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# **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**

**Larry Cretul**  
Speaker

**Pat Patterson**  
Chair

**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

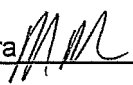

HB 1253 – Continuing Care Facilities by Rep. Proctor

**III. Meeting Adjourned**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 337 Condominiums  
SPONSOR(S): Civil Justice & Courts Policy Committee; Roberson  
TIED BILLS: None IDEN./SIM. BILLS: SB 968

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	10 Y, 1 N, As CS	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee		Marra 	Cooper 
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Condominium associations require unit owners to pay assessments to fund the operations of the association. Current law, and the governing documents of a condominium association, imposes certain penalties or restrictions upon a unit owner who is delinquent in payment of assessments necessary to operate the association.

This bill requires a condominium association to provide a detailed notice of delinquency to a delinquent unit owner. No restriction on a unit owner goes into effect until at least 20 days after the unit owner has received notice; and, if the owner objects to the assessment and shows payment, no restriction may go into effect until the objection is resolved.

This bill does not appear to have a fiscal effect on state or local governments.

The bill has an effective date of January 1, 2011.



## 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.

A bill to be entitled

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

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

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

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

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

(b) As to any statute or any provision in the governing documents that creates a restriction or condition upon a unit owner related to delinquency in the payment of moneys owed to the association, no such restriction or condition shall be in effect until 20 days after receipt of the delinquency notice by 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**

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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                                     \_\_\_\_\_

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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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- 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:

"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.<sup>1</sup>

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

#### **Rating 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.<sup>2</sup>

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

<sup>1</sup> s. 627.4025, F.S.

<sup>2</sup> 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 insurance<sup>3</sup> 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).<sup>4</sup>

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.<sup>5</sup>

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 coverage<sup>6</sup> or are

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.)

<sup>6</sup> 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 Citizens<sup>7</sup> 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.<sup>8</sup>

#### *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 law<sup>9</sup> requires a 100 day written notice, or notice by June 1<sup>st</sup>, whichever is earlier, for

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<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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 1<sup>st</sup>, 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.<sup>10</sup> It is not a private insurance company.<sup>11</sup> Citizens' book of business is divided into three separate accounts<sup>12</sup>:

1. **Personal Lines Account (PLA) – Multiperil Policies<sup>13</sup>**  
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-only<sup>14</sup> 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.<sup>15</sup>

### *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.<sup>16</sup> The three Citizens' accounts calculate deficits and resulting assessment needs independently.

**Citizens Policyholder Surcharges:**<sup>17</sup> 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

<sup>10</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>11</sup> s. 627.351(6)(a)1., F.S.

<sup>12</sup> s. 627.351(6)(b)2., F.S.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> s. 627.351(6)(b)2.b., F.S.

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

<sup>17</sup> 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:<sup>18</sup> 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.<sup>19</sup> 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:<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

<sup>18</sup> s. 627.351(6)(b)3.a. and b., F.S.

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

<sup>20</sup> s. 627.352(6)(b)3.d., F.S.

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

<sup>22</sup> 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.

<sup>23</sup> 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*.<sup>24</sup>

#### **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.<sup>25</sup>

#### **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

<sup>24</sup> 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.

<sup>25</sup> 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, PCPR<sup>26</sup> 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

<sup>26</sup> 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 policies<sup>27</sup> 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 policies<sup>28</sup> 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

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<sup>27</sup> 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.

<sup>28</sup> 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.<sup>29</sup>

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.

<sup>29</sup> 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

54 (1)1. An insurer complying with the requirements of s.  
 55 627.7031 may use a rate for residential property insurance, as  
 56 defined in s. 627.4025, different from the otherwise applicable  
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

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).

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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

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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

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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

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**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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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 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 debts, 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.

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

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

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

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~~1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate 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)~~(ee)~~ 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)~~ 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)~~ The assets of the corporation may be invested and  
1446 managed by the State Board of Administration.

1447 ~~(ee)~~ 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)(1) 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)(1), 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)(1), 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

1683

1684

1685

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

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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 \_\_\_\_\_

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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.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 447 (2010)

Amendment No. 1A

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

Amendment No. 1A

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.

