

By Senators Silver, Gutman, Dudley, Dyer, Holzendorf,
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38-754A-98

See HB

1 A bill to be entitled
2 An act relating to insurance; providing a short
3 title; amending s. 215.555, F.S.; revising
4 definitions; excluding the Fair Access to
5 Insurance Requirements Plan from application of
6 reimbursement contract requirements; defining
7 "insurer" for purposes of certain revenue
8 bonds; providing for deactivation of the
9 Residential Property and Casualty Joint
10 Underwriting Association and termination of the
11 association's plan of operation under certain
12 circumstances; providing for additional
13 assessments and augmented assessments for
14 certain purposes; providing for appropriating
15 certain moneys in the Florida Hurricane
16 Catastrophe Fund to the Department of Community
17 Affairs for certain purposes; amending s.
18 626.916, F.S.; authorizing certain surplus
19 lines insurers to remove and insure policies
20 from the Residential Property and Casualty
21 Joint Underwriting Association and the Florida
22 Windstorm Underwriting Association under
23 certain circumstances; providing procedures and
24 limitations; requiring reinsurance; prohibiting
25 eligibility for windstorm coverage for certain
26 risks; amending s. 627.0629, F.S.; requiring
27 the Department of Insurance to adopt certain
28 credits for use by insurers in certain rate
29 filings under certain circumstances; clarifying
30 the application of certain discounts for mobile
31 home owner's insurance rate filings; requiring

1 insurers to implement certain discounts or rate
2 differentials for mobile home insurance
3 premiums; providing criteria; requiring the
4 department to adopt certain credits used by
5 insurers for certain residential property
6 insurance policies; providing requirements;
7 authorizing the establishment of the Blue
8 Ribbon Homes Program for certain purposes;
9 providing priority for evaluations and
10 mitigation funds for certain applicants;
11 authorizing the department to develop and adopt
12 certain actuarial methodologies for certain
13 purposes; authorizing the department to enter
14 into contracts for such development; providing
15 criteria; amending s. 627.0651, F.S.;
16 specifying use of certain underwriting rules
17 for motor vehicle insurance; amending s.
18 627.351, F.S.; proscribing coverage by the
19 Florida Windstorm Underwriting Association for
20 certain persons and properties; revising
21 criteria and requirements for the association's
22 plan of operation to provide windstorm
23 coverage; requiring the Florida Windstorm
24 Underwriting Association and the Residential
25 Property and Casualty Joint Underwriting
26 Association to allow insurers to remove
27 packages of policies from the association;
28 providing criteria and requirements for
29 packaging; providing procedures, requirements,
30 and limitations on removal of such policies;
31 providing for assignments of policies from the

1 association under certain circumstances;
2 imposing assignment fees; providing
3 requirements and limitations for such
4 assignments; providing exceptions; providing
5 definitions; authorizing the department to
6 adopt rules; authorizing the department to
7 require revisions or amendments to certain
8 plans; amending s. 627.3513, F.S.; clarifying a
9 definition; providing construction; amending s.
10 627.3515, F.S.; revising requirements for the
11 department's market assistance plan; specifying
12 additional criteria and requirements for such
13 plan; providing for assignment or placement of
14 policies under the plan; providing limitations;
15 providing definitions; providing powers of the
16 department; providing for transferring plan
17 funding obligations from the Residential
18 Property and Casualty Joint Underwriting
19 Association to the FAIR Plan; amending s.
20 627.3516, F.S.; revising the principal entities
21 responsible for creating a residual property
22 insurance market coordinating council; revising
23 council membership; creating s. 627.3518, F.S.;
24 establishing the Florida Access to Insurance
25 Requirements (FAIR) Plan; providing purposes;
26 providing definitions; creating the Florida
27 FAIR Plan Association; providing for operation
28 and membership; requiring insurers to
29 participate in the association; providing
30 requirements; providing for assessments;
31 providing for additional assessments under

