed the ~~current~~ policy limits of
93 coverage for property damage for the policy in effect on the
94 date of the loss, and provided the insured has repaired the
95 structure in accordance with the engineering recommendations
96 upon which any payment or policy proceeds were based.

97 Section 14. Section 627.7073, Florida Statutes, is amended
98 to read:

99 627.7073 Sinkhole reports.—

100 (1) Upon completion of testing as provided in s. 627.7072,
101 the professional engineer or professional geologist shall issue
102 a report and certification to the insurer, with an additional

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103 copy and certification for the insurer to forward to and the
104 policyholder as provided in this section.

105 (a) Sinkhole loss is verified if, based upon tests
106 performed in accordance with s. 627.7072, a professional
107 engineer or a professional geologist issues a written report and
108 certification stating:

109 1. That the cause of the actual physical and structural
110 damage is sinkhole activity within a reasonable professional
111 probability.

112 2. That the analyses conducted were of sufficient scope to
113 identify sinkhole activity as the cause of damage within a
114 reasonable professional probability.

115 3. A description of the tests performed.

116 4. A recommendation by the professional engineer of
117 methods for stabilizing the land and building and for making
118 repairs to the foundation.

119 (b) If sinkhole activity is eliminated as the cause of
120 damage to the structure, the professional engineer or
121 professional geologist shall issue a written report and
122 certification to the policyholder and the insurer stating:

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

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

128 3. A statement of the cause of the damage within a
129 reasonable professional probability.

130 4. A description of the tests performed.

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131 (c) The respective findings, opinions, and recommendations
132 of the professional engineer or professional geologist as to the
133 cause of distress to the property and the findings, opinions,
134 and recommendations of the professional engineer as to land and
135 building stabilization and foundation repair as required by s.
136 627.707(2), shall be presumed correct. The presumption of
137 correctness is based upon the public policy concerns relating to
138 the availability and affordability of sinkhole coverage, to
139 provide consistency in claims handling and reduce the number of
140 disputed sinkhole claims and is therefore a presumption shifting
141 the burden of proof by clear and convincing evidence under s.
142 90.304.

143 (2) (a) Any insurer that has paid a claim for a sinkhole
144 loss shall file a copy of the report and certification, prepared
145 pursuant to subsection (1), including the legal description of
146 the real property and the name of the property owner and the
147 amount paid by the insurer, with the county clerk of court, who
148 shall record the report and certification. The insurer shall
149 also file a copy of any report prepared on behalf of the insured
150 or their representative that indicates that sinkhole loss caused
151 the damage claimed. The insurer shall bear the cost of filing
152 and recording of one or more reports ~~the report~~ and
153 certification. There shall be no cause of action or liability
154 against an insurer for compliance with this section. The
155 recording of the report and certification does not:

156 1. Constitute a lien, encumbrance, or restriction on the
157 title to the real property or constitute a defect in the title
158 to the real property;

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159 2. Create any cause of action or liability against any
160 grantor of the real property for breach of any warranty of good
161 title or warranty against encumbrances; or

162 3. Create any cause of action or liability against any
163 title insurer that insures the title to the real property.

164 (b) The seller of real property upon which a sinkhole
165 claim has been made by the seller and paid by the insurer shall
166 disclose to the buyer of such property that a claim has been
167 paid, the amount of the payment, and whether or not the full
168 amount of the proceeds were used to repair the sinkhole damage.
169 The seller shall also provide to the buyer a copy of both the
170 report prepared pursuant to subsection (1) or any report
171 prepared on behalf of the insured.

172 Section 15. Section 627.7074, Florida Statutes, is amended
173 to read:

174 627.7074 Alternative procedure for resolution of disputed
175 sinkhole insurance claims.—

176 (1) As used in this section, the term:

177 (a) "Neutral evaluation" means the alternative dispute
178 resolution provided for in this section.

179 (b) "Neutral evaluator" means a professional engineer or a
180 professional geologist who has completed a course of study in
181 alternative dispute resolution designed or approved by the
182 department for use in the neutral evaluation process, who is
183 determined to be fair and impartial.

184 (2)(a) The department shall certify and maintain a list of
185 persons who are neutral evaluators.

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186 (b) The department shall prepare a consumer information
187 pamphlet for distribution by insurers to policyholders which
188 clearly describes the neutral evaluation process and includes
189 information and forms necessary for the policyholder to request
190 a neutral evaluation.

191 (3) Neutral evaluation is available to either party if a
192 sinkhole report has been issued pursuant to s. 627.7073.
193 Following the receipt of the report provided under s. 627.7073
194 or the denial of a claim for a sinkhole loss, the insurer shall
195 notify the policyholder of his or her right to participate in
196 the neutral evaluation program under this section. Neutral
197 evaluation supersedes the alternative dispute resolution process
198 under s. 627.7015 but does not supersede the appraisal clause,
199 if provided by the insurance policy. The insurer shall provide
200 to the policyholder the consumer information pamphlet prepared
201 by the department pursuant to paragraph (2) (b).

202 (4) Neutral evaluation is nonbinding, but mandatory if
203 requested by either party. A request for neutral evaluation may
204 be filed with the department by the policyholder or the insurer
205 on a form approved by the department. The request for neutral
206 evaluation must state the reason for the request and must
207 include an explanation of all the issues in dispute at the time
208 of the request. Filing a request for neutral evaluation tolls
209 the applicable time requirements for filing suit for a period of
210 60 days following the conclusion of the neutral evaluation
211 process or the time prescribed in s. 95.11, whichever is later.

212 (5) Neutral evaluation shall be conducted as an informal
213 process in which formal rules of evidence and procedure need not

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214 be observed. A party to neutral evaluation is not required to
215 attend neutral evaluation if a representative of the party
216 attends and has the authority to make a binding decision on
217 behalf of the party. All parties shall participate in the
218 evaluation in good faith.

219 (6) The insurer shall pay the costs associated with the
220 neutral evaluation.

221 (7) Upon receipt of a request for neutral evaluation, the
222 department shall provide the parties a list of certified neutral
223 evaluators. The parties shall mutually select a neutral
224 evaluator from the list and promptly inform the department. If
225 the parties cannot agree to a neutral evaluator within 10
226 business days, the department shall allow the parties to submit
227 requests to disqualify neutral evaluators on the list for cause.
228 For purposes of this subsection, a ground for cause is only
229 required to be found by the department when:

230 (a) A familial relationship exists between the neutral
231 evaluator and either party or their representatives within the
232 third degree;

233 (b) The proposed neutral evaluator has, in a professional
234 capacity, previously represented either party or their
235 representatives in the same or a substantially related matter;

236 (c) The proposed neutral evaluator has, in a professional
237 capacity, represented another person in the same or a
238 substantially related matter and that person's interests are
239 materially adverse to the interests of the parties; or

240 (d) The proposed neutral evaluator works in the same firm
241 or corporation as a person who has, in a professional capacity,

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242 previously represented either party or their respective
243 representatives in the same or a substantially related matter.

244
245 The department shall appoint a neutral evaluator from the
246 department list and if requested by either party, shall appoint
247 a neutral evaluator who can determine both causation and method
248 of repair. The department shall allow each party to disqualify
249 one neutral evaluator without cause. Upon selection or
250 appointment, the department shall promptly refer the request to
251 the neutral evaluator. Within 5 business days after the
252 referral, the neutral evaluator shall notify the policyholder
253 and the insurer of the date, time, and place of the neutral
254 evaluation conference. The conference may be held by telephone,
255 if feasible and desirable. The neutral evaluation conference
256 shall be held within 45 days after the receipt of the request by
257 the department. For purposes of this paragraph, the term
258 "substantially related matter" means participation by the
259 neutral evaluator on the same claim, property, or any adjacent
260 property.

261 (8) The department shall adopt rules of procedure for the
262 neutral evaluation process.

263 (9) For policyholders not represented by an attorney, a
264 consumer affairs specialist of the department or an employee
265 designated as the primary contact for consumers on issues
266 relating to sinkholes under s. 20.121 shall be available for
267 consultation to the extent that he or she may lawfully do so.

268 (10) Evidence of an offer to settle a claim during the
269 neutral evaluation process, as well as any relevant conduct or

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270 statements made in negotiations concerning the offer to settle a
271 claim, is inadmissible to prove liability or absence of
272 liability for the claim or its value, except as provided in
273 subsection (13).

274 (11) Regardless of when invoked, any court proceeding
275 related to the subject matter of the neutral evaluation shall be
276 stayed pending completion of the neutral evaluation and for 5
277 days after the filing of the neutral evaluator's report with the
278 court.

279 (12) If the neutral evaluator, based upon his or her
280 professional training and credentials, is only qualified to
281 determine the causation issue or the method of repair issue, the
282 department shall allow the neutral evaluator to enlist the
283 assistance of another professional from the qualified neutral
284 evaluators list, not previously stricken by parties with respect
285 to the subject evaluation, who, based upon his or her
286 professional training and credentials, is able to provide an
287 opinion as to the other disputed issue. Any professional who, if
288 appointed as the neutral evaluator would be disqualified for any
289 reason enumerated in subsection (7), must be disqualified. In
290 addition, the neutral evaluator may use the service of other
291 experts or professionals on the qualified neutral evaluators
292 list as necessary to ensure that all items in dispute are
293 addressed in order to complete the neutral evaluation. The
294 neutral evaluator may request that the entity that performed
295 testing pursuant to s. 627.7072 perform such additional
296 reasonable testing deemed necessary in the professional opinion
297 of the neutral evaluator to complete the neutral evaluation.

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298 ~~(13)-(12)~~ For all matters that are not resolved by the
299 parties at the conclusion of the neutral evaluation, the neutral
300 evaluator shall prepare a report stating that in his or her
301 opinion the sinkhole loss has been verified or eliminated within
302 a reasonable degree of professional probability and, if
303 verified, whether the sinkhole loss has caused any structural or
304 cosmetic damage to the building and, if so, the need for and
305 estimated costs of stabilizing the land and any covered
306 structures or buildings and other appropriate remediation or
307 structural repairs that are necessary due to the sinkhole loss.
308 The evaluator's report shall be sent to all parties in
309 attendance at the neutral evaluation and to the department.

310 ~~(14)-(13)~~ The recommendation of the neutral evaluator is
311 not binding on any party, and the parties retain access to
312 court. The neutral evaluator's written recommendation is
313 admissible in any ~~subsequent~~ action or proceeding relating to
314 the claim or to the cause of action giving rise to the claim.

315 ~~(15)-(14)~~ If the neutral evaluator first verifies the
316 existence of a sinkhole and, second, recommends the need for and
317 estimates costs of stabilizing the land and any covered
318 structures or buildings and other appropriate remediation or
319 structural repairs, which costs exceed the amount that the
320 insurer has offered to pay the policyholder, the insurer is
321 liable to the policyholder for up to \$2,500 in attorney's fees
322 for the attorney's participation in the neutral evaluation
323 process. For purposes of this subsection, the term "offer to
324 pay" means a written offer signed by the insurer or its legal
325 representative and delivered to the policyholder within 10 days

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326 after the insurer receives notice that a request for neutral
327 evaluation has been made under this section.

328 (16)~~(15)~~ If the insurer timely agrees in writing to comply
329 and timely complies with the recommendation of the neutral
330 evaluator, but the policyholder declines to resolve the matter
331 in accordance with the recommendation of the neutral evaluator
332 pursuant to this section:

333 (a) The insurer is not liable for extracontractual damages
334 related to a claim for a sinkhole loss but only as related to
335 the issues determined by the neutral evaluation process. This
336 section does not affect or impair claims for extracontractual
337 damages unrelated to the issues determined by the neutral
338 evaluation process contained in this section; and

339 (b) The actions of the insurer are not a confession of
340 judgment or an admission of liability and the insurer shall is
341 not be liable for attorney's fees under s. 627.428 or other
342 provisions of the insurance code unless the policyholder obtains
343 a judgment that is more favorable than the recommendation of the
344 neutral evaluator.

345 (17) If the insurer agrees to comply with the neutral
346 evaluator's report, payment for stabilizing the land and
347 building and repairing the foundation shall be made in
348 accordance with the terms and conditions of the applicable
349 insurance policy.

350

351

352

353

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 447 (2010)

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354 Remove line 1757 and insert:
355 for the Circuit Court of Leon county; amending s. 627.707, F.S.;
356 amending s. 627.7073, F.S.; amending s. 627.7074, F.S.;
357 repealing s. 627.7065,

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COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee

3 Representative Nelson offered the following:

4
5 **Amendment to Amendment (32458) by Representative Proctor**
6 **(with title amendment)**

7 Between lines 1678 and 1679, insert:

8 Section 1. Section 627.41341, Florida Statutes, is created
9 to read:

10 627.41341 Notice of Change in Policy Terms.--

11 (1) As used in this section, the term:

12 (a) "Change in Policy Terms" means the modification,
13 addition or deletion of any term, coverage, duty or condition
14 from the prior policy. The correction of typographical or
15 scrivener's errors, or mandated legislative changes, is not a
16 "change in policy terms".

17 (b) "Policy" means a written contract of personal lines
18 insurance or written agreement for or effecting insurance, or
19 the certificate thereof, by whatever name called, and includes

Amendment No. 1B

20 all clauses, riders, endorsements, and papers which are a part
21 thereof. The term "policy" does not include a binder as defined
22 in s. 627.420 unless the duration of the binder period exceeds
23 60 days.

24 (c) "Renewal" means the issuance and delivery by an
25 insurer of a policy superseding at the end of the policy period
26 a policy previously issued and delivered by the same insurer, or
27 the issuance and delivery of a certificate or notice extending
28 the term of a policy beyond its policy period or term. Any
29 policy with a policy period or term of less than 6 months or any
30 policy with no fixed expiration date shall for the purpose of
31 this section be considered as if written for successive policy
32 periods or terms of 6 months.

33 (2) A renewal policy may contain a change in policy terms.
34 If a renewal policy contains a change in policy terms, the
35 insurer shall give the named insured a written Notice of Change
36 in Policy Terms that shall be enclosed with the written notice
37 of renewal premium required by s. 627.4133 and s. 627.728.

38 (3) While not required, United States postal proof of
39 mailing or registered mailing of the Notice of Change in Policy
40 Terms to the named insured at the address shown in the policy
41 shall be sufficient proof of notice.

42 (4) Receipt of payment of the premium for the renewal
43 policy by the insurer shall be deemed to be acceptance of the
44 new policy terms by the named insured.

45 (5) If an insurer fails to provide the Notice of Change in
46 Policy Terms required under this section, the original policy
47 terms shall remain in effect until the next renewal and the

Amendment No. 1B

48 proper service of the Notice of Change in Policy Terms or until
49 the effective date of replacement coverage obtained by the named
50 insured, whichever occurs first.

51 (6) The intent of this section is:

52 (a) To allow an insurer to make a change in policy terms
53 without nonrenewing policyholders that the insurer wishes to
54 continue insuring.

55 (b) To alleviate the concern and confusion to the
56 policyholders caused by the required policy nonrenewal for the
57 limited issue when an insurer intends to renew the insurance
58 policy but the new policy contains a change in policy terms.

59 (c) To encourage policyholders to discuss their coverages
60 with their insurance agent.

61

62

63

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

64

Remove line(s) 1760 and insert:

65

Environmental Protection; creating s. 627.41341, F.S.; providing
66 effective dates.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

An automatic renewal provision allows an agreement to continuously renew unless either party to the agreement gives notice of his or her intention to terminate the contract within a specified period of time before the renewal deadline.¹ In some instances, consumers do not realize a service contract contains a renewal provision and may ultimately contract with the seller for a period longer than anticipated or desired.