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**T I T L E   A M E N D M E N T**

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 447 (2010)

Amendment No. 1A

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,

Amendment No. 1B

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

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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 OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 751

Automatic Renewal of Service Contracts

SPONSOR(S): McBurney

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1332

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Vickroy <i>W</i>	Cooper <i>JM</i>
2)	Civil Justice & Courts Policy Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Contracts with automatic renewal provisions are designed to continuously renew unless a party takes an action to cancel the contract. The burden is generally placed on the consumer, who may not always notice the provisions, to terminate the contract. Therefore, consumers may ultimately contract for a period longer than anticipated.

Federal law provides protection against unfair or deceptive contract provisions under the Federal Trade Commission Act (FTC Act), and state law provides similar protection under the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act); however, state law does not explicitly regulate the notification of automatic renewal provisions to consumers.

The bill provides that an automatic renewal provision must be clearly and conspicuously disclosed in service contracts where the provision renews a contract for more than one month and where the provision causes the contract to be in effect more than six months after the contract was initiated. It also provides that where the service contract is for twelve months or longer, and the renewal is for a period of one month or longer, the seller must provide either written or electronic notification to the consumer no more than sixty and no less than thirty days prior to the cancellation deadline provided in the service contract.

The bill makes automatic renewal provisions void and unenforceable if any notification requirements are not met, except under certain circumstances. It also provides exemptions from the notification requirements for:

- financial institutions;
- health studios;
- insurance providers;
- warranty associations;
- electric utilities;
- private companies providing certain local or municipal services; and
- certain types of healthcare organizations and programs.

The bill has no fiscal impact on state or local government.

The bill would go into effect July 1, 2010 and would only apply to service contracts entered into on or after the effective date.

## 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Furthermore, the FDUTP Act is expressly intended to provide consistent protection with the FTC Act,<sup>4</sup> and does not purport to list every offense which may constitute unfair or deceptive practices.<sup>5</sup> A violation of this Act may result in a civil penalty of up to \$10,000 for each violation.<sup>6</sup> 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.<sup>7</sup>

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

<sup>2</sup> 15 U.S.C.A. § 45.

<sup>3</sup> Section 501.202(2), F.S.

<sup>4</sup> Section 501.202(3), F.S.

<sup>5</sup> F.A.C. 2-2.001.

<sup>6</sup> Section 501.2075, F.S.

<sup>7</sup> ElfaOnline, State Laws Regulating Automatic Renewal Clauses in Tangible Personal Property Lease Contracts, *available at*: [www.elfaonline.org/pub/advocacy/state/.../AutoRenewalLaws.pdf](http://www.elfaonline.org/pub/advocacy/state/.../AutoRenewalLaws.pdf)

Florida law currently provides limitations on certain types of contracts. For example, dance studio<sup>8</sup> and health studio services<sup>9</sup> 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.<sup>10</sup>

## **Effect of Purposed Changes:**

### Notification Requirements:

The bill requires sellers<sup>11</sup> to clearly and conspicuously disclose automatic renewal provisions to consumers<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.

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<sup>8</sup> Section 501.143(4)(g), F.S.

<sup>9</sup> Section 501.017(1)(e), F.S.

<sup>10</sup> 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).

<sup>11</sup> "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.

<sup>12</sup> "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."

<sup>13</sup> 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.

<sup>14</sup> 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;<sup>15</sup>
- health studios;<sup>16</sup>
- insurance providers;<sup>17</sup>
- warranty associations;<sup>18</sup>
- healthcare service organizations and programs;<sup>19</sup>
- electric utilities;<sup>20</sup> and
- private companies providing certain types of municipal services.<sup>21</sup>

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

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.<sup>25</sup> 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.<sup>26</sup>

### 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:

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

<sup>16</sup> See Section 501.0125(1), F.S.

<sup>17</sup> See Ch. 624, F.S.; and ch. 627, F.S.

<sup>18</sup> See Ch. 634, F.S.

<sup>19</sup> See Ch. 636, F.S.; and ch. 641, F.S.

<sup>20</sup> See Section 366.02(2), F.S.

<sup>21</sup> See Section 180.05, F.S.

<sup>22</sup> See Ch. 634, F.S.

<sup>23</sup> See Ch. 636, F.S.

<sup>24</sup> See Ch, 641, F.S.

<sup>25</sup> Section 180.05, F.S.

<sup>26</sup> 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

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2010

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

Bill No. 751

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) McBurney offered the following:

4  
5       **Amendment (with directory and title amendments)**

6       Delete line(s) 40 to 69 insert:

7  
8       that has an automatic renewal provision, unless the consumer  
9        Cancels that contract, shall disclose the automatic renewal  
10       provision clearly and conspicuously in the contract or contract  
11       offer.