1 certain circumstances; authorizing local
2 governments to issue bonds under certain
3 circumstances; providing procedures and
4 requirements; requiring property insurance rate
5 filings under certain circumstances; providing
6 requirements; declaring the FAIR Plan to be a
7 political subdivision; exempting the plan from
8 the corporate income tax; protecting financial
9 characteristics of the association; requiring
10 the association to contract with the Florida
11 Hurricane Catastrophe Fund for certain
12 purposes; requiring the association to develop
13 and adopt a plan of operation; providing for
14 department approval of the plan; providing for
15 amending the plan; specifying requirements for
16 the plan; requiring certificates of eligibility
17 for coverage; providing procedures, criteria,
18 and standards; providing for levy of market
19 equalization surcharges by the plan; amending
20 s. 627.4091, F.S.; prohibiting insurers from
21 canceling or nonrenewing residential policies
22 without notice; providing requirements for such
23 notice; amending s. 627.4133, F.S.; providing
24 additional requirements relating to notices of
25 cancellation or nonrenewal; requiring insurers
26 to offer coverage for certain replacement
27 property under certain circumstances; creating
28 s. 627.4138, F.S.; providing restrictions on
29 cancellation or nonrenewal of residential
30 coverage; providing legislative findings;
31 requiring insurers to reduce rates after

1 deactivation of the Residential Property and
2 Casualty Joint Underwriting Association;
3 providing an exception; providing procedures;
4 requiring insurers' rate filings to reflect
5 certain savings; authorizing the Department of
6 Insurance to adopt rules; providing
7 appropriations; repealing s. 627.062(6), F.S.,
8 relating to arbitration of certain rate
9 filings; repealing s. 627.0628, F.S., relating
10 to contract provisions for illegal occupation;
11 providing severability; amending ss. 624.4071,
12 626.918, 626.932, 626.9325, and 626.9541, F.S.;
13 correcting cross-references; providing an
14 effective date.

15
16 WHEREAS, it is in the best interests of both the
17 property owners of this state and the insurance industry to
18 maximize available resources for catastrophic losses, to allow
19 private markets to operate to the extent of their capacity,
20 and to provide for tax-free growth of reserves for
21 catastrophic events, and

22 WHEREAS, the reallocation of resources from frequent
23 losses of limited severity to coverage of less frequent, more
24 severe catastrophic events can most effectively be
25 accomplished by eliminating the Residential Property and
26 Casualty Joint Underwriting Association, by reducing the
27 geographic scope of the Florida Windstorm Underwriting
28 Association, and by expansion of the financing capabilities of
29 the Florida Hurricane Catastrophe Fund, NOW, THEREFORE,

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. This act may be cited as the "Homeowners'
2 Protection Act."

3 Section 2. Paragraph (c) of subsection (2), paragraphs
4 (d), (e), and (f) of subsection (4), paragraph (a) of
5 subsection (6), and subsection (7) of section 215.555, Florida
6 Statutes, are amended to read:

7 215.555 Florida Hurricane Catastrophe Fund.--

8 (2) DEFINITIONS.--As used in this section:

9 (c) "Covered policy" means any insurance policy
10 covering residential property in this state, including, but
11 not limited to, any homeowner's, mobile home owner's, farm
12 owner's, condominium association, condominium unit owner's,
13 tenant's, or apartment building policy, or any other policy
14 covering a residential structure or its contents issued by any
15 authorized insurer, including any joint underwriting
16 association created pursuant to s. 627.351 or s. 627.3518 or
17 similar entity created pursuant to law or issued by an
18 eligible surplus lines insurer pursuant to s. 626.916(2)(a).
19 "Covered policy" does not include any policy that excludes
20 wind coverage or hurricane coverage or any reinsurance
21 agreement.

22 (4) REIMBURSEMENT CONTRACTS.--

23 (d)1. The contract shall require the insurer to report
24 to the board, as directed by the board, but no later than
25 December 31 of each year, and quarterly thereafter, its losses
26 from covered events for the year. The contract shall require
27 the board to determine and pay, as soon as practicable after
28 receiving these reports, the initial amount of reimbursement
29 due and adjustments to this amount based on later loss
30 information. The adjustments to reimbursement amounts shall
31

1 require the board to pay, or the insurer to return, amounts
2 reflecting the most recent calculation of losses.

3 2. If the board determines that the projected year-end
4 balance of the fund, together with the amount that the board
5 determines that it is possible to raise through revenue bonds
6 issued under subsection (6) and through other borrowing and
7 financing arrangements under paragraph (7)(b), are
8 insufficient to pay reimbursement to all insurers at the level
9 promised in the contract, the board shall:

10 a. First reimburse insurers writing covered policies,
11 which insurers are in full compliance with this section and
12 have petitioned the Department of Insurance and qualified as
13 limited apportionment companies under s. 627.351(2)(b)4 ~~s.~~
14 ~~627.351(2)(b)3~~. The amount of such reimbursement shall be the
15 lesser of \$10 million or an amount equal to 10 times the
16 insurer's reimbursement premium for the current year. The
17 amount of reimbursement paid under this sub-subparagraph may
18 not exceed the full amount of reimbursement promised in the
19 reimbursement contract. This sub-subparagraph does not apply
20 with respect to any contract year in which the year-end
21 projected cash balance of the fund, exclusive of any bonding
22 capacity of the fund, exceeds \$2 billion. Only one member of
23 any insurer group may receive reimbursement under this
24 sub-subparagraph.