The Federal Trade Commission Act (FTC Act) provides protection against unfair or deceptive contract provisions, thus, automatic renewal provisions not disclosed prominently may be prohibited under federal law. The FTC Act provides that, "unfair or deceptive acts or practices in or affecting commerce" are unlawful.² Similarly, the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act) provides protection for consumers against unfair methods of competition, or deceptive or unfair acts or practices in the conduct of any trade or commerce.³ Furthermore, the FDUTP Act is expressly intended to provide consistent protection with the FTC Act,⁴ and does not purport to list every offense which may constitute unfair or deceptive practices.⁵ A violation of this Act may result in a civil penalty of up to \$10,000 for each violation.⁶ Thus, state law may provide protection for deceptive or undisclosed automatic renewal provisions.

Several states provide express regulation of automatic renewal provisions. For example, California, New York, Rhode Island, Illinois, and North Carolina law provide specific requirements for automatic renewal provisions.⁷

¹ US Legal Definitions, Automatic Renewal Clause Law and Legal Definition, <http://definitions.uslegal.com/a/automatic-renewal-clause/> (last visited March 15, 2010).

² 15 U.S.C.A. § 45.

³ Section 501.202(2), F.S.

⁴ Section 501.202(3), F.S.

⁵ F.A.C. 2-2.001.

⁶ Section 501.2075, F.S.

⁷ ElfaOnline, State Laws Regulating Automatic Renewal Clauses in Tangible Personal Property Lease Contracts, *available at*: www.elfaonline.org/pub/advocacy/state/.../AutoRenewalLaws.pdf

Florida law currently provides limitations on certain types of contracts. For example, dance studio⁸ and health studio services⁹ are limited to thirty-six months and may only be renewed annually. Similarly, warranty contracts must allow the consumer to cancel the contract at any time.¹⁰

Effect of Purposed Changes:

Notification Requirements:

The bill requires sellers¹¹ to clearly and conspicuously disclose automatic renewal provisions to consumers¹² when the provision renews a contract for more than one month and causes the contract to stay in effect for more than six months after the contract was initiated. The bill does not define clearly and conspicuously; however, states with similar statutes sometimes define this term based on the size of the font, typeface, and whether a reasonable person would notice the disclosure.¹³

In addition, the bill further requires sellers of contracts with a term of twelve months or more, which contain an automatic renewal provision that renews the contract for more than one month to provide written or electronic notification to consumers no more than sixty and no less than thirty days prior to the cancellation deadline provided in the service contract.¹⁴ This notification must clearly and conspicuously inform the consumer that the contract will automatically renew unless it is cancelled by the consumer. It must also provide methods for the consumer to obtain details of the automatic renewal provision and cancellation procedure.

Consequences for Failure to Comply:

The bill provides that a seller who fails to comply with the notification requirements will render the contract void and unenforceable. This may result in sellers being required to reimburse consumers for the unwanted or unknown additional extension of a service contract.

However, the bill also provides that if the seller can demonstrate the following, the contract will not be void and unenforceable:

- It has established and implemented written procedures to comply with and enforce the requirements as part of its routine business practice;
- The failure to comply was the result of error;
- It has provided, as a part of routine business practice, for a refund for the unearned portion of the contract starting from the date the seller is notified of the error.

It is somewhat unclear whether the seller is required to demonstrate all three elements of this list, or whether demonstration of one or more of the elements is sufficient.

⁸ Section 501.143(4)(g), F.S.

⁹ Section 501.017(1)(e), F.S.

¹⁰ See Section 634.12195), F.S. (governing motor vehicle service agreements); section 634.414, F.S. (governing home warranties); and section 634.312(8), F.S. (governing service warranties).

¹¹ "Seller" is defined as any person, firm, partnership, association, or corporation engaged in commerce that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract. "Service contract" means any written contract for performance of services over a certain period of time or for a specific duration.

¹² "Individual" is defined in section 501.603(7), F.S. as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity."

¹³ For example, California's disclosure law defines clearly and conspicuously to mean, "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size...in a matter that clearly calls attention to the language." Section 17601(5)(c), CA Stat. Anon.

¹⁴ See *supra* note 10 (defining "service contract").

Exemptions from the Notification Requirements:

The bill exempts the following entities from the notification requirements:

- Federal and state financial institutions and any subsidiary or affiliate thereof;¹⁵
- health studios;¹⁶
- insurance providers;¹⁷
- warranty associations;¹⁸
- healthcare service organizations and programs;¹⁹
- electric utilities;²⁰ and
- private companies providing certain types of municipal services.²¹

The warranty association exemption includes an exemption for motor vehicle service agreement companies, home warranty associations, and service warranty associations.²² The exemption for healthcare service organizations and programs include: prepaid limited health service organizations, discount medical plan organizations,²³ health maintenance organizations, prepaid health clinics, and healthcare services.²⁴

The exemption for private companies providing municipal services includes any company authorized to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.²⁵ It also encompasses any other service enumerated in ch. 180, F.S. that may be performed by private companies, including:

- cleaning and improving street channels or other bodies of water;
- regulating the flow of streams;
- providing water and alternative water supplies;
- collecting and disposing of sewage or garbage;
- constructing, maintaining, operating, or repairing hospitals, jails, and golf courses; and
- constructing, operating, or maintaining gas plants.²⁶

B. SECTION DIRECTORY:

Section 1 provides that automatic renewal provisions must be clearly and conspicuously disclosed and that certain contracts require the seller to provide written or electronic notification to the consumer before the deadline of the contract. It also provides for the requirements for notification and exemptions of certain licensed entities, financial institutions, and private companies.

Section 2 provides an effective date of July 1, 2010 and that the requirements would only apply to service contracts entered into on or after the effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁵ See section 655.005(1)9h), F.S.; and 12 U.S.C.A. § 1813(c)(2).

¹⁶ See Section 501.0125(1), F.S.

¹⁷ See Ch. 624, F.S.; and ch. 627, F.S.

¹⁸ See Ch. 634, F.S.

¹⁹ See Ch. 636, F.S.; and ch. 641, F.S.

²⁰ See Section 366.02(2), F.S.

²¹ See Section 180.05, F.S.

²² See Ch. 634, F.S.

²³ See Ch. 636, F.S.

²⁴ See Ch, 641, F.S.

²⁵ Section 180.05, F.S.

²⁶ Section 180.06, F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative impact on sellers who must provide refunds to consumers when they have not complied with the notification requirements of the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 501.603, F.S. does not specifically define "consumer." It does define "consumer goods or services" and "individual," but it does not provide a definition of "consumer" as is stated within the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to automatic renewal of service contracts;
 3 providing definitions; requiring sellers that sell, lease,
 4 or offer to sell or lease any services to consumers
 5 pursuant to certain contracts to disclose automatic
 6 renewal provisions; providing disclosure requirements;
 7 providing exceptions to the disclosure requirements;
 8 providing that certain violations will render an automatic
 9 renewal provision void and unenforceable; providing
 10 applicability; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. (1) DEFINITIONS.—As used in this section:

15 (a) "Automatic renewal provision" means a provision under
 16 which a service contract is renewed for a specified period of
 17 more than 1 month if the renewal causes the service contract to
 18 be in effect more than 6 months after the day of the initiation
 19 of the service contract. Such renewal is effective unless the
 20 consumer gives notice to the seller of the consumer's intention
 21 to terminate the service contract.

22 (b) "Consumer" means an individual, as defined in s.
 23 501.603, Florida Statutes, receiving service, maintenance, or
 24 repair under a service contract. The term does not include an
 25 individual engaged in business or employed by or otherwise
 26 acting on behalf of a governmental entity if the individual
 27 enters into the service contract as part of or ancillary to the
 28 individual's business activities or on behalf of the business or

29 governmental entity.

30 (c) "Seller" means any person, firm, partnership,
 31 association, or corporation engaged in commerce that sells,
 32 leases, or offers to sell or lease any service to a consumer
 33 pursuant to a service contract.

34 (d) "Service contract" means a written contract for the
 35 performance of services over a fixed period of time or for a
 36 specified duration.

37 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.-

38 (a) Any seller that sells, leases, or offers to sell or
 39 lease any service to a consumer pursuant to a service contract
 40 that automatically renews for a specified period of more than 1
 41 month, unless the consumer cancels the contract, shall disclose
 42 the automatic renewal provision clearly and conspicuously in the
 43 contract or contract offer.

44 (b) Any seller that sells or offers to sell any service to
 45 a consumer pursuant to a service contract the term of which is a
 46 specified period of 12 months or more and that automatically
 47 renews for a specified period of more than 1 month, unless the
 48 consumer cancels the contract, shall provide the consumer with
 49 written or electronic notification of the automatic renewal
 50 provision. Notification shall be provided to the consumer no
 51 less than 30 days or no more than 60 days before the
 52 cancellation deadline pursuant to the automatic renewal
 53 provision. Such notification shall disclose clearly and
 54 conspicuously:

55 1. That unless the consumer cancels the contract the
 56 contract will automatically renew.

57 2. Methods by which the consumer may obtain details of the
 58 automatic renewal provision and cancellation procedure, whether
 59 by contacting the seller at a specified telephone number or
 60 address, by referring to the contract, or by any other method.

61 (c) A seller that fails to comply with the requirements of
 62 this subsection is in violation of this subsection unless the
 63 seller demonstrates that:

64 1. As part of the seller's routine business practice, the
 65 seller has established and implemented written procedures to
 66 comply with this section and enforces compliance with the
 67 procedures.

68 2. Any failure to comply with this subsection is the
 69 result of error.

70 3. As part of the seller's routine business practice,
 71 where an error has caused the failure to comply with this
 72 subsection, the unearned portion of the contract subject to the
 73 automatic renewal provision is refunded as of the date on which
 74 the seller is notified of the error.

75 (d) This subsection does not apply to:

76 1. A financial institution as defined in s. 655.005(1)(h),
 77 Florida Statutes, or any depository institution as defined in 12
 78 U.S.C. s. 1813(c)(2).

79 2. A foreign bank maintaining a branch or agency licensed
 80 under the laws of any state of the United States.

81 3. Any subsidiary or affiliate of an entity described in
 82 subparagraph 1. or subparagraph 2.

83 4. A health studio as defined in s. 501.0125(1), Florida
 84 Statutes.

85 5. Any entity licensed under chapter 624, chapter 627,
86 chapter 634, chapter 636, or chapter 641, Florida Statutes.

87 6. Any electric utility as defined in s. 366.02(2),
88 Florida Statutes.

89 7. Any private company as defined in s. 180.05, Florida
90 Statutes, providing services described in chapter 180, Florida
91 Statutes, that is competing against a governmental entity or has
92 a governmental entity providing billing services on its behalf.

93 (e) A violation of this subsection renders the automatic
94 renewal provision void and unenforceable.

95 Section 2. This act shall take effect July 1, 2010, and
96 applies only to contracts entered into on or after that date.

**INSURANCE, BUSINESS &
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 751 by Rep. McBurney
Automatic Renewal of Service Contracts**

AMENDMENT SUMMARY

March 17, 2010

Amendment 1 (**lines 40-69**) by Rep. McBurney. Deletes requirement that a service contract be renewed for a specified period of more than one month. Clarifies what the seller must demonstrate to prevent a service contract from becoming void and unenforceable.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

21 provision. Such notification shall disclose clearly and
22 conspicuously:

23 1. That unless the consumer cancels the contract the
24 contract will automatically renew.

25 2. Methods by which the consumer may obtain details of the
26 automatic renewal provision and cancellation procedure, whether
27 by contracting the seller at a specified telephone number or
28 address, by referring to the contract, or by any other method.

29 (c) A seller that fails to comply with the requirements of
30 this subsection is in violation of this subsection unless the
31 seller demonstrates that:

32 1. As part of the seller's routine business practice, the
33 seller has established and implemented written procedures to
34 comply with this section and enforces compliance with the
35 procedures.

36 2. Any failure to comply with this subsection is the result
37 of error; and
38

39

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 885

Life Insurance

SPONSOR(S): Tobia

TIED BILLS:

IDEN./SIM. BILLS: SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Reilly <i>RJR</i>	Cooper <i>PC</i>
2) Policy Council			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

An insurer that sells a life insurance policy that will replace an existing policy owned by a person must send notice of the replacement policy to the current insurer. House Bill 885 provides that an insurer is not required to send notice of replacement of a life insurance policy to the current insurer when the replacement policy is issued by the same insurer or an affiliated insurer of the policy that is to be replaced. Specifically, such notice is not required for transactions involving:

- An application to the current insurer that issued the current policy when a contractual change or conversion privilege is being exercised.
- A current policy is being replaced by the same insurer pursuant to a program approved by the Office of Insurance Regulation.
- A term conversion privilege is being exercised among corporate affiliates.

Under current law, an employee covered by a group life insurance policy may insure their spouse and/or dependent children under the policy for up to 50% of the amount for which the employee is insured. The bill removes this cap, and allows coverage of spouses and dependent children under a group life insurance policy up to the amount for which the employee is insured under the policy.

The bill takes effect upon becoming law and does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Replacement of Life Insurance

An insurer that sells a life insurance policy that will replace an existing policy owned by a person must send notice of the replacement policy to the current insurer, among other responsibilities.¹ The notice is intended to give the current insurer the opportunity to contact the policyholder to discuss the current policy before it is canceled.²

House Bill 885 creates s. 627.4605, F.S. The section provides that an insurer is not required to send notice of replacement life insurance to the current insurer when the replacement policy is issued by the same insurer or an affiliate of the insurer of the policy that is to be replaced. Specifically, notice of replacement life insurance does not need to be sent to the current insurer for transactions involving:

- An application to the current insurer that issued the current policy when a contractual change or conversion privilege is being exercised.
- A current policy is being replaced by the same insurer pursuant to a program approved by the Office of Insurance Regulation.
- A term conversion privilege is being exercised among corporate affiliates.

This section is consistent with model standards adopted by the National Association of Insurance Commissioners (NAIC).³

¹ Rule 690-151.007, F.A.C., implementing ss. 624.307(1), 626.9521, 626.9541, 626.9641, 626.99, F.S. The insurer is also required to provide certain information to the prospective purchaser of the replacement policy.

² Correspondence between representatives of the life insurance industry (Paul Sanford) and staff of the Insurance, Business & Financial Affairs (IBFA) Policy Committee. On file with the IBFA Policy Committee.

³ National Association of Insurance Commissioners, "Life Insurance and Annuities Replacement Regulation" (July 2006). Available from the NAIC website: <http://www.naic.org>.

Dependent Coverage under Group Life Insurance Policies

Thirty-five states have statutory provisions relating to coverage of spouses and dependent children under group life insurance policies.⁴ Twenty of these states do not specify a coverage limitation;⁵ 12 allow coverage up to the amount for which the employee is insured under the group policy;⁶ and three states, including Florida under s. 627.5575(3), F.S.,⁷ allow coverage of up to 50% of the amount for which the employee is insured under the group life insurance policy. The NAIC model, which was adopted in the 1980s, limits coverage for spouses and dependent children under group life insurance policies to 50% of the amount for which the employee is insured.⁸

The bill removes the 50% cap, and allows spouses and dependent children to be insured under a group life insurance policy up to the amount for which the employee is insured.

B. SECTION DIRECTORY:

Section 1. Creates s. 627.4605, F.S., "Replacement notice."

Section 2. Amends s. 627.5575, F.S., "Group life insurance for dependents."

Section 3. Provides for the bill to become effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may make increased coverage available to spouses and dependent children under group life insurance policies.

⁴ See American Council of Life Insurers, "Law Survey: Dependent Caps on Group Life Insurance" (July 2009). A copy of the survey is on file with the IBFA Policy Committee.

⁵ Arkansas, Delaware, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, and Utah.

⁶ Arizona, California, Hawaii, Illinois, Maryland, New Jersey, Texas, Vermont, Virginia, Washington, and West Virginia. New York permits the spouse to be insured for up to 100% of the amount for which the employee is insured under the group life policy, but limits coverage for a dependent child to a maximum of \$25,000.