12      (b) Any seller that sells or offers to sell any service to  
13       a consumer pursuant to a service contract the term of which is a  
14       specified period of 12 months or more and that automatically  
15       renews for a specified period of more than 1 month, unless the  
16       consumer cancels the contract, shall provide the consumer with  
17       written or electronic notification of the automatic renewal  
18       provision. Notification shall be provided to the consumer no  
19       less than 30 days or no more than 60 days before the  
20       cancellation deadline pursuant to the automatic renewal

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.<sup>1</sup> The notice is intended to give the current insurer the opportunity to contact the policyholder to discuss the current policy before it is canceled.<sup>2</sup>

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).<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> Twenty of these states do not specify a coverage limitation;<sup>5</sup> 12 allow coverage up to the amount for which the employee is insured under the group policy;<sup>6</sup> and three states, including Florida under s. 627.5575(3), F.S.,<sup>7</sup> 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.<sup>8</sup>

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.

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Kansas and Nebraska also provide a 50% limitation.

<sup>8</sup> 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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2010

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.<sup>1</sup> 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.<sup>2</sup>

##### **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

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<sup>1</sup> Section 561.02, F.S.

<sup>2</sup> 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

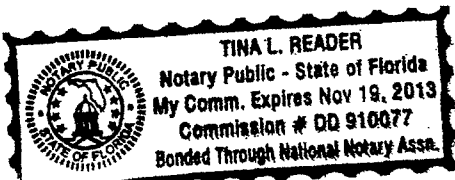
Affiant further says that the said Daily Commercial is a newspaper published in said Leesburg, in said Lake County, Florida, and that the said newspaper has heretofore been continuously published in said Lake County, Florida each day and has been entered as second class matter at the post office in Leesburg 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,

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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.



HB 1051

**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.<sup>1</sup> 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.<sup>2</sup>

##### 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

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<sup>1</sup> Section 561.02, F.S.

<sup>2</sup> 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.: 484-0348 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@tawas.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 \_\_\_\_\_

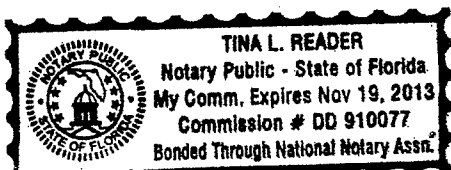
Jan 14, 2010

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 at 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

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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

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
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);<sup>1</sup>
- the University Area Community Development Corporation (UACDC);<sup>2</sup>
- the Lowry Park Zoo;<sup>3</sup> and
- the Tampa Bay History Center.<sup>4</sup>

### **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.

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<sup>1</sup> Chapter 98-449, Laws of Florida.

<sup>2</sup> Chapter 2003-355, Laws of Florida.

<sup>3</sup> Chapter 94-464, Laws of Florida.

<sup>4</sup> 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.



1                                   A bill to be entitled  
 2           An act relating to Hillsborough County; authorizing the  
 3           Division of Alcoholic Beverages and Tobacco of the  
 4           Department of Business and Professional Regulation to  
 5           issue an alcoholic beverage license to the Children's  
 6           Museum of Tampa, Inc., to use within the museum's building  
 7           and on its grounds; providing that the license may be used  
 8           only for special events; providing for payment of the  
 9           license fee; providing for sale of beverages for  
 10          consumption within the museum's building and on its  
 11          grounds; prohibiting sales for consumption off premises;  
 12          authorizing transfer and providing for subsequent  
 13          reversion of the license under certain circumstances;  
 14          providing an effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Notwithstanding any other provision of law, the  
 19 Division of Alcoholic Beverages and Tobacco of the Department of  
 20 Business and Professional Regulation is authorized, upon  
 21 application, to issue an alcoholic beverage license in  
 22 accordance with section 561.17, Florida Statutes, to the  
 23 Children's Museum of Tampa, Inc., (the "museum"), 110 W.  
 24 Gasparilla Plaza, Tampa, a not-for-profit corporation, for use  
 25 within the building known as the Children's Museum of Tampa,  
 26 Inc., and on its adjoining grounds. The museum shall pay the  
 27 applicable license fee provided in section 565.02, Florida  
 28 Statutes. The license may be used only for special events.

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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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> The OIR is also empowered to discipline a facility for violations of residents' rights.<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> *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).

<sup>2</sup> 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).