25 b. Next pay to each insurer the amount of
26 reimbursement it is owed, up to an amount equal to the
27 insurer's share of the actual premium paid for that contract
28 year, multiplied by the actual claims-paying capacity
29 available for that contract year. This determination shall be
30 adjusted to reflect payments made under sub-subparagraph a.

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1 c. Thereafter, establish, based on reimbursable
2 losses, the prorated reimbursement level at the highest level
3 for which any remaining fund balance or bond proceeds are
4 sufficient.

5 (e)1. Except as provided in subparagraphs 2. and 3.,
6 the contract shall provide that if an insurer demonstrates to
7 the board that it is likely to qualify for reimbursement under
8 the contract, and demonstrates to the board that the immediate
9 receipt of moneys from the board is likely to prevent the
10 insurer from becoming insolvent, the board shall advance the
11 insurer, at market interest rates, the amounts necessary to
12 maintain the solvency of the insurer, up to 50 percent of the
13 board's estimate of the reimbursement due the insurer. The
14 insurer's reimbursement shall be reduced by an amount equal to
15 the amount of the loan and interest thereon.

16 2. With respect only to an entity created under s.
17 627.351, the contract shall also provide that the board may,
18 upon application by such entity, advance to such entity, at
19 market interest rates, up to 90 percent of the lesser of:

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

22 b. The entity's share of the actual reimbursement
23 premium paid for that contract year, multiplied by the
24 currently available liquid assets of the fund. In order for
25 the entity to qualify for an advance under this subparagraph,
26 the entity must demonstrate to the board that the advance is
27 essential to allow the entity to pay claims for a covered
28 event and the board must determine that the fund's assets are
29 sufficient and are sufficiently liquid to allow the board to
30 make an advance to the entity and still fulfill the board's
31 reimbursement obligations to other insurers. The entity's

1 final reimbursement for any contract year in which an advance
2 has been made under this subparagraph must be reduced by an
3 amount equal to the amount of the advance and any interest on
4 such advance. In order to determine what amounts, if any, are
5 due the entity, the board may require the entity to report its
6 exposure and its losses at any time to determine retention
7 levels and reimbursements payable.

8 3. The contract shall also provide specifically and
9 solely with respect to any limited apportionment company under
10 s. 627.351(2)(b)4. ~~s. 627.351(2)(b)3.~~ that the board may, upon
11 application by such company, advance to such company up to the
12 lesser of:

13 a. Ninety percent of the board's estimate of the
14 reimbursement due to such company, or

15 b. Ninety percent of the company's share of the total
16 fund premiums applied to the board's currently available
17 liquid assets,

18
19 at market rates, if the company demonstrates to the board that
20 the immediate receipt of such moneys is essential to permit it
21 to pay claims for a covered event and if the board determines
22 that the fund's assets are sufficient and are sufficiently
23 liquid to permit the board to make an advance to such company
24 and at the same time fulfill its reimbursement obligations to
25 the insurers that are participants in the fund. Such
26 company's final reimbursement for any contract year in which
27 an advance pursuant to this subparagraph has been made shall
28 be reduced by an amount equal to the amount of the advance and
29 interest thereon. In order to determine what amounts, if any,
30 are due to such company, the board may require such company to
31 report its exposure and its losses at such times as may be

1 required to determine retention levels and loss reimbursements
2 payable.

3 (f) The contract shall provide that in the event of
4 the insolvency of an insurer, the fund shall pay directly to
5 the Florida Insurance Guaranty Association for the benefit of
6 Florida policyholders of the insurer the net amount of all
7 reimbursement moneys owed to the insurer. As used in this
8 paragraph, the term "net amount of all reimbursement moneys"
9 means that amount which remains after reimbursement for
10 preliminary or duplicate payments owed to private reinsurers
11 or other inuring reinsurance payments to private reinsurers
12 that satisfy statutory or contractual obligations of the
13 insolvent insurer attributable to covered events to such
14 reinsurers. Such private reinsurers shall be reimbursed or
15 otherwise paid prior to payment to the Florida Insurance
16 Guaranty Association, notwithstanding any law to the contrary.
17 The guaranty association shall pay all claims up to the
18 maximum amount permitted by chapter 631; thereafter, any
19 remaining moneys shall be paid pro rata to claims not fully
20 satisfied. This paragraph does not apply to a joint
21 underwriting association, risk apportionment plan, or other
22 entity created under s. 627.351 or s. 627.3518.