⁷ Kansas and Nebraska also provide a 50% limitation.

⁸ Correspondence between representatives of the life insurance industry (Paul Sanford) and IBFA Policy Committee staff. On file with the IBFA Policy Committee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to life insurance; creating s. 627.4605,
 3 F.S.; specifying nonapplication of a required notice to a
 4 current insurer of a policy replacement under certain
 5 circumstances; amending s. 627.5575, F.S.; revising the
 6 limitation on the amount of insurance for spouses of
 7 dependent children of employees of members under a group
 8 life insurance policy; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 627.4605, Florida Statutes, is created
 13 to read:

14 627.4605 Replacement notice.—A notice to a current insurer
 15 of a replacement of a current life insurance policy is not
 16 required in a transaction involving:

17 (1) An application to the current insurer that issued the
 18 current policy or contract when a contractual change or
 19 conversion privilege is being exercised;

20 (2) A current policy or contract is being replaced by the
 21 same insurer pursuant to a program filed with and approved by
 22 the office; or

23 (3) A term conversion privilege is being exercised among
 24 corporate affiliates.

25 Section 2. Subsection (3) of section 627.5575, Florida
 26 Statutes, is amended to read:

27 627.5575 Group life insurance for dependents.—Except for a
 28 policy issued under s. 627.553, a group life insurance policy

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29 | may be extended to insure the employees or members against loss
30 | due to the deaths of their spouses and dependent children or any
31 | class or classes thereof, subject to the following:

32 | (3) The amounts of insurance for any covered spouse or
33 | dependent child under the policy may not exceed ~~50 percent of~~
34 | the amount of insurance for which the employee or member is
35 | insured.

36 | Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS



BILL #: HB 1049

City of Eustis, Lake County

SPONSOR(S): Hays

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	10 Y, 1 N	Noriega	Hoagland
2)	Insurance, Business & Financial Affairs Policy Committee		Livingston 	Cooper 
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (DBPR) is responsible for enforcement of the beverage law. Section 561.422, F.S., authorizes nonprofit civic organizations to apply for up to three temporary alcoholic beverage permits for a period not to exceed 3 days, subject to any other state, municipal, or county ordinance regulating the time for selling alcoholic beverages. The permit requires that the alcoholic beverages may only be consumed on the premises.

This bill authorizes the division to issue temporary alcoholic beverages permits to nonprofit organizations holding outdoor events in the downtown area of the City of Eustis in Lake County.

An organization may be issued up to 15 temporary permits per calendar year, valid for up to three days, in addition to the three temporary permits currently authorized by law. The division is required to adopt rules on or before October 1, 2010, to administer the act.

The division has indicated that it can handle the provisions of this bill with existing resources.

The bill takes effect upon becoming law.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapters 561-568, F.S., comprise Florida's beverage law. The Division of Alcoholic Beverages and Tobacco (division) is responsible for the enforcement of these statutes.¹ Section 561.422, F.S., authorizes "nonprofit civic organizations" to apply for up to three temporary alcoholic beverage permits for a period not to exceed three days, subject to any other state, municipal, or county ordinance regulating the time for selling alcoholic beverages. The permit requires that the alcoholic beverages may only be consumed on the premises.

Upon the filing of an application, the nonprofit civic organization must present a local building or zoning permit, and pay a fee of \$25 per permit. All net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization. Individual nonprofit civic organizations are limited to three permits per calendar year.

According to the division, there are currently 165 nonprofit civic organizations in the City of Eustis.²

Effect of Proposed Changes

This bill authorizes the division to issue temporary permits authorizing nonprofit organizations to sell alcoholic beverages for consumption on the premises at outdoor events on public right-of-way in the downtown area, as specifically described in the bill, of the City of Eustis in Lake County.

A nonprofit civic organization may be issued up to 15 temporary permits per calendar year, valid for up to three days, in addition to the three temporary permits authorized by s. 561.422, F.S. The

¹ Section 561.02, F.S.

² Impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated February, 2010, HB 1049 and cite Guidestar.org (internet provider connecting people with nonprofit information) as the source for the number of nonprofit civic organizations in Eustis.

organization must provide a valid street-closure permit issued by the City of Eustis, and must comply with all other requirements of s. 561.422, F.S., in obtaining the temporary permits authorized by the bill.

This bill requires the division to adopt rules on or before October 1, 2010, to administer the act.

B. SECTION DIRECTORY:

Section 1. Provides for the issuance of temporary alcoholic beverages permits to nonprofit civic organizations for event activities conducted in the City of Eustis in Lake County.

Section 2. Effective date – upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 14, 2010.

WHERE? The *Daily Commercial*, a daily newspaper of general circulation published in Lake County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, this bill will provide economic revitalization to downtown Eustis. Also, nonprofit organizations will have a new funding source and additional public events will attract more visitors to downtown Eustis.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the division to adopt rules to administer this act. The division has indicated that this bill does not address what would occur if a rule challenge were to be initiated and rules could not be adopted by the date specified in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.422, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES
2010 LOCAL BILL CERTIFICATION FORM

BILL #: 1049

SPONSOR(S): Hays

RELATING TO: City of Eustis, Lake County
[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Lake

CONTACT PERSON: Paul Runk

PHONE NO.: 488-0548 E-Mail: paul.runk@myflorida.house.gov

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES NO

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES NO

Date hearing held: 9-30-2009

Location: Lake-Sumter Community College

(3) Was this bill formally approved by a majority of the delegation members?

YES NO

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES NO DATE 1-11-2010

Where? Daily Commercial County Lake

Referendum in lieu of publication: YES NO

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES NO NOT APPLICABLE

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES NO NOT APPLICABLE

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES NO

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

M. Marlene O'Toole
Delegation Chair (Original Signature)

3-1-2010
Date

M. MARLENE O'TOOLE
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2009 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. Please submit this form to the Military & Local Affairs Policy Committee as soon as possible after the bill is filed.

BILL #: 1049
SPONSOR(S): Hays
RELATING TO: City of Eustis, Lake County
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY 09-10</u>	<u>FY 10-11</u>
Expenditures:	2000	6000

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 09-10</u>	<u>FY 10-11</u>
Federal:		
State:		
Local:	169,000	189,000

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 09-10</u>	<u>FY 10-11</u>
Revenues:	10,000	30,000

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: The economic revitalization of downtown Eustis is the main benefit of passing this Bill. Non-Profit organizations will have a new funding source and an increase of public events will attract more visitors to the downtown area.
Disadvantages:

NONE

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Special Events have proven to be a successful way of promoting the downtown and key to the revitalization process. Local restaurants and shops are very supportive of special events and are direct beneficiaries. Typically, these events bring 2,500 to 7,500 to downtown. It is not competitive with local business, but rather a means to their success.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

The data is based on Eustis Main Street history and discussions with other local non-profits.

PREPARED BY: Wayne Carter 12/17/09
[Must be signed by Preparer] Date

TITLE: EXECUTIVE Director

REPRESENTING: Eustis Main Street, Inc

PHONE: (352) 357-8555

E-Mail Address: Wayne Carter@EustisMainStreet, Inc.

Affidavit of Publication

Daily Commercial

Leesburg, Lake County, Florida

Case No. _____

STATE OF FLORIDA
COUNTY OF LAKE

Before the undersigned authority personally appeared Ron Wallace who on oath says that he is the Publisher of the Daily Commercial, a daily newspaper published at Leesburg in Lake County, Florida, that the attached copy of advertisement, being

195349

in the matter of Notice

in the _____ Court,

was inserted in said newspaper in the issues of _____

Jan 14, 2010

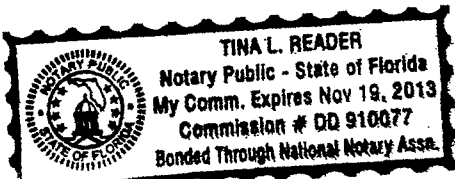
Affiant further says that the said Daily Commercial is a newspaper published in said Leesburg, in said Lake County, Florida, and that the said newspaper has heretofore been continuously published in said Lake County, Florida each day and has been entered as second class matter at the post office in Leesburg in said Lake County, Florida, for a period of one year preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Signed Ron Wallace
Ron Wallace, Publisher

Sworn to and subscribed before me this 19 day of Jan, 2010, by Ron Wallace, Publisher, who is personally known to me.

(Seal)

Tina Reader
Tina Reader, Notary Public



NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2010 Legislature for passage of an act relating to the City of Eustis, Lake County, relating to temporary permits for alcohol sales by nonprofit civic organizations at outdoor events in Eustis; the act shall take effect upon becoming law.

Ad No. 195349
Jan. 14, 2010

See Here

1 A bill to be entitled
 2 An act relating to the City of Eustis, Lake County;
 3 authorizing the Division of Alcoholic Beverages and
 4 Tobacco of the Department of Business and Professional
 5 Regulation to issue up to a specified number of temporary
 6 permits to a nonprofit civic organization to sell
 7 alcoholic beverages for consumption on the premises at
 8 outdoor events on public right-of-way in the downtown area
 9 of Eustis; providing that such events require a street-
 10 closure permit from the City of Eustis; providing that the
 11 permits authorized by the act are in addition to certain
 12 other authorized temporary permits; requiring the
 13 nonprofit civic organization to comply with certain
 14 statutory requirements in obtaining the permits authorized
 15 by the act; requiring the division to adopt rules;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. (1) Notwithstanding any other provision of
 21 law, the Division of Alcoholic Beverages and Tobacco of the
 22 Department of Business and Professional Regulation may issue to
 23 a bona fide nonprofit civic organization, upon application and
 24 presentation of a valid street-closure permit issued by the City
 25 of Eustis, a temporary permit authorizing the sale of alcoholic
 26 beverages for consumption on the premises at outdoor events on
 27 public right-of-way in the downtown area of Eustis. Any such
 28 nonprofit civic organization may be issued up to 15 temporary

29 permits per calendar year and each temporary permit is valid for
 30 up to 3 days. For purposes of this act, the downtown area of
 31 Eustis is described as follows:

32 Begin at the Western Right-of-Way of Northshore Drive
 33 at the intersection of the Northern Right-of-Way of
 34 Wilt Avenue; thence run East along the Northern Right-
 35 of-Way of Wilt Avenue to the Eastern Right-of-Way of
 36 North Grove Street; thence run South along the eastern
 37 Right-of-Way of North Grove Street (a/k/a SR 19 North)
 38 to the Northern Right-of-Way of Bates Avenue; thence
 39 run East along the Norther Right-of-Way Bates Avenue
 40 to the Eastern Right-of-Way of Dewey Street to the
 41 Southern Right-of-Way of Citrus Avenue; thence run
 42 West along the Southern Right-of-Way of Citrus Avenue
 43 to the Eastern Right-of-Way of North Grove Street
 44 (a/k/a SR 19 North); thence run South along the
 45 Eastern Right-of-Way of North Grove Street (a/k/a SR
 46 19 North) to the Southern Right of Way of Ward Street
 47 to the Eastern Right-of-Way of West Woodward Avenue;
 48 thence run West along the Southern Right-of-Way of
 49 West Woodward Avenue to Lake Eustis; thence run North
 50 along the waters edge of Lake Eustis and landward to
 51 the intersection of the Western Right-of-Way of
 52 Northshore Drive and the Northern Right-of-Way of Wilt
 53 Avenue and the point of beginning.

54 (2) The temporary permits authorized by this act are in
 55 addition to the three temporary permits authorized per year for
 56 a nonprofit civic organization pursuant to section 561.422,

HB 1049

2010

57 | Florida Statutes.

58 | (3) The nonprofit civic organization shall comply with all
59 | other requirements of section 561.422, Florida Statutes, in
60 | obtaining the temporary permits authorized by this act.

61 | (4) On or before October 1, 2010, the Division of
62 | Alcoholic Beverages and Tobacco of the Department of Business
63 | and Professional Regulation shall adopt rules pursuant to
64 | chapter 120, Florida Statutes, to administer this act. Such
65 | rules shall include permitting procedures and application forms.

66 | Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1051

City of Tavares, Lake County

SPONSOR(S): Hays

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	10 Y, 1 N	Noriega	Hoagland
2)	Insurance, Business & Financial Affairs Policy Committee		<i>[Signature]</i> Livingston	Cooper <i>[Signature]</i>
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (DBPR) is responsible for enforcement of the Beverage Law. Section 561.422, F.S., authorizes nonprofit civic organizations to apply for up to three temporary alcoholic beverage permits for a period not to exceed 3 days, subject to any other state, municipal, or county ordinance regulating the time for selling alcoholic beverages. The permit requires that the alcoholic beverages may only be consumed on the premises.

This bill authorizes the division to issue temporary alcoholic beverages permits to nonprofit organizations holding outdoor events in the downtown area of the City of Tavares in Lake County.

An organization may be issued up to 15 temporary permits per calendar year, valid for up to three days, in addition to the three temporary permits currently authorized by law. The division is required to adopt rules on or before October 1, 2010, to administer the act.

The division has indicated that it can handle the provisions of this bill with existing resources.

The bill takes effect upon becoming law.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapters 561-568, F.S., comprise Florida's beverage law. The Division of Alcoholic Beverages and Tobacco (division) is responsible for the enforcement of these statutes.¹ Section 561.422, F.S., authorizes "nonprofit civic organizations" to apply for up to three temporary alcoholic beverage permits for a period not to exceed three days, subject to any other state, municipal, or county ordinance regulating the time for selling alcoholic beverages. The permit requires that the alcoholic beverages may only be consumed on the premises.

Upon the filing of an application, the nonprofit civic organization must present a local building or zoning permit, and pay a fee of \$25 per permit. All net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization. Individual nonprofit civic organizations are limited to three permits per calendar year.

According to the division, there are currently 100 nonprofit civic organizations in the City of Tavares.²

Effect of Proposed Changes

This bill authorizes the division to issue temporary permits authorizing nonprofit organizations to sell alcoholic beverages for consumption on the premises at outdoor events on public right-of-way in the downtown area, as specifically described in the bill, of the City of Tavares in Lake County.

A nonprofit civic organization may be issued up to 15 temporary permits per calendar year, valid for up to three days, in addition to the three temporary permits authorized by s. 561.422, F.S. The

¹ Section 561.02, F.S.

² Impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated February, 2010, HB 1051 and cite Guidestar.org (internet provider connecting people with nonprofit information) as the source for the number of nonprofit civic organizations in Tavares.

organization must provide a valid street-closure permit issued by the City of Tavares, and must comply with all other requirements of s. 561.422, F.S., in obtaining the temporary permits authorized by the bill.

This bill requires the division to adopt rules on or before October 1, 2010, to administer the act.

B. SECTION DIRECTORY:

Section 1. Provides for the issuance of temporary alcoholic beverages permits to nonprofit civic organizations for event activities conducted in the City of Tavares in Lake County.

Section 2. Effective date – upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 14, 2010.

WHERE? The *Daily Commercial*, a daily newspaper of general circulation published in Lake County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, this bill will offer not-for-profit groups additional opportunities to sell alcoholic beverages and to raise additional funds for local charities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the division to adopt rules to administer this act. The division has indicated that this bill does not address what would occur if a rule challenge were to be initiated and rules could not be adopted by the stated time.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The division has indicated that it can handle the provisions of this bill within existing resources.

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.422, F.S.

V. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES
2010 LOCAL BILL CERTIFICATION FORM

BILL #: 1051

SPONSOR(S): Hays

RELATING TO: City of Tavares, Lake County
(Indicate Area Affected (City, County or Special District) and Subject)

NAME OF DELEGATION: Lake

CONTACT PERSON: Paul Runk

PHONE NO.: 488-0348 E-Mail: paul.runk@myfloridahouse.gov

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES NO

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES NO

Date hearing held: 9-30-2009

Location: Lake Sumter Community College

(3) Was this bill formally approved by a majority of the delegation members?