<sup>3</sup> ss. 651.021, and 651.023, F.S.

<sup>4</sup> s. 651.083, F.S.

<sup>5</sup> *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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>The 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

## **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.

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<sup>6</sup> ss. 651.021-651.023, F.S.

<sup>7</sup> s. 651.026, F.S., s.651.033, F.S., s.651.035, F.S. and s.651.055, F.S.

<sup>8</sup> s. 651.105, F.S.

<sup>9</sup> ss. 651.106 and 651.108, F.S.

<sup>10</sup> s. 651.085, F.S.

<sup>11</sup> 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."<sup>12</sup>

### 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%.

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<sup>12</sup> 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."<sup>13</sup>

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."<sup>14</sup>

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>13</sup> *Id.*

<sup>14</sup> *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



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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~~ 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

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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

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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



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# **Insurance, Business & Financial Affairs Policy Committee**

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

**ADDENDUM A**



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

**HB 447 by Rep. Proctor**

**Residential Property Insurance**

**AMENDMENT SUMMARY**

**March 17, 2010**

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**Amendment #1C to the Strike All Amendment** by Rep. Nehr (Line 1676): The amendment allows insurance companies, upon approval by the OIR, to obtain reinsurance credit for financing contracts that provide funding for catastrophe losses but are not traditional reinsurance contracts.



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 447 (2010)

Amendment No. 1C

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) Nehr 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. Section 624.611, Florida Statutes, is created  
9 to read:

10          624.611 Catastrophe Contracts.--

11 An insurer may annually submit a plan to the office in advance  
12 of the hurricane season, to use financial contracts other than  
13 reinsurance contracts to provide catastrophe loss funding. In  
14 the plan, the insurer must demonstrate that the coverage,  
15 together with its reinsurance program, will provide adequate  
16 protection for policyholders in the event of a natural  
17 catastrophe. If the contract does not provide for coverage that  
18 is highly correlated with the actual losses of the insurer, the  
19 insurer must demonstrate its ability to cover the basis risk

Amendment No. 1C

20 created by this lack of correlation. If the office approves the  
21 plan, the insurer may purchase the contracts and take credit for  
22 reinsurance for amounts expected or due from other parties to  
23 the contracts in accordance with any terms, conditions, or  
24 limitations established by the office.

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**T I T L E   A M E N D M E N T**

29

Remove line 1757 and insert:

30

for the Circuit Court of Leon County; creating s. 624.611, F.S.,

31

allowing the use of specified financial contracts to provide

32

catastrophe loss funding; providing requirements for the use of

33

such contracts; providing for credit for reinsurance for use of

34

such contracts; repealing s. 627.7065,



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

**HB 447 by Rep. Proctor**

**Residential Property Insurance**

**AMENDMENT SUMMARY**

**March 17, 2010**

---

**Amendment #1D to the Strike All Amendment** by Rep. Hays (Line 1676): Requires a notification to be put on the declarations page or on the renewal notice of every insurance policy that is subject to assessments by Citizens Property Insurance Corporation (Citizens) or the Florida Hurricane Catastrophe Fund (FHCF). The notification relates to the potential assessments that can be charged the policyholder to offset the deficits of Citizens or the FHCF.

Amendment No. 1D

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) Hays 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. In the interest of full disclosure and  
9 transparency to insurance policy owners and since most  
10 insurance policies sold in this state are subject to  
11 assessments to make up for the funding deficiencies of the  
12 Citizens Property Insurance Corporation or the Florida  
13 Hurricane Catastrophe Fund, the following warning shall be  
14 printed in bold type of not less than 16 points and shall be  
15 displayed on the declarations page or on the renewal notice of  
16 every insurance policy sold or issued in this state that is or  
17 may be subject to assessment by the Citizens Property Insurance  
18 Corporation or the Florida Hurricane Catastrophe Fund:  
19

Amendment No. 1D

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WARNING

The premium you are about to pay may NOT be the full cost of this insurance policy. If a hurricane strikes Florida, you may be forced to pay additional moneys to offset the inability of the state-owned Citizens Property Insurance Corporation or the Florida Hurricane Catastrophe Fund to pay claims resulting from the losses due to the hurricane.

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**T I T L E   A M E N D M E N T**

Remove line 1757 and insert:

for the Circuit Court of Leon County; specifying a required notice for insurance policies issued or renewed in this state; providing notice requirements; repealing s. 627.7065,