YES NO

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES NO DATE 1-14-2010

Where? Daily Commercial County Lake

Referendum in lieu of publication: YES NO

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES NO NOT APPLICABLE

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES NO NOT APPLICABLE

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES NO

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

M. Marlene O'Toole
Delegation Chair (Original Signature)

3-1-2010
Date

M. MARLENE O'TOOLE
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2009 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. Please submit this form to the Military & Local Affairs Policy Committee as soon as possible after the bill is filed.

BILL #: 1051
SPONSOR(S): Hays
RELATING TO: City of Tavares, Lake County
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures:	<u>FY 09-10</u>	<u>FY 10-11</u>
	\$100	\$100

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 09-10</u>	<u>FY 10-11</u>
Federal:		
State:		
Local:	\$100	\$100

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues:	<u>FY 09-10</u>	<u>FY 10-11</u>
	\$1,000	\$1,000

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: Will offer not-for-profit groups additional opportunities to sell beverages and raise additional funds for local charities.

Disadvantages: None.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Source of data is based on past events.

PREPARED BY: Brian Neeron 12/17/09
[Must be signed by Preparer] Date

TITLE: Director of Economic Development

REPRESENTING: City of Tawas

PHONE: 352-742-6402

E-Mail Address: Bneeron@t2wares.org

Affidavit of Publication

Daily Commercial

Leesburg, Lake County, Florida

Case No. _____

STATE OF FLORIDA
COUNTY OF LAKE

Before the undersigned authority personally appeared Ron Wallace who on oath says that he is the Publisher of the Daily Commercial, a daily newspaper published at Leesburg in Lake County, Florida, that the attached copy of advertisement, being

195348

in the matter of Notice

in the _____ Court,

was inserted in said newspaper in the issues of _____

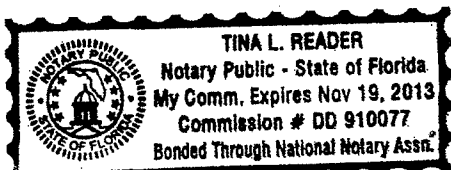
Jan 14, 2010

Affiant further says that the said Daily Commercial is a newspaper published in said Leesburg, in said Lake County, Florida, and that the said newspaper has heretofore been continuously published in said Lake County, Florida each day and has been entered as second class matter at the post office in Leesburg in said Lake County, Florida, for a period of one year preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Signed Ron Wallace
Ron Wallace, Publisher

Sworn to and subscribed before me this 19 day of Jan, 2010, by Ron Wallace, Publisher, who is personally known to me.

(Seal) Tina Reader
Tina Reader, Notary Public



NOTICE OF LEGISLATION
TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2010 Legislature for passage of an act relating to the City of Tavares, Lake County, relating to temporary permits for alcohol sales by nonprofit civic organizations for outdoor events in Tavares. The act shall take effect upon becoming law.
Ad No. 195348
Jan. 14, 2010

e Here

1 A bill to be entitled
 2 An act relating to the City of Tavares, Lake County;
 3 authorizing the Division of Alcoholic Beverages and
 4 Tobacco of the Department of Business and Professional
 5 Regulation to issue up to a specified number of temporary
 6 permits to a nonprofit civic organization to sell
 7 alcoholic beverages for consumption on the premises at
 8 outdoor events on public right-of-way in the downtown area
 9 of Tavares; providing that such events require a street-
 10 closure permit from the City of Tavares; providing that
 11 the permits authorized by the act are in addition to
 12 certain other authorized temporary permits; requiring the
 13 nonprofit civic organization to comply with certain
 14 statutory requirements in obtaining the permits authorized
 15 by the act; requiring the division to adopt rules;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. (1) Notwithstanding any other provision of
 21 law, the Division of Alcoholic Beverages and Tobacco of the
 22 Department of Business and Professional Regulation may issue to
 23 a bona fide nonprofit civic organization, upon application and
 24 presentation of a valid street-closure permit issued by the City
 25 of Tavares, a temporary permit authorizing the sale of alcoholic
 26 beverages for consumption on the premises at outdoor events on
 27 public right-of-way in the downtown area of Tavares. Any such
 28 nonprofit civic organization may be issued up to 15 temporary

HB 1051

2010

29 permits per calendar year and each temporary permit is valid for
 30 up to 3 days. For purposes of this act, the downtown area of
 31 Tavares is that area bounded by U.S. Highway 441 on the North;
 32 St. Clair Abrams Avenue on the East; State Road 19 on the West;
 33 and Lake Dora on the South.

34 (2) The temporary permits authorized by this act are in
 35 addition to the three temporary permits authorized per year for
 36 a nonprofit civic organization pursuant to section 561.422,
 37 Florida Statutes.



38 (3) The nonprofit civic organization shall comply with all
 39 other requirements of section 561.422, Florida Statutes, in
 40 obtaining the temporary permits authorized by this act.

41 (4) On or before October 1, 2010, the Division of
 42 Alcoholic Beverages and Tobacco of the Department of Business
 43 and Professional Regulation shall adopt rules pursuant to
 44 chapter 120, Florida Statutes, to administer this act. Such
 45 rules shall include permitting procedures and application forms.

46 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1247 Hillsborough County
SPONSOR(S): Military & Local Affairs Policy Committee and Ambler
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2510

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	11 Y, 1 N, As CS	Noriega	Hoagland
2)	Insurance, Business & Financial Affairs Policy Committee		Livingston 	Cooper 
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level and the state "sales tax" is collected at the retail level.

This bill authorizes the division to issue a special alcoholic beverage license for use within the Children's Museum of Tampa, Inc., (Museum) and on its adjoining grounds. The bill provides that the Museum must pay the applicable license fee and that this license may only be used for special events.

The license authorized by this bill allows the Museum to sell alcoholic beverages for consumption within Museum grounds, but not off the premises. Further, the bill allows the Museum to transfer the license to qualified applicants authorized by contract with the Museum to provide food services on the premises.

According to the Economic Impact Statement, this bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder.

The division has indicated that the provisions of this bill will result in annual revenues of \$1,820 to the agency. In addition, the division has indicated that it can handle the provisions of this bill within existing resources.

This bill has an effective date of upon becoming law.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapters 561-565 and 567-568 F.S., comprise Florida's beverage law. The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer (vendor). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Florida's retail alcoholic beverage licensing system is generally built around the quota license structure with other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. Section 561.20(1), F.S., provides for a quota or limitation on the number of liquor licenses which may be issued in a county based on population: one license for each 7,500 residents. There are no statutory limitations on the number of retail beer and wine licenses which may be issued in a county.

Section 565.02(1)(b), F.S., specifies annual fees that a vendor must pay. If a vendor operates a place of business where consumption on the premises is permitted in a county having a population of over 100,000 the fee is \$1,820. Section s. 186.901, F.S., addresses population census determinations. According to the University of Florida's Bureau of Economic and Business Research (BEBR), the April 1, 2009, population estimate for Hillsborough County is 1,196,892. Therefore, the license fee of \$1,820 listed in s. 565.02(1)(b), F.S., would apply to the Museum.

There are numerous statutory exceptions to the quota limitation which allow for the issuance of liquor licenses to various entities meeting specified conditions, e.g., hotels or motels, civic center authorities, golf clubs, restaurants, etc.

Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the "licensed premises" of a retail establishment over which the licensee has dominion or control. The beverage law does not allow a patron to leave an establishment with an open alcoholic beverage or enter another licensed premises with an alcoholic beverage.

No alcoholic beverage license is currently issued to the Children's Museum of Tampa, Inc., a not-for-profit corporation. Over time, similar legislation has been adopted for the following Tampa Bay area locations:

- the Museum of Science and Industry (MOSI);¹
- the University Area Community Development Corporation (UACDC);²
- the Lowry Park Zoo;³ and
- the Tampa Bay History Center.⁴

Effect of Proposed Changes

Notwithstanding the limitations contained in the beverage law, this bill authorizes the division to issue a special alcoholic beverage license for use within the Children's Museum of Tampa, Inc., (Museum) and on its adjoining grounds.

The bill provides that the Museum must pay the applicable license fee provided in s. 565.02, F.S., and that this license may only be used for special events.

The license authorized by this bill allows the Museum to sell alcoholic beverages for consumption within Museum grounds, but not off the premises.

Further, the bill allows the Museum to transfer the license to qualified applicants authorized by contract with the Museum to provide food services on the premises. However, upon termination of a transferee's authorization or contract, the license automatically reverts to the Museum by operation of law.

According to the University of Florida's Bureau of Economic and Business Research (BEBR), the April 1, 2009, population estimate for Hillsborough County is 1,196,892. Therefore, the license fee of \$1,820 listed in s. 565.02(1)(b), F.S., would apply to the Museum.

B. SECTION DIRECTORY:

Section 1. Authorizes the division to issue an alcoholic beverage license to the Museum in accordance with s. 561.17, F.S., upon application and payment of the appropriate license fee.

Section 2. Authorizes the sale of alcoholic beverages to be consumed on Museum premises; provides that the license may not permit the sale of alcoholic beverages in sealed containers for consumption off the premises.

Section 3. Authorizes the transfer of the license and provides for subsequent reversion of the license under certain circumstances.

Section 4. Effective date - upon becoming a law.

¹ Chapter 98-449, Laws of Florida.

² Chapter 2003-355, Laws of Florida.

³ Chapter 94-464, Laws of Florida.

⁴ Chapter 2007-303, Laws of Florida.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 25, 2010.

WHERE? The *Tampa Tribune*, a daily newspaper of general circulation published in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, this bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder. In addition, the Museum would have the potential to increase facility rentals to generate revenue for its community programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The division has indicated that the provisions of this bill will result in annual revenues of \$1,820 to the agency. In addition, the division has indicated that it can handle the provisions of this bill within existing resources.

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.17, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the Military & Local Affairs Policy Committee adopted one amendment and reported the bill favorably as a Committee Substitute.

This amendment deleted language allowing the removal of opened, partially consumed containers of alcoholic beverages from museum premises. This language is inconsistent with local ordinances, so it was deleted to avoid a conflict between state and local laws.

This analysis reflects the amendment adopted by the Military & Local Affairs Policy Committee.

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29 Section 2. Alcoholic beverages may be sold by the licensee
 30 for consumption within the building and on the grounds of the
 31 museum. The license issued pursuant to this act does not permit
 32 the sale of alcoholic beverages in sealed containers for
 33 consumption outside the building and its grounds.

34 Section 3. The museum may transfer the license from time
 35 to time to qualified applicants who are either authorized by or
 36 under contract with the museum to provide food services at the
 37 museum. Upon termination of a transferee's authorization or
 38 contract, the license automatically reverts by operation of law
 39 to the museum.

40 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS



BILL #: HB 1253

Continuing Care Facilities

SPONSOR(S): Proctor

TIED BILLS:

IDEN./SIM. BILLS: SB 2030

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Cooper 	Cooper 
2)	Elder & Family Services Policy Committee			
3)	Full Appropriations Council on Education & Economic Development			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

Continuing Care Retirement Communities (CCRCs), also known as life-care facilities, are retirement facilities that furnish residents with shelter and health care for an entrance fee and monthly payments. In Florida, CCRCs are regulated by the Department of Financial Services, the Agency for Health Care Administration and the Office of Insurance Regulation (OIR); the latter primarily through chapter 651, F.S. The OIR authorizes and monitors a facility's operation as well as determines the facility's financial status and the management capabilities of its managers and owners. The OIR is also empowered to discipline a facility for violations of residents' rights. Currently there are 70 CCRCs in the state, which are home to approximately 25,000 residents.

This bill clarifies and updates several provisions in chapter 651, F.S., many of which are reflective of current practices in CCRCs. Among its key provisions, the bill:

- Increases fees for certificates of authority as well as allowable provider cancellation processing fees.
- Adds new content requirements for annual reports.
- Clarifies that a provider may assess a non-refundable application processing fee.
- Clarifies that the taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to "property."
- Clarifies that if a prospective resident signs a contract but delays moving into the community, he or she is considered to have occupied a unit in the facility when he or she pays an entrance fee, or any portion thereof, and has begun paying a monthly fee. The proposed language also reiterates that such resident has 7 days from the date of signing the contract to cancel without financial penalty.
- Adds new requirements for the residents' council regarding providing notice to residents.
- Gives residents the right to receive memos and announcements from the residents' council as well as unrestricted access to the council.
- Increases the availability and distribution of certain information and reports to residents and prospective residents.
- Changes OIR inspections from "at least once every 3 years" to "at least once every 5 years" to conform to requirements for other entities regulated by OIR.
- Requires the Continuing Care Advisory Council to report annually the Council's findings and recommendations concerning continuing care facilities to the Governor and the Commissioner of OIR.
- Requires OIR to disclose to Council members specified information regarding complaints filed with DFS and to notify the Council regarding rule changes and scheduled rule workshops/hearings.
- Repeals current law regarding provisional certificates issued under prior law.

Increasing fees will result in additional revenues to the state and negatively impact the private sector; both in an indeterminate amount. The OIR indicates that any additional workload requirements generated by the bill can be absorbed within current resources. The bill's effective date is July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1253.IBFA.doc

DATE: 3/16/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Continuing Care Retirement Communities (CCRCs), also known as life-care facilities, are retirement facilities that furnish residents with shelter and health care for an entrance fee and monthly payments.¹ A major benefit of joining a CCRC is that residents are provided a continuum of care in an environment familiar to them, close to family and friends. Residents are offered a variety of social and medical services while residing in independent living or assisted living arrangements or nursing homes. Currently there are 70 CCRCs in the state, which are home to approximately 25,000 residents.²

With the rather unique nature of CCRCs, oversight responsibility of these entities is shared among several state agencies. The Department of Financial Services may become involved after a contractual agreement has been signed by both parties or during the mediation process. These matters are usually initially addressed through the Department's Consumer Helpline. On the other hand, the Agency for Health Care Administration regulates other CCRC aspects, such as assisted living, skilled nursing care, quality-of-care, and concerns with medical facilities.

Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide service not only in the present but also in the future. Accordingly, the Office of Insurance Regulation (OIR) is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.³ The OIR is also empowered to discipline a facility for violations of residents' rights.⁴ These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.⁵

¹ *Long-Term Care: A Guide for Consumers*, Florida Department of Financial Services, p.18 at <http://www.myfloridacfo.com/Consumers/Guides/Health/index.htm> (Last viewed on March 15, 2010).

² Presentation to the Governor's Continuing Care Advisory Council November 3, 2009 at <http://www.flair.com/pdf/2009CouncilPresentation.pdf> (Last viewed on March 15, 2010).

³ ss. 651.021, and 651.023, F.S.

⁴ s. 651.083, F.S.

⁵ *Id.*

In order to operate a CCRC in Florida a provider must obtain from OIR a certificate of authority predicated upon first receiving a provisional certificate. The application process involves submitting a market feasibility study and various financial information, including projected revenues and expenses, current assets and liabilities of the applicant, and expectations of the financial condition of the project.⁶

As part of the ongoing monitoring of the facility, current law requires providers to submit annual reports to OIR, which must include information to assess the financial viability of the provider. Current law also provides for the scrutinizing of provider escrow accounts and the maintaining by providers of specified minimum liquid reserves. Also, each continuing care contract must be submitted and approved by OIR prior to its use in the state.⁷

Regarding examinations and inspections, OIR may at any time, and must at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for examination of insurance companies pursuant to s.624.316, F.S.⁸The OIR is also authorized to discipline facilities for violations of a plethora of regulatory requirements by denying, suspending, or revoking certificates of authority or, in lieu thereof, to levy a fine not to exceed \$1,000 per violation. However, if it is found that the provider knowingly and willfully violated a lawful order of OIR or a provision of chapter 651, F.S, the office may impose a fine in an amount not to exceed \$10,000 for each such violation.⁹

Current law also addresses issues related to meetings and communications between a provider and residents. Quarterly meetings are required and residents' organizations may be represented at such meetings.¹⁰ Also, there has been created in statute the Continuing Care Advisory Council, which acts in an advisory capacity to OIR, meeting at least once a year to recommend to the office needed changes in statutes and rules and upon the request of OIR to assist with any corrective action, rehabilitation or cessation of the business plan of a provider.¹¹

Proposed Changes in the Bill

Certificates of Authority

The bill increases the filing fee for a certificate of authority and a provisional certificate of authority from \$75 and \$50, respectively, to \$5,000, as, according to the bill's proponents, originally requested by OIR. Subsequently, the office noted that these fee increases are in excess of the \$1,500 now charged to insurance companies for a certificate of authority and have suggested that if a reasonable fee increase is appropriate to reflect costs associated with regulation of CCRCs, it may be reasonable to set the fee at \$1,500.

The bill also increases the threshold for identifying persons named in the application for a provisional certificate of authority who are associated with a business entity that provides goods, services, or a lease to the continuing care facility from \$500 or more to \$10,000 or more. Also regarding the applications for a provisional certificate it adds wait list contracts to the list of contract forms that must be approved by OIR if they are used by a provider.

⁶ ss. 651.021-651.023, F.S.

⁷ s. 651.026, F.S., s.651.033, F.S., s.651.035, F.S. and s.651.055, F.S.

⁸ s. 651.105, F.S.

⁹ ss. 651.106 and 651.108, F.S.

¹⁰ s. 651.085, F.S.

¹¹ s. 651.121, F.S.

Annual Reports

The bill expands financial statement requirements to require supplemental financial information and cash flow information from any additional licensed facility or operations that are not part of the licensed facility. Current law requires that if a provider has multiple licensed facilities the provider must provide a separate statement of operations for each facility. The proposed change will require that any provider with multiple licensed facilities also provide a balance sheet, statement of cash flows, and a statement of changes in equity for each licensed facility.

The bill also specifies that if financial terms change based on revisions to generally accepted principles, the new terminology will be required in the annual report, opinion, and schedules.

Escrow Accounts and Minimum Liquid Reserves

The bill clarifies that a provider may assess a non-refundable application processing fee on a prospective resident, which is separate from an entrance fee, and that the taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to "property." It also deletes obsolete language related to a phase-in of reserve requirements.

Contracts

Regarding contracts between providers and residents, the bill clarifies that if a prospective resident signs a contract but delays moving into the community, he or she is considered to have occupied a unit in the facility when he or she pays an entrance fee, or any portion thereof, and has begun paying a monthly fee. The proposed language also reiterates that such resident has 7 days from the date of signing the contract to cancel without financial penalty. Proponents of the bill indicate that some people enter into a contract and pay fees strictly for insurance purposes and don't move in until they need services. Current law does not address this situation, which, according to the bill's proponents, was not anticipated in previous re-writes of chapter 651, F.S.

The bill also clarifies conditions under which a processing fee may be charged and increases the allowable processing fee from 4% to 5% in the event of cancellation. The bill further clarifies that a person who postpones moving into the facility but takes possession of a unit and begins paying fees is a resident for the purpose of refunds to which prospective residents are entitled if they die or become ill before moving in.

Residents' Council/Rights/Meetings

The bill requires that within 30 days after an election a newly elected president or chair of the residents' council shall be provided a copy of chapter 651, F.S., and rules or be provided direction to a public website to obtain the information. It also clarifies that residents have the right to receive memos or announcements from or approved for distribution by the residents' council and that a provider may not restrict a resident's access to the residents' council.

Regarding the current requirement for quarterly meetings between residents and the governing body of the provider, the bill requires that the president or chair of the residents' council be provided a written summary of reasons why a monthly maintenance fee is to be increased and permits a "designated representative" of the provider to attend council meetings.

Availability and Distribution of Reports

The bill specifies that a management company is an agent of the provider when it comes to disclosing information to residents as required by law. It expands the list of items that must be provided to the president or chair of the residents' council to include a summary of entrance fees collected and refunds made for the period covered in the annual report, a copy of the annual statement, a copy of the quarterly annual statement if one is required, and a copy of newly approved continuing care contracts when requested.

Examinations and Inspections

The bill changes the requirement for OIR to conduct an examination of each CCRC from "at least once every 3 years" to "at least once every 5 years". This change in examination and inspections conforms to the same timeframes for other entities regulated by OIR. The bill also states that the examinations shall include confirmation that all disclosure requirements to the president or chair of the residents' council have been made.

Continuing Care Advisory Council

The bill creates a new requirement for the Advisory Council chair to report the Council's findings and recommendations annually to the Governor and OIR. It also requires OIR, on an annual basis, to provide the Council with a summary and comparison of data on CCRCs based on information submitted in the two most recent annual reports. The OIR is also to provide a summary of the number, type and status of complaints related to CCRCs that have been filed with the DFS. Because, according to the Office, it has been providing this information to the Council, the requirement does not represent a new responsibility or role for the Office. Finally the bill creates a new subsection to require the Office to notify the Advisory Council of proposed rule changes or scheduled rule workshops and hearings related to the administration of chapter 651, F.S.

Provisional Certificates Issued Under Prior Law

The bill repeals s.651.133, F.S., which, according to OIR, is obsolete and no longer enforced.

B. SECTION DIRECTORY:

Section 1. Amends s. 651.011, F.S., relating to definitions.

Section 2. Amends s. 651.012, F.S., relating to exempted facility; written disclosure of exemption.

Section 3. Amends s. 651.015, F.S., relating to administration; forms; fees; rules; fines.

Section 4. Amends s. 651.022, F.S., relating to provisional certificate of authority; application.

Section 5. Amends s. 651.0235, F.S., relating to validity of provisional certificates of authority and certificates of authority.

Section 6. Amends s. 651.026, F.S., relating to annual reports.

Section 7. Amends s. 651.033, F.S., relating to escrow accounts.

Section 8. Amends s. 651.035, F.S., relating to minimum liquid reserve requirements.

Section 9. Amends s. 651.055, F.S., relating to contracts; right to rescind.

Section 10. Amends s. 651.081, F.S., relating to resident's council.

Section 11. Amends s. 651.083, F.S., relating to residents' rights.

Section 12. Amends s. 651.085, F.S., relating to quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.

Section 13. Amends s. 651.091, F.S., relating to availability, distribution, and posting of reports and records; requirement of full disclosure.

Section 14. Amends s. 651.105(1), F.S., relating to examination and inspections.

Section 15. Amends s. 651.114, F.S., relating to delinquency proceedings; remedial rights.

Section 16. Amends s. 651.1151, F.S., relating to administrative, vendor, and management contracts.

Section 17. Amends s. 651.121, F.S., relating to Continuing Care Advisory Council.

Section 18. Repeals s. 651.133, F.S., relating to provisional certificates issued under prior law.

Section 19. Amends s. 628.4615, F.S., relating to specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation

Section 20. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As written, the fee for a certificate of authority is increased from \$75 to \$5,000; and the fee for a provisional certificate of authority is increased from \$50 to \$5,000. This fee would not apply to existing CCRCs and the number of new applications for either provisional certificates of authority or certificates of authority cannot be determined. However, as of November 3, 2009 there were 3 CCRCs with a provisional certificate of authority. The sponsor of the bill has indicated he will be offering an amendment to eliminate the fee increase.

2. Expenditures:

According to OIR, the legislation will result in an anticipated increase in contract and form filings with the office. However, OIR states that "the operational requirements of administration and enforcement can be absorbed within current resources."¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Residents who cancel their contracts with CCRCs will be subject to an increase in the the allowable processing fee from 4% to 5%.

¹² Office of Insurance Regulation 2010—Bill analysis, HB 1253, March 12, 2010. (On file with the Insurance, Business & Financial Affairs Policy Committee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. It does not reduce the percentage of a state tax shared with counties or municipalities. The bill also does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

No additional authority necessary. However, OIR notes that "Rule 69O-193.002(17) – definition of CCRC 'occupancy' will need to be amended to conform to this legislation."¹³

C. DRAFTING ISSUES OR OTHER COMMENTS:

In their analysis of HB 1253, OIR raised what they characterized as a technical concern.

"The legislation affects the form and substance of audited financial statements. The July 1, 2010 date, occurs in that period when auditors are preparing provider financial statements actually filed in July. The Office recommends the effective date for changes to financial statements become effective October 1, 2010."¹⁴

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹³ *Id.*

¹⁴ *Id.*

1 A bill to be entitled
2 An act relating to continuing care facilities; amending s.
3 651.011, F.S.; revising definitions relating to ch. 651,
4 F.S.; amending s. 651.012, F.S.; conforming cross-
5 references; amending s. 651.015, F.S.; increasing the fees
6 for a certificate of authority and a provisional
7 certificate of authority to operate a continuing care
8 facility; amending s. 651.022, F.S.; increasing the
9 threshold amount for businesses that must be identified in
10 an application for a provisional certificate of authority;
11 adding wait-list contracts to the forms that must be
12 submitted with the application; amending s. 651.0235,
13 F.S.; conforming provisions to changes made by the act;
14 amending s. 651.026, F.S.; revising the financial
15 information that must be submitted annually for each
16 certified facility; requiring the annual report to reflect
17 any changes in accounting principle terminology; amending
18 s. 651.033, F.S.; authorizing a provider to assess a
19 separate, nonrefundable fee for processing an application
20 for continuing care; amending s. 651.035, F.S.; clarifying
21 that the amounts maintained in escrow relating to taxes
22 refer to property taxes; deleting an obsolete provision;
23 amending s. 651.055, F.S.; providing that a resident is
24 deemed to be occupying a unit upon the payment of certain
25 fees; providing a timeframe for rescinding a contract;
26 increasing the application processing fee; conforming
27 provisions to changes made by the act; amending s.
28 651.081, F.S.; renaming residents' organizations as

29 residents' councils; requiring the provider to provide a
 30 newly elected chair of a council with a copy of ch. 651,
 31 F.S., and related rules; amending s. 651.083, F.S.;
 32 clarifying that a resident has a right to receive
 33 residents' council memos and announcements; prohibiting a
 34 provider from restricting a resident's access to the
 35 council; amending s. 651.085, F.S.; requiring the provider
 36 to provide the reasons for increasing the maintenance fee
 37 to the chair of the residents' council; allowing a
 38 designated representative to represent the provider at
 39 meetings; amending s. 651.091, F.S.; specifying that a
 40 management company or operator is an agent of the provider
 41 for the purposes of disclosing certain information to
 42 residents; expanding the list of items that must be
 43 provided to the chair of the residents' council; requiring
 44 the provider to provide a copy of s. 651.071, F.S.,
 45 relating to receivership or liquidation, to all
 46 prospective residents; amending s. 651.105, F.S.;
 47 increasing the amount of time that the Office of Insurance
 48 Regulation has to inspect a facility; requiring the office
 49 to determine if all disclosures have been made to the
 50 chair of the residents' council; amending ss. 651.114 and
 51 651.1151, F.S.; conforming provisions to changes made by
 52 the act; amending s. 651.121, F.S.; conforming provisions
 53 to changes made by the act; requiring the chair of the
 54 Continuing Care Advisory Council to report the council's
 55 findings and recommendations to the Governor and the
 56 Commissioner of Insurance Regulation; requiring the office

57 to provide certain information to the council; repealing
 58 s. 651.133, F.S., relating to provisional certificates
 59 under prior law; amending s. 628.4615, F.S.; conforming
 60 cross-references; providing an effective date.
 61

62 Be It Enacted by the Legislature of the State of Florida:
 63

64 Section 1. Section 651.011, Florida Statutes, is reordered
 65 and amended to read:

66 651.011 Definitions.—For the purposes of this chapter, the
 67 term:

68 ~~(3)(1)~~ "Continuing Care Advisory Council" or "advisory
 69 council" means the ~~Continuing Care Advisory~~ council established
 70 in ~~by~~ s. 651.121.

71 (2) "Continuing care" or "care" means, furnishing pursuant
 72 to a contract, furnishing shelter and ~~either~~ nursing care or
 73 personal services as defined in s. 429.02, whether such nursing
 74 care or personal services are provided in the facility or in
 75 another setting designated by the contract for continuing care,
 76 to an individual not related by consanguinity or affinity to the
 77 provider furnishing such care, upon payment of an entrance fee.
 78 Other personal services provided must ~~shall~~ be designated in the
 79 continuing care contract. Contracts to provide continuing care
 80 include agreements to provide care for any duration, including
 81 contracts that are terminable by either party.

82 ~~(4)(3)~~ "Entrance fee" means an initial or deferred payment
 83 of a sum of money or property made as full or partial payment to
 84 assure the resident a place in a facility. An accommodation fee,

85 admission fee, or other fee of similar form and application are
 86 ~~shall be~~ considered to be an entrance fee.

87 (5)~~(4)~~ "Facility" means a place that provides ~~in which it~~
 88 ~~is undertaken to provide~~ continuing care.

89 (8)~~(5)~~ "Licensed" means that the provider has obtained a
 90 certificate of authority from the department.

91 (9)~~(6)~~ "Provider" means the owner or operator, whether a
 92 natural person, partnership or other unincorporated association,
 93 however organized, trust, or corporation, of an institution,
 94 building, residence, or other place, whether operated for profit
 95 or not, which owner or operator provides ~~undertakes to provide~~
 96 continuing care for a fixed or variable fee, or for any other
 97 remuneration of any type, whether fixed or variable, for the
 98 period of care, payable in a lump sum or lump sum and monthly
 99 maintenance charges or in installments, but does not mean an ~~any~~
 100 entity that has existed and continuously operated a facility
 101 located on at least ~~no less than~~ 63 acres in this state
 102 providing residential lodging to members and their spouses for
 103 at least 66 years on or before July 1, 1989, and ~~such facility~~
 104 has the residential capacity of 500 persons, is directly or
 105 indirectly owned or operated by a nationally recognized
 106 fraternal organization, is not open to the public, and accepts
 107 only its members and their spouses as residents ~~at such a~~
 108 ~~facility~~.

109 (10)~~(7)~~ "Records" means the permanent financial,
 110 directory, and personnel information and data maintained by a
 111 provider pursuant to this chapter.

112 (11)~~(8)~~ "Resident" means a purchaser of, ~~or~~ a nominee of,

113 or a subscriber to, a continuing care agreement. Such an
 114 agreement does may not be construed to give the resident a part
 115 ownership of the facility in which the resident is to reside,
 116 unless expressly provided for in the agreement.

117 (6)-(9) "Generally accepted accounting principles" means
 118 those accounting principles and practices adopted by the
 119 Financial Accounting Standards Board and the American Institute
 120 of Certified Public Accountants, including Statement of Position
 121 90-8 with respect to any full year to which the statement
 122 applies.

123 (7)-(10) "Insolvency" means the condition in which the
 124 provider is unable to pay its obligations as they come due in
 125 the normal course of business.

126 (1)-(11) "Advertising" means the dissemination of any
 127 written, visual, or electronic information by a provider, or any
 128 person affiliated with or controlled by a provider, to potential
 129 residents or their representatives for the purpose of inducing
 130 such persons to subscribe to or enter into a contract to reside
 131 in a continuing care community that is subject to this chapter
 132 ~~covered by this act.~~

133 Section 2. Section 651.012, Florida Statutes, is amended
 134 to read:

135 651.012 Exempted facility; written disclosure of
 136 exemption.—Any facility exempted under ss. 632.637(1)(e) and
 137 651.011(9) ~~651.011(6)~~ must provide written disclosure of such
 138 exemption to each person admitted to the facility after October
 139 1, 1996. This disclosure must be written using language likely
 140 to be understood by the person and must briefly explain the

141 ~~exemption provisions of ss. 632.637(1)(e) and 651.011(6).~~

142 Section 3. Subsection (2) of section 651.015, Florida
143 Statutes, is amended to read:

144 651.015 Administration; forms; fees; rules; fines.—The
145 administration of this chapter is vested in the commission,
146 office, and department, which shall:

147 (2) Collect in advance, and the applicant shall pay in
148 advance, the following fees:

149 (a) At the time of filing an application for a certificate
150 of authority, an application fee ~~in the amount~~ of \$5,000 ~~\$75~~ for
151 each facility.

152 (b) At the time of filing the annual report required by s.
153 651.026, a fee ~~in the amount~~ of \$100 for each year or part
154 thereof for each facility.

155 (c) A late fee not to exceed \$50 per a day for each day of
156 noncompliance.

157 (d) A fee to cover the actual cost of a credit report and
158 fingerprint processing.

159 (e) At the time of filing an application for a provisional
160 certificate of authority, a fee ~~in the amount~~ of \$5,000 ~~\$50~~.

161 Section 4. Paragraph (b) of subsection (2) of section
162 651.022, Florida Statutes, is amended, paragraph (g) is added to
163 that subsection, and paragraphs (i) and (j) of subsection (3) of
164 that section are amended, to read:

165 651.022 Provisional certificate of authority;
166 application.—

167 (2) The application for a provisional certificate of
168 authority shall be on a form prescribed by the commission and

169 shall contain the following information:

170 (b) The full names, residences, and business addresses of:

171 1. The proprietor, if the applicant or provider is an
172 individual.

173 2. Every partner or member, if the applicant or provider
174 is a partnership or other unincorporated association, however
175 organized, having fewer than 50 partners or members, together
176 with the business name and address of the partnership or other
177 organization.

178 3. The principal partners or members, if the applicant or
179 provider is a partnership or other unincorporated association,
180 however organized, having 50 or more partners or members,
181 together with the business name and business address of the
182 partnership or other organization. If such unincorporated
183 organization has officers and a board of directors, the full
184 name and business address of each officer and director may be
185 set forth in lieu of the full name and business address of its
186 principal members.

187 4. The corporation and each officer and director thereof,
188 if the applicant or provider is a corporation.

189 5. Every trustee and officer, if the applicant or provider
190 is a trust.

191 6. The manager, whether an individual, corporation,
192 partnership, or association.

193 7. Any stockholder holding at least a 10 percent ~~10-~~
194 ~~percent~~ interest in the operations of the facility in which the
195 care is to be offered.

196 8. Any person whose name is required to be provided in the

197 application under ~~the provisions of~~ this paragraph and who owns
 198 any interest in or receives any remuneration from, either
 199 directly or indirectly, any professional service firm,
 200 association, trust, partnership, or corporation providing goods,
 201 leases, or services to the facility for which the application is
 202 made, with a real or anticipated value of \$10,000 ~~\$500~~ or more,
 203 and the name and address of the professional service firm,
 204 association, trust, partnership, or corporation in which such
 205 interest is held. The applicant shall describe such goods,
 206 leases, or services and the probable cost to the facility or
 207 provider and shall describe why such goods, leases, or services
 208 should not be purchased from an independent entity.

209 9. Any person, corporation, partnership, association, or
 210 trust owning land or property leased to the facility, along with
 211 a copy of the lease agreement.

212 10. Any affiliated parent or subsidiary corporation or
 213 partnership.

214 (g) The forms of the continuing care residency contracts,
 215 reservation contracts, escrow agreements, and wait list
 216 contracts, if applicable, which are proposed to be used by the
 217 provider in the furnishing of care. If the office finds that the
 218 continuing care contracts and escrow agreements comply with ss.
 219 651.023(1)(c), 651.033, and 651.055, it shall approve them.
 220 Thereafter, no other form of contract or agreement may be used
 221 by the provider until it has been submitted to the office and
 222 approved.

223 (3) In addition to the information required in subsection
 224 (2), an applicant for a provisional certificate of authority

225 shall submit a market feasibility study. The market feasibility
 226 study shall include at least the following information:

227 ~~(i) The application for a provisional certificate of~~
 228 ~~authority shall be accompanied by the forms of the continuing~~
 229 ~~care residency and reservation contracts and escrow agreements~~
 230 ~~proposed to be used by the provider in the furnishing of care.~~
 231 ~~If the office finds that the continuing care contracts and~~
 232 ~~escrow agreements comply with ss. 651.023(1)(c), 651.033, and~~
 233 ~~651.055, it shall approve them. Thereafter, no other form of~~
 234 ~~contract or agreement may be used by the provider until it has~~
 235 ~~been submitted to the office and approved.~~

236 (i)~~(j)~~ The name of the person who prepared the feasibility
 237 study and the experience of such person in preparing similar
 238 studies or otherwise consulting in the field of continuing care.

239 Section 5. Subsection (2) of section 651.0235, Florida
 240 Statutes, is amended to read:

241 651.0235 Validity of provisional certificates of authority
 242 and certificates of authority.-

243 (2) If the provider fails to meet the requirements of this
 244 chapter for a provisional certificate of authority or a
 245 certificate of authority, the office may notify the provider of
 246 any deficiencies and require the provider to correct such
 247 deficiencies within a period to be determined by the office. If
 248 such deficiencies are not corrected within 20 days after the
 249 notice to the provider, or within less time at the discretion of
 250 the office, the office shall notify the Continuing Care Advisory
 251 Council, which may assist the facility in formulating a remedial
 252 plan to be submitted to the office within ~~no later than~~ 60 days

253 after ~~from~~ the date of notification. The time period for
 254 correcting the ~~granted to correct~~ deficiencies may be extended
 255 upon submission of a plan for corrective action approved by the
 256 office. If such deficiencies have not been cleared by the
 257 expiration of such time period, as extended, the office shall
 258 petition for a delinquency proceeding or pursue such other
 259 relief as ~~is~~ provided ~~for~~ under this chapter, as the
 260 circumstances may require.

261 Section 6. Subsection (2) of section 651.026, Florida
 262 Statutes, is amended to read:

263 651.026 Annual reports.—

264 (2) The annual report shall be in such form as the
 265 commission prescribes and shall contain at least the following:

266 (a) Any change in status with respect to the information
 267 required to be filed under s. 651.022(2).

268 (b) Financial statements audited by an independent
 269 certified public accountant, which must ~~shall~~ contain, for two
 270 or more periods if the facility has been in existence that long,
 271 all of the following:

272 1. An accountant's opinion and, in accordance with
 273 generally accepted accounting principles:

- 274 a. A balance sheet;
- 275 b. A statement of income and expenses;
- 276 c. A statement of equity or fund balances; and
- 277 d. A statement of changes in cash flows, ~~and~~

278 2. Notes to the financial statements considered customary
 279 or necessary for ~~to~~ full disclosure or adequate understanding of
 280 the financial statements, financial condition, and operation.

281 (c) The following financial information:

282 1. A detailed listing of the assets maintained in the

283 liquid reserve as required under ~~in~~ s. 651.035 and in accordance

284 with part II of chapter 625;

285 2. A schedule giving additional information relating to

286 property, plant, and equipment having an original cost of at

287 least \$25,000, so as to show in reasonable detail with respect

288 to each separate facility original costs, accumulated

289 depreciation, net book value, appraised value or insurable value

290 and date thereof, insurance coverage, encumbrances, and net

291 equity of appraised or insured value over encumbrances. Any

292 property not used in continuing care must ~~shall~~ be shown

293 separately from property used in continuing care;

294 3. The level of participation in Medicare or Medicaid

295 programs, or both;

296 4. A statement of all fees required of residents,

297 including, but not limited to, a statement of the entrance fee

298 charged, the monthly service charges, the proposed application

299 of the proceeds of the entrance fee by the provider, and the

300 plan by which the amount of the entrance fee is determined if

301 the entrance fee is not the same in all cases; and

302 5. Any change or increase in fees if ~~when~~ the provider

303 changes ~~either~~ the scope of, or the rates for, care or services,

304 regardless of whether the change involves the basic rate or only

305 those services available at additional costs to the resident.

306 6. ~~a.~~ If the provider has more than one certificated

307 facility, or has operations that are not licensed under this

308 chapter, it shall submit a balance sheet, statement of income

309 and expenses, statement of equity or fund balances, and
 310 statement of cash flows ~~statement of operations~~ for each
 311 facility licensed under this chapter as supplemental information
 312 to the audited financial statements required under paragraph (b)
 313 ~~as part of the annual report.~~

314 ~~b. If the provider has operations that are not Florida~~
 315 ~~certificated facilities, the provider shall also submit as~~
 316 ~~supplemental information to the audited financial statements,~~
 317 ~~balance sheets, statements of changes in equity, and statements~~
 318 ~~of cash flows for each Florida certificated facility.~~

319 (d) Such other reasonable data, financial statements, and
 320 pertinent information as the commission or office may require
 321 with respect to the provider or the facility, or its directors,
 322 trustees, members, branches, subsidiaries, or affiliates, to
 323 determine the financial status of the facility and the
 324 management capabilities of its managers and owners.

325 (e) Each facility shall file with the office annually,
 326 together with the annual report required by this section, a
 327 computation of its minimum liquid reserve calculated in
 328 accordance with s. 651.035 on a form prescribed by the
 329 commission.

330 (f) If, due to a change in generally accepted accounting
 331 principles, the balance sheet, statement of income and expenses,
 332 statement of equity or fund balances, or statement of cash flows
 333 is known by any other name or title, the annual report must
 334 contain financial statements using the changed names or titles
 335 that most closely correspond to a balance sheet, statement of
 336 income and expenses, statement of equity or fund balances, and

337 statement of changes in cash flows.

338 Section 7. Paragraph (d) of subsection (1) of section
 339 651.033, Florida Statutes, is amended, and paragraph (d) is
 340 added to subsection (3) of that section, to read:

341 651.033 Escrow accounts.—

342 (1) When funds are required to be deposited in an escrow
 343 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.
 344 651.055:

345 (d) All funds deposited in an escrow account, if invested,
 346 shall be invested as set forth in part II of chapter 625;
 347 however, such investment may ~~shall~~ not diminish the funds held
 348 in escrow below the amount required by this chapter. ~~All~~ Funds
 349 deposited in an escrow account are ~~shall~~ not be subject to any
 350 charges by the escrow agent except escrow agent fees associated
 351 with administering the accounts, or subject to any liens,
 352 judgments, garnishments, creditor's claims, or other
 353 encumbrances against the provider or facility except as provided
 354 in s. 651.035(1) ~~651.035(2)~~.

355 (3) In addition, when entrance fees are required to be
 356 deposited in an escrow account pursuant to s. 651.022, s.
 357 651.023, or s. 651.055:

358 (d) A provider may assess a nonrefundable fee, which is
 359 separate from the entrance fee, for processing a prospective
 360 resident's application for continuing care.

361 Section 8. Section 651.035, Florida Statutes, is amended
 362 to read:

363 651.035 Minimum liquid reserve requirements.—

364 (1) A provider shall maintain in escrow a minimum liquid

365 reserve consisting of the following reserves, as applicable:
 366 ~~reserves specified in subsection (2).~~

367 ~~(2)~~(a) Each A provider shall maintain in escrow as a debt
 368 service reserve ~~an amount equal to~~ the aggregate amount of all
 369 principal and interest payments due during the fiscal year on
 370 any mortgage loan or other long-term financing of the facility,
 371 including property taxes as recorded in the audited financial
 372 statements required under s. 651.026. The amount must ~~shall~~
 373 include any leasehold payments and all costs related to such
 374 payments. If principal payments are not due during the fiscal
 375 year, the provider shall maintain in escrow as a minimum liquid
 376 reserve an amount equal to interest payments due during the next
 377 12 months on any mortgage loan or other long-term financing of
 378 the facility, including property taxes.

379 (b) A provider that ~~which~~ has outstanding indebtedness
 380 that ~~which~~ requires ~~what is normally referred to as~~ a "debt
 381 service reserve" to be held in escrow pursuant to a trust
 382 indenture or mortgage lien on the facility and for which the
 383 debt service reserve may only be used to pay principal and
 384 interest payments on the debt that ~~which~~ the debtor is obligated
 385 to pay, and which may include property taxes and insurance, may
 386 include such debt service reserve in computing the ~~its~~
 387 ~~computation of its~~ minimum liquid reserve needed to satisfy this
 388 subsection if, ~~provided that~~ the provider furnishes to the
 389 office a copy of the agreement under which such debt service is
 390 held, together with a statement of the amount being held in
 391 escrow for the debt service reserve, certified by the lender or
 392 trustee and the provider to be correct. The trustee shall

393 provide the office with any information concerning the debt
 394 service reserve account upon request of the provider or the
 395 office. ~

396 (c) Each provider shall maintain in escrow an operating
 397 reserve ~~in an amount~~ equal to 30 percent of the total operating
 398 expenses projected in the feasibility study required by s.
 399 651.023 for the first 12 months of operation. Thereafter, each
 400 provider shall maintain in escrow an operating reserve ~~in an~~
 401 ~~amount~~ equal to 15 percent of the total operating expenses in
 402 the annual report filed pursuant to s. 651.026. If ~~Where~~ a
 403 provider has been in operation for more than 12 months, the
 404 total annual operating expenses shall be determined by averaging
 405 the total annual operating expenses reported to the office by
 406 the number of annual reports filed with the office within the
 407 ~~immediate~~ preceding 3-year period subject to adjustment if ~~in~~
 408 ~~the event~~ there is a change in the number of facilities owned.
 409 For purposes of this subsection, total annual operating expenses
 410 ~~shall~~ include all expenses of the facility except: depreciation
 411 and amortization; interest and property taxes included in
 412 paragraph (a) subsection (1); extraordinary expenses that ~~which~~
 413 are adequately explained and documented in accordance with
 414 generally accepted accounting principles; liability insurance
 415 premiums in excess of those paid in calendar year 1999; and
 416 changes in the obligation to provide future services to current
 417 residents. For providers initially licensed during or after
 418 calendar year 1999, liability insurance shall be included in the
 419 total operating expenses in an amount not to exceed the premium
 420 paid during the first 12 months of facility operation. Beginning

421 January 1, 1993, the operating reserves required under this
 422 subsection shall be in an unencumbered account held in escrow
 423 for the benefit of the residents. Such funds may not be
 424 encumbered or subject to any liens or charges by the escrow
 425 agent or judgments, garnishments, or creditors' claims against
 426 the provider or facility. However, if a facility had a lien,
 427 mortgage, trust indenture, or similar debt instrument in place
 428 before ~~prior to~~ January 1, 1993, which encumbered all or any
 429 part of the reserves required by this subsection and such funds
 430 were used to meet the requirements of this subsection, then such
 431 arrangement may be continued, unless a refinancing or
 432 acquisition has occurred, and the provider shall be in
 433 compliance with this subsection.

434 (d) Each provider shall maintain in escrow a renewal and
 435 replacement reserve ~~in an amount~~ equal to 15 percent of the
 436 total accumulated depreciation based on the audited financial
 437 statement required to be filed pursuant to s. 651.026, not to
 438 exceed 15 percent of the facility's average operating expenses
 439 for the past 3 fiscal years based on the audited financial
 440 statements for each of those ~~such~~ years. For a provider who is
 441 an operator of a facility but is not the owner and depreciation
 442 is not included as part of the provider's financial statement,
 443 the renewal and replacement reserve required by this paragraph
 444 must ~~shall~~ equal 15 percent of the total operating expenses of
 445 the provider, as described in this section. Each provider
 446 licensed before ~~prior to~~ October 1, 1983, shall ~~be required to~~
 447 fully fund the renewal and replacement reserve by October 1,
 448 2003, by multiplying the difference between the former escrow

449 requirement and the present escrow requirement by the number of
 450 years the facility has been in operation after October 1, 1983.

451 ~~(3) In lieu of fulfilling the escrow requirements provided~~
 452 ~~in subsections (1) and (2), each facility licensed prior to~~
 453 ~~October 1, 1983, shall be required to maintain in escrow the~~
 454 ~~minimum liquid reserve that would have been required under this~~
 455 ~~section as it existed on October 1, 1982, plus 5 percent of the~~
 456 ~~difference between the former escrow requirement and the present~~
 457 ~~escrow requirement multiplied by the number of years the~~
 458 ~~facility has been in operation after October 1, 1983. Beginning~~
 459 ~~October 1, 2003, the escrow requirements provided in subsections~~
 460 ~~(1) and (2) shall apply in full to facilities licensed before~~
 461 ~~October 1, 1983.~~

462 (2)~~(4)~~(a) In facilities where not all residents are under
 463 continuing care contracts, the reserve requirements of
 464 subsection (1) ~~(2)~~ shall be computed only with respect to the
 465 proportional share of operating expenses which are ~~that is~~
 466 applicable to residents as defined in s. 651.011. For purposes
 467 of this calculation, the proportional share shall be based upon
 468 the ratio of residents under continuing care contracts to those
 469 residents who do not hold such contracts.

470 (b) In facilities that ~~which~~ have voluntarily and
 471 permanently discontinued marketing continuing care contracts,
 472 the office may allow a reduced debt service reserve as required
 473 in subsection (1) based upon the ratio of residents under
 474 continuing care contracts to those residents who do not hold
 475 such contracts if the office finds that such reduction is not
 476 inconsistent with the security protections intended by this

477 chapter. In making this determination, the office may consider
 478 such factors as the financial condition of the facility, the
 479 provisions of the outstanding continuing care contracts, the
 480 ratio of residents under continuing care agreements to those
 481 residents who do not hold a continuing care contract, current
 482 occupancy rates, previous sales and marketing efforts, life
 483 expectancy of the remaining contract holders, and the written
 484 policies of the board of directors of the provider or a similar
 485 board.

486 (3)~~(5)~~ If ~~When~~ principal and interest payments are paid to
 487 a trust that ~~which~~ is beneficially held by the residents as
 488 described in s. 651.023(5), the office may waive all or any
 489 portion of the escrow requirements for mortgage principal and
 490 interest contained in subsection (1) if the office finds that
 491 such waiver is not inconsistent with the security protections
 492 intended by this chapter.

493 (4)~~(6)~~ The office, upon approval of a plan for fulfilling
 494 the requirements of this section and upon demonstration by the
 495 facility of an annual increase in liquid reserves, may extend
 496 the time for compliance.

497 (5)~~(7)~~~~(a)~~ A provider may satisfy the minimum liquid
 498 reserve requirements of this section by acquiring from a
 499 financial institution, as specified in paragraph (b), a clean,
 500 unconditional irrevocable letter of credit ~~in an amount~~ equal to
 501 the requirements of this section.

502 (a) The letter of credit must ~~shall~~ be issued by a
 503 financial institution participating in the State of Florida
 504 Treasury Certificate of Deposit Program, and must be approved by

505 ~~the letter of credit shall be subject to the approval of the~~
 506 office before ~~prior to~~ issuance and before ~~prior to~~ any renewal
 507 or modification thereof. At a minimum, the letter of credit must
 508 ~~shall~~ provide for:

509 1. Ninety days' prior written notice to both the provider
 510 and the office of the financial institution's determination not
 511 to renew or extend the term of the letter of credit.

512 2. Unless otherwise arranged by the provider to the
 513 satisfaction of the office, deposit by the financial institution
 514 of ~~such~~ letter of credit funds in an account designated by the
 515 office no later than 30 days before ~~prior to~~ the expiration of
 516 the letter of credit.

517 3. Deposit by the financial institution of ~~such~~ letter of
 518 credit funds in an account designated by the office within ~~no~~
 519 ~~later than~~ 4 business days following written instructions from
 520 the office that, in the sole judgment of the office, funding of
 521 the minimum liquid reserve is required.

522 (b) The terms of the ~~such~~ letter of credit must ~~shall~~ be
 523 approved by the office and the long-term debt of the financial
 524 institution providing such letter of credit must ~~shall~~ be rated
 525 in one of their top three long-term debt rating categories by
 526 either Moody's Investors Service, Standard & Poor's Corporation,
 527 or a recognized securities rating agency acceptable to the
 528 office.

529 (c) The letter of credit must ~~shall~~ name the office as
 530 beneficiary.

531 (d) Notwithstanding any other provision of this section, a
 532 provider using ~~utilizing~~ a letter of credit pursuant to this

533 subsection shall, at all times, have and maintain in escrow an
 534 operating cash reserve equal to 2 months' operating expenses as
 535 determined pursuant to s. 651.026.

536 (e) If ~~In the event~~ the issuing financial institution no
 537 longer participates in the State of Florida Treasury Certificate
 538 of Deposit Program, such financial institution shall deposit as
 539 collateral with the department eligible securities, as
 540 prescribed by s. 625.52, having a market value equal to or
 541 greater than 100 percent of the stated amount of the letter of
 542 credit.

543 (6) ~~(8)(a)~~ Each fiscal year, a provider may withdraw up to
 544 33 percent of the total renewal and replacement reserve
 545 available. The reserve available is equal to the market value of
 546 the invested reserves at the end of the provider's prior fiscal
 547 year. The withdrawal must ~~is to~~ be used for capital items or
 548 major repairs, and

549 (a) Before any funds are eligible for withdrawal, the
 550 provider must obtain written permission from the office by
 551 submitting the following ~~information~~:

552 1. The amount of the withdrawal and the intended use of
 553 the proceeds.

554 2. A board resolution and sworn affidavit signed by two
 555 officers or general partners of the provider which indicates
 556 approval of the withdrawal and use of the funds.

557 3. Proof that the provider has met all funding
 558 requirements for the operating, debt service, and renewal and
 559 replacement reserves computed for the previous fiscal year.

560 4. Anticipated payment schedule for refunding the renewal

561 and replacement reserve fund.

562 (b) Within 30 days after the withdrawal of funds ~~from the~~
 563 ~~renewal and replacement reserve fund~~, the provider must begin
 564 refunding the reserve account in equal monthly payments that
 565 ~~which~~ allow for a complete funding of the ~~such~~ withdrawal within
 566 36 months. If the payment schedule required under subparagraph
 567 (a)4. has changed, the provider must update the office with the
 568 new payment schedule. If the provider fails to make a required
 569 monthly payment or the payment is late, the provider must notify
 570 the office within 5 days after the due date of the payment. No
 571 additional withdrawals from the renewal and replacement reserve
 572 will be allowed until all scheduled payments are current.

573 Section 9. Paragraphs (d) and (g) of subsection (1) and
 574 subsections (2) and (5) of section 651.055, Florida Statutes,
 575 are amended to read:

576 651.055 Contracts; right to rescind.—

577 (1) Each continuing care contract and each addendum to
 578 such contract shall be submitted to and approved by the office
 579 prior to its use in this state. Thereafter, no other form of
 580 contract shall be used by the provider unless it has been
 581 submitted to and approved by the office. Each contract shall:

582 (d) Describe the health and financial conditions required
 583 for a person to be accepted as a resident and to continue as a
 584 resident, once accepted, including the effect of any change in
 585 the health or financial condition of the ~~a~~ person between the
 586 date of submitting an application for admission to the facility
 587 and entering into a continuing care contract ~~and the date of~~
 588 ~~taking occupancy in a unit.~~ If a prospective resident signs a

589 contract but postpones moving into the facility, the individual
 590 is deemed to be occupying a unit at the facility when he or she
 591 pays the entrance fee or any portion of the fee, other than a
 592 reservation deposit, and begins making monthly maintenance fee
 593 payments. Such resident may rescind the contract and receive a
 594 full refund of any funds paid, without penalty or forfeiture,
 595 within 7 days after executing the contract as specified in
 596 subsection (2).

597 (g) Provide that the contract may be canceled by ~~upon the~~
 598 ~~giving~~ at least 30 days' ~~of~~ written notice of cancellation ~~of at~~
 599 ~~least 30 days~~ by the provider, the resident, or the person who
 600 provided the transfer of property or funds for the care of such
 601 resident; however, if a contract is canceled because there has
 602 been a good faith determination that a resident is a danger to
 603 himself or herself or others, only such notice as is reasonable
 604 under the circumstances is ~~shall be~~ required.

605 1. The contract must also ~~shall further~~ provide in clear
 606 and understandable language, in print no smaller than the
 607 largest type used in the body of the contract, the terms
 608 governing the refund of any portion of the entrance fee.

609 2. For a resident whose contract with the facility
 610 provides that the resident does not receive a transferable
 611 membership or ownership right in the facility, and who has
 612 occupied his or her unit, the refund shall be calculated on a
 613 pro rata basis with the facility retaining up to ~~no more than~~ 2
 614 percent per month of occupancy by the resident and up to a 5
 615 percent ~~no more than a 4 percent fee for processing fee~~. Such
 616 refund must ~~shall~~ be paid within ~~no later than~~ 120 days after

617 ~~the~~ giving the ~~of~~ notice of intention to cancel.

618 3. In addition to a processing fee, if the contract
 619 provides for the facility to retain up to ~~no more than~~ 1 percent
 620 per month of occupancy by the resident, it may provide that such
 621 refund will be paid from the proceeds of the next entrance fees
 622 received by the provider for units for which there are no prior
 623 claims by any resident until paid in full or, if the provider
 624 has discontinued marketing continuing care contracts, within 200
 625 days after the date of notice.

626 4. Unless ~~the provisions of~~ subsection (5) applies ~~apply,~~
 627 for any prospective resident, regardless of whether or not such
 628 a resident receives a transferable membership or ownership right
 629 in the facility, who cancels the contract before ~~prior to~~
 630 occupancy of the unit, ~~the refund shall be~~ the entire amount
 631 paid toward the entrance fee shall be refunded, less a
 632 processing fee of up to 5 percent ~~not to exceed 4 percent~~ of the
 633 entire entrance fee; however, the ~~but in no event shall such~~
 634 processing fee may not exceed the amount paid by the prospective
 635 resident. Such refund must ~~shall~~ be paid within ~~no later than~~ 60
 636 days after ~~the~~ giving the ~~of~~ notice of intention to cancel. For
 637 a resident who has occupied his or her unit and who has received
 638 a transferable membership or ownership right in the facility,
 639 the foregoing refund provisions do ~~shall~~ not apply but are ~~shall~~
 640 ~~be~~ deemed satisfied by the acquisition or receipt of a
 641 transferable membership or an ownership right in the facility.
 642 The provider may ~~shall~~ not charge any fee for the transfer of
 643 membership or sale of an ownership right.

644 (2) A resident has the right to rescind a continuing care

645 contract and receive a full refund of any funds paid, without
 646 penalty or forfeiture, within 7 days after executing the
 647 contract. A resident may ~~shall~~ not be required to move into the
 648 facility designated in the contract before the expiration of the
 649 7-day period. During the 7-day period, the resident's funds must
 650 be held in an escrow account unless otherwise requested by the
 651 resident pursuant to s. 651.033(3)(c).

652 (5) Except for a resident who postpones moving into the
 653 facility but is deemed to have occupied a unit as described in
 654 paragraph (1)(d), if a prospective resident dies before
 655 occupying the facility or, through illness, injury, or
 656 incapacity, is precluded from becoming a resident under the
 657 terms of the continuing care contract, the contract is
 658 automatically canceled, and the prospective resident or his or
 659 her the resident's legal representative shall receive a full
 660 refund of all moneys paid to the facility, except those costs
 661 specifically incurred by the facility at the request of the
 662 prospective resident and set forth in writing in a separate
 663 addendum, signed by both parties, to the contract.

664 Section 10. Section 651.081, Florida Statutes, is amended
 665 to read:

666 651.081 ~~Continuing care facilities~~ Residents' council
 667 ~~organizations.~~

668 (1) Residents living in a facility holding a valid
 669 certificate of authority under this chapter have the right of
 670 self-organization, the right to be represented by an individual
 671 of their own choosing, and the right to engage in concerted
 672 activities for the purpose of keeping informed on the operation

673 of the facility ~~that~~ which is caring for them or for the purpose
 674 of other mutual aid or protection.

675 (2) A residents' council organization created for the
 676 purpose of representing residents on matters set forth in s.
 677 651.085 may be established through an election in which the
 678 residents, as defined in s. 651.011 ~~this chapter~~, vote by
 679 ballot, ~~either~~ physically or by proxy. If the election is to be
 680 held during a meeting, a notice of the organizational meeting
 681 must be provided to all residents of the community at least 10
 682 business days before the meeting. Notice may be given through
 683 internal mailboxes, communitywide newsletters, bulletin boards,
 684 in-house television stations, and other similar means of
 685 communication. An election ~~for~~ creating a residents' council
 686 organization is valid if at least 40 percent of the total
 687 resident population participates in the election and a majority
 688 of the participants vote affirmatively for the council
 689 organization. The initial residents' council organization
 690 created under this section is valid for at least 12 months. A
 691 residents' organization formalized by ~~If the facility has a~~
 692 ~~residents' association, residents' council, or similarly~~
 693 ~~organized body with~~ bylaws and elected officials, ~~such~~
 694 ~~organization~~ must be recognized as the residents' council
 695 organization under this section and s. 651.085. Within 30 days
 696 after the election of a newly elected president or chair of the
 697 residents' council, the provider shall give the president or
 698 chair a copy of this chapter and rules adopted thereunder, or
 699 direct him or her to the appropriate public website to obtain
 700 this information. ~~There shall be~~ Only one residents' council may

701 ~~organization~~ to represent residents before the governing body of
 702 the provider as described in s. 651.085(2).

703 Section 11. Paragraphs (c) and (f) of subsection (1) of
 704 section 651.083, Florida Statutes, are amended, present
 705 subsection (5) of that section is redesignated as subsection
 706 (6), and a new subsection (5) is added to that section, to read:
 707 651.083 Residents' rights.—

708 (1) No resident of any facility shall be deprived of any
 709 civil or legal rights, benefits, or privileges guaranteed by
 710 law, by the State Constitution, or by the United States
 711 Constitution solely by reason of status as a resident of a
 712 facility. Each resident of a facility has the right to:

713 (c) Unrestricted private communication, including
 714 receiving and sending unopened correspondence. This includes the
 715 right to receive memos or announcements from or approved for
 716 distribution by the residents' council.

717 (f) Present grievances and recommend changes in policies,
 718 procedures, and services to the staff of the facility, governing
 719 officials, or any other person without restraint, interference,
 720 coercion, discrimination, or reprisal. This right includes
 721 access to ombudsman volunteers and advocates and the right to be
 722 a member of, and active in, and to associate with, advocacy or
 723 special interest groups or associations.

724 (5) The provider may not restrict a resident's access to
 725 the residents' council.

726 Section 12. Subsections (1) and (2) of section 651.085,
 727 Florida Statutes, are amended to read:

728 651.085 Quarterly meetings between residents and the

729 governing body of the provider; resident representation before
 730 the governing body of the provider.—

731 (1) The governing body of a provider, or the designated
 732 representative of the provider, shall hold quarterly meetings
 733 with the residents of the continuing care facility for the
 734 purpose of free discussion of subjects including, but not
 735 limited to, income, expenditures, and financial trends and
 736 problems as they apply to the facility, as well as a discussion
 737 on proposed changes in policies, programs, and services. At
 738 quarterly meetings where monthly maintenance fee increases are
 739 discussed, a summary of the reasons for raising the fee as
 740 specified in subsection (4) must be provided in writing to the
 741 president or chair of the residents' council. Upon request of
 742 the residents' council ~~organization~~, a member of the governing
 743 body of the provider, such as a board member, a general partner,
 744 ~~or a~~ principal owner, or designated representative shall attend
 745 such meetings. Residents are ~~shall be~~ entitled to at least 7
 746 days' advance notice of each quarterly meeting. An agenda and
 747 any materials that will be distributed by the governing body or
 748 representative of the provider shall be posted in a conspicuous
 749 place at the facility and shall be available upon request to
 750 residents of the facility. The office shall request verification
 751 from a facility that quarterly meetings are held and open to all
 752 residents if ~~when~~ it receives a complaint from the residents'
 753 council that a facility is not in compliance with ~~the provisions~~
 754 ~~of~~ this subsection. In addition, a facility shall report to the
 755 office in the annual report required under s. 651.026 the dates
 756 on which quarterly meetings were held during the reporting

757 period.

758 (2) A residents' council ~~organization~~ formed pursuant to
 759 s. 651.081, members of which are elected by the residents, may
 760 designate a resident to represent them before the governing body
 761 of the provider or organize a meeting or ballot election of the
 762 residents ~~of the facility~~ to determine whether to elect a
 763 resident to represent them before the governing body of the
 764 provider. If a residents' council ~~organization as described in~~
 765 ~~s. 651.081~~ does not exist, any resident may organize a meeting
 766 or ballot election of the residents of the facility to determine
 767 whether to elect a resident to represent them before the
 768 governing body and, if applicable, elect the representative. The
 769 residents' council ~~organization~~, or the resident that organizes
 770 a meeting or ballot election to elect a representative, shall
 771 give all residents ~~of the facility~~ notice at least 10 business
 772 days before the meeting or election. Notice may be given through
 773 internal mailboxes, communitywide newsletters, bulletin boards,
 774 in-house television stations, and other similar means of
 775 communication. An election of the representative is valid if at
 776 least 40 percent of the total resident population participates
 777 in the election and a majority of the participants vote
 778 affirmatively for the representative. The initial designated
 779 representative elected under this section shall be elected to
 780 serve ~~for a period of~~ at least 12 months.

781 Section 13. Section 651.091, Florida Statutes, is amended
 782 to read:

783 651.091 Availability, distribution, and posting of reports
 784 and records; requirement of full disclosure.-

785 (1) Each continuing care facility shall maintain as public
 786 information, available upon request, records of all cost and
 787 inspection reports pertaining to that facility which ~~that~~ have
 788 been filed with or issued by any governmental agency. A copy of
 789 each ~~such~~ report shall be retained ~~in such records~~ for at least
 790 ~~not less than~~ 5 years after ~~from~~ the date the report is filed or
 791 issued. Each facility shall also maintain as public information,
 792 available upon request, all annual statements that have been
 793 filed with the office. For purposes of this section, a
 794 management company or operator is considered an agent of the
 795 provider.

796 (2) Every continuing care facility shall:

797 (a) Display the certificate of authority in a conspicuous
 798 place inside the facility.

799 (b) Post in a prominent position in the facility which is
 800 ~~so as to be~~ accessible to all residents and ~~to~~ the general
 801 public a concise summary of the last examination report issued
 802 by the office, with references to the page numbers of the full
 803 report noting any deficiencies found by the office, and the
 804 actions taken by the provider to rectify such deficiencies,
 805 indicating in such summary where the full report may be
 806 inspected in the facility.

807 (c) Post in a prominent position in the facility which is
 808 ~~so as to be~~ accessible to all residents and ~~to~~ the general
 809 public a summary of the latest annual statement, indicating in
 810 the summary where the full annual statement may be inspected in
 811 the facility. A listing of any proposed changes in policies,
 812 programs, and services must ~~shall~~ also be posted.

813 (d) Distribute a copy of the full annual statement to the
 814 president or chair of the residents' council within 30 days
 815 after ~~the~~ filing ~~of~~ the annual report with the office, and
 816 designate a staff person to provide explanation thereof.

817 (e) Notify the residents' council of any plans filed with
 818 the office to obtain new financing, additional financing, or
 819 refinancing for the facility and of any applications to the
 820 office for any expansion of the facility.

821 (f) Deliver to the president or chair of the residents'
 822 council a summary of entrance fees collected and refunds made
 823 during the time period covered in the annual report and the
 824 refund balances due at the end of the report period.

825 (g) Deliver to the president or chair of the residents'
 826 council a copy of each quarterly statement within 30 days after
 827 the quarterly statement is filed with the office if the facility
 828 is required to file quarterly.

829 (h) Upon request, deliver to the president or chair of the
 830 residents' council a copy of any newly approved continuing care
 831 contract within 30 days after approval by the office.

832 (3) Before entering into a contract to furnish continuing
 833 care, the provider undertaking to furnish the care, or the agent
 834 of the provider, shall make full disclosure, and provide copies
 835 of the disclosure documents to the prospective resident or his
 836 or her legal representative, of the following information:

837 (a) The contract to furnish continuing care.

838 (b) The summary listed in paragraph (2)(b).

839 (c) All ownership interests and lease agreements,
 840 including information specified in s. 651.022(2)(b)8.

841 (d) In keeping with the intent of this subsection relating
 842 to disclosure, the provider shall make available for review,
 843 master plans approved by the provider's governing board and any
 844 plans for expansion or phased development, to the extent that
 845 the availability of such plans will not put at risk real estate,
 846 financing, acquisition, negotiations, or other implementation of
 847 operational plans and thus jeopardize the success of
 848 negotiations, operations, and development.

849 (e) Copies of the rules and regulations of the facility
 850 and an explanation of the responsibilities of the resident.

851 (f) The policy of the facility with respect to admission
 852 to and discharge from the various levels of health care offered
 853 by the facility.

854 (g) The amount and location of any reserve funds required
 855 by this chapter, and the name of the person or entity having a
 856 claim to such funds in the event of a bankruptcy, foreclosure,
 857 or rehabilitation proceeding.

858 (h) A copy of s. 651.071.

859 (i) ~~(h)~~ A copy of the resident's rights as described in s.
 860 651.083.

861 (4) A true and complete copy of the full disclosure
 862 document to be used must ~~shall~~ be filed with the office before
 863 ~~prior to its~~ use. A resident or prospective resident or his or
 864 her legal representative may ~~shall be permitted to~~ inspect the
 865 full reports referred to in paragraph (2) (b); the charter or
 866 other agreement or instrument required to be filed with the
 867 office pursuant to s. 651.022(2), together with all amendments
 868 thereto; and the bylaws of the corporation or association, if

869 any. Upon request, copies of the reports and information shall
 870 be provided to the individual requesting them if the individual
 871 agrees to pay a reasonable charge to cover copying costs.

872 Section 14. Subsection (1) of section 651.105, Florida
 873 Statutes, is amended, and subsection (5) is added to that
 874 section, to read:

875 651.105 Examination and inspections.—

876 (1) The office may at any time, and shall at least once
 877 every 5 ~~3~~ years, examine the business of any applicant for a
 878 certificate of authority and any provider engaged in the
 879 execution of care contracts or engaged in the performance of
 880 obligations under such contracts, in the same manner as is
 881 provided for the examination of insurance companies pursuant to
 882 s. 624.316. Such examinations shall be made by a representative
 883 or examiner designated by the office, whose compensation will be
 884 fixed by the office pursuant to s. 624.320. Routine examinations
 885 may be made by having the necessary documents submitted to the
 886 office; and, for this purpose, financial documents and records
 887 conforming to commonly accepted accounting principles and
 888 practices, as required under s. 651.026, are ~~will be~~ deemed
 889 adequate. The final written report of each ~~such~~ examination must
 890 ~~shall~~ be filed with the office and, when so filed, constitutes
 891 ~~will constitute~~ a public record. Any provider being examined
 892 shall, upon request, give reasonable and timely access to all of
 893 its records. The representative or examiner designated by the
 894 office may at any time examine the records and affairs and
 895 inspect the physical property of any provider, whether in
 896 connection with a formal examination or not.

897 (5) At the time of the routine examination, the office
 898 shall determine if all disclosures required under this chapter
 899 have been made to the president or chair of the residents'
 900 council.

901 Section 15. Subsections (1) through (4) of section
 902 651.114, Florida Statutes, are amended to read:

903 651.114 Delinquency proceedings; remedial rights.—

904 (1) Upon determination by the office that a provider is
 905 not in compliance with this chapter, the office may notify the
 906 chair of the Continuing Care Advisory Council, who may assist
 907 the office in formulating a corrective action plan.

908 (2) A provider shall make available to the advisory
 909 council, within no later than 30 days after being requested to
 910 do so by the ~~advisory~~ council, a plan for obtaining compliance
 911 or solvency.

912 (3) Within ~~The council shall, no later than~~ 30 days after
 913 notification, the advisory council shall:

914 (a) Consider and evaluate the plan submitted by the
 915 provider.

916 (b) Discuss the problem and solutions with the provider.

917 (c) Conduct such other business as is necessary.

918 (d) Report its findings and recommendations to the office,
 919 which may require additional modification of the plan.

920 (4)~~(a)~~ After receiving ~~Upon~~ approval of a plan by the
 921 office, the provider shall submit ~~monthly~~ a progress report
 922 monthly to the advisory council or the office, or both, in a
 923 manner prescribed by the office.

924 ~~(b)~~ ~~After a period of~~ 3 months, or at any earlier time

925 deemed necessary, the council shall evaluate the progress by the
 926 provider and shall advise the office of its findings.

927 Section 16. Subsection (3) of section 651.1151, Florida
 928 Statutes, is amended to read:

929 651.1151 Administrative, vendor, and management
 930 contracts.-

931 (3) Any contract with an affiliate, an entity controlled
 932 by the provider, or an entity controlled by an affiliate of the
 933 provider for administrative, vendor, or management services
 934 entered into or renewed after October 1, 1991, must include
 935 ~~shall contain~~ a provision that the contract will ~~shall~~ be
 936 canceled upon issuance of an order by the office pursuant to
 937 this section. A copy of the current management services
 938 contract, pursuant to this section, if any, must be on file in
 939 the marketing office or other area accessible ~~area~~ to residents
 940 and the appropriate residents' council ~~resident organizations~~.

941 Section 17. Section 651.121, Florida Statutes, is amended
 942 to read:

943 651.121 Continuing Care Advisory Council.-

944 (1) The Continuing Care Advisory Council to the office is
 945 created to consist of 10 members who are residents of this state
 946 appointed by the Governor and geographically representative of
 947 this state. Three members shall be administrators of facilities
 948 that ~~which~~ hold valid certificates of authority under this
 949 chapter and shall have been actively engaged in the offering of
 950 continuing care agreements in this state for 5 years before
 951 appointment. The remaining members ~~shall~~ include:

952 (a) A representative of the business community whose

953 expertise is in the area of management.

954 (b) A representative of the financial community who is not
955 a facility owner or administrator.

956 (c) A certified public accountant.

957 (d) An attorney.

958 (e) Three residents who hold continuing care agreements
959 with a facility certified in this state.

960 (2) The term of office for each member shall be 3 years,
961 or until the member's successor has been appointed and
962 qualifies.

963 (3) The council members shall serve without pay, but shall
964 be reimbursed for per diem and travel expenses by the office in
965 accordance with s. 112.061.

966 (4) Each prospective council member shall submit to the
967 appointing officer a statement detailing any financial interest
968 of 10 percent or more in one or more continuing care facilities,
969 including, but not limited to, ownership interest in a facility,
970 property leased to a facility, and ownership in any company
971 providing goods or services to a facility. This statement shall
972 include the name and address of each facility involved and the
973 extent and character of the financial interest of the applicant.
974 Upon appointment of the council member, this statement shall
975 become a public document.

976 (5) The council shall:

977 (a) Meet at least once a year and, at such annual meeting,
978 elect a chair from their number and elect or appoint a vice
979 chair ~~secretary~~, each of whom shall hold office for 1 year and
980 thereafter until a successor is elected and qualified.

981 (b) Hold other meetings at such times and places as the
 982 office or the chair of the council may direct.

983 (c) Keep a record of its proceedings. The books and
 984 records of the council shall be prima facie evidence of all
 985 matters reported therein and, except for proceedings conducted
 986 under s. 651.018, shall be open to inspection at all times.

987 (d) Act in an advisory capacity to the office on matters
 988 pertaining to the operation and regulation of continuing care
 989 facilities.

990 (e) Recommend to the office needed changes in statutes and
 991 rules.

992 (f) Upon the request of the office, assist, with any
 993 corrective action, rehabilitation or cessation of business plan
 994 of a provider.

995 (6) A provider shall furnish to the council, no later than
 996 14 business days after being requested to do so by the council,
 997 all documents and information reasonably requested by the
 998 council.

999 (7) The council chair shall report annually the council's
 1000 findings and recommendations concerning continuing care
 1001 facilities to the Executive Office of the Governor and the
 1002 Commissioner of Insurance Regulation.

1003 (8) At the council's annual meeting, the office shall
 1004 provide members with a summary and comparison of data on
 1005 continuing care facilities submitted in the most recent two
 1006 annual reports and a summary of the number, type, and status of
 1007 complaints related to continuing care facilities which were
 1008 filed with the Division of Consumer Services in the Department

1009 of Financial Services during the preceding fiscal year.

1010 (9) The office shall notify the council by written
 1011 memorandum or electronic means of proposed rule changes and
 1012 scheduled rule workshops and hearings related to the
 1013 administration of this chapter.

1014 Section 18. Section 651.133, Florida Statutes, is
 1015 repealed.

1016 Section 19. Subsection (1) of section 628.4615, Florida
 1017 Statutes, is amended to read:

1018 628.4615 Specialty insurers; acquisition of controlling
 1019 stock, ownership interest, assets, or control; merger or
 1020 consolidation.—

1021 (1) For the purposes of this section, the term "specialty
 1022 insurer" means any person holding a license or certificate of
 1023 authority as:

1024 (a) A motor vehicle service agreement company authorized
 1025 to issue motor vehicle service agreements as those terms are
 1026 defined in s. 634.011;

1027 (b) A home warranty association authorized to issue "home
 1028 warranties" as those terms are defined in s. 634.301(3) and (4);

1029 (c) A service warranty association authorized to issue
 1030 "service warranties" as those terms are defined in s.
 1031 634.401(13) and (14);

1032 (d) A prepaid limited health service organization
 1033 authorized to issue prepaid limited health service contracts, as
 1034 those terms are defined in chapter 636;

1035 (e) An authorized health maintenance organization
 1036 operating pursuant to s. 641.21;

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1037 (f) An authorized prepaid health clinic operating pursuant
 1038 to s. 641.405;

1039 (g) A legal expense insurance corporation authorized to
 1040 engage in a legal expense insurance business pursuant to s.
 1041 642.021;

1042 (h) A provider that ~~which~~ is licensed to operate a
 1043 facility that ~~which~~ undertakes to provide continuing care as
 1044 those terms are defined in s. 651.011~~(2), (4), (5), and (6)~~;

1045 (i) A multiple-employer welfare arrangement operating
 1046 pursuant to ss. 624.436-624.446;

1047 (j) A premium finance company authorized to finance
 1048 insurance premiums pursuant to s. 627.828; or

1049 (k) A corporation authorized to accept donor annuity
 1050 agreements pursuant to s. 627.481.

1051 Section 20. This act shall take effect July 1, 2010.

**INSURANCE, BUSINESS &
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 1253 by Rep. Proctor
Continuing Care Facilities**

AMENDMENT SUMMARY

March 17, 2010

Amendment 1 (**lines 142-160**) by Rep. Proctor. Removes the fee increases for applications for certificates of authority and provisional certificates of authority.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1253 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Insurance, Business & Financial
2 Affairs Policy Committee

3 Representative Proctor offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 142-160

7

8

9

10 **T I T L E A M E N D M E N T**

11 Remove lines 5-8 and insert:

12 references; amending s. 651.022, F.S.; increasing the