23 (6) REVENUE BONDS.--

24 (a) General provisions.--

25 1. Upon the occurrence of a hurricane and a
26 determination that the moneys in the fund are or will be
27 insufficient to pay reimbursement at the levels promised in
28 the reimbursement contracts, the board may take the necessary
29 steps under paragraph (b) or paragraph (c) for the issuance of
30 revenue bonds for the benefit of the fund. The proceeds of
31 such revenue bonds may be used to make reimbursement payments

1 under reimbursement contracts; to refinance or replace
2 previously existing borrowings or financial arrangements; to
3 pay interest on bonds; to fund reserves for the bonds; to pay
4 expenses incident to the issuance or sale of any bond issued
5 under this section, including costs of validating, printing,
6 and delivering the bonds, costs of printing the official
7 statement, costs of publishing notices of sale of the bonds,
8 and related administrative expenses; or for such other
9 purposes related to the financial obligations of the fund as
10 the board may determine. The term of the bonds may not exceed
11 30 years. The board may pledge or authorize the corporation to
12 pledge all or a portion of all revenues under subsection (5)
13 and under subparagraph 3. to secure such revenue bonds and the
14 board may execute such agreements between the board and the
15 issuer of any revenue bonds and providers of other financing
16 arrangements under paragraph (7)(b) as the board deems
17 necessary to evidence, secure, preserve, and protect such
18 pledge. If reimbursement premiums received under subsection
19 (5) or earnings on such premiums are used to pay debt service
20 on revenue bonds, such premiums and earnings shall be used
21 only after the use of the moneys derived from assessments
22 under subparagraph 3. The funds, credit, property, or taxing
23 power of the state or political subdivisions of the state
24 shall not be pledged for the payment of such bonds. The board
25 may also enter into agreements under paragraph (b) or
26 paragraph (c) for the purpose of issuing revenue bonds in the
27 absence of a hurricane upon a determination that such action
28 would maximize the ability of the fund to meet future
29 obligations.

30 2. The Legislature finds and declares that the
31 issuance of bonds under this subsection is for the public

1 purpose of paying the proceeds of the bonds to insurers,
2 thereby enabling insurers to pay the claims of policyholders
3 to assure that policyholders are able to pay the cost of
4 construction, reconstruction, repair, restoration, and other
5 costs associated with damage to property of policyholders of
6 covered policies after the occurrence of a hurricane. Revenue
7 bonds may not be issued under this subsection until validated
8 under chapter 75. The validation of at least the first
9 obligations incurred pursuant to this subsection shall be
10 appealed to the Supreme Court, to be handled on an expedited
11 basis.

12 3.a. If the board determines that the amount of
13 revenue produced under subsection (5) is insufficient to fund
14 the obligations, costs, and expenses of the fund, including
15 repayment of revenue bonds, the board shall direct the
16 Department of Insurance to levy an emergency assessment on
17 each insurer writing property and casualty business in this
18 state. For the purposes of this subsection, "insurer" means
19 any authorized insurer writing property casualty business in
20 this state, any joint underwriting association created under
21 s. 627.351, the FAIR Plan created pursuant to s. 627.3518 or a
22 similar entity created pursuant to law, and any eligible
23 surplus lines insurer which has issued covered policies
24 pursuant to s. 626.916(2), provided, as to such surplus lines
25 insurer, that the emergency assessment shall be levied only on
26 the direct written premium attributable to the covered
27 policies issued pursuant to s. 626.916(2).Pursuant to the
28 emergency assessment, each such insurer shall pay to the fund
29 by July 1 of each year an amount set by the board not
30 exceeding 2 percent of its gross direct written premium for
31 the prior year from all property and casualty business in this

1 state except for workers' compensation, except that, if the
2 Governor has declared a state of emergency under s. 252.36 due
3 to the occurrence of a covered event, the amount of the
4 assessment may be increased to an amount not exceeding 4
5 percent of such premium. As used in this subsection, the term
6 "property and casualty business" includes all lines of
7 business identified on Form 2, Exhibit of Premiums and Losses,
8 in the annual statement required by s. 624.424 and any rules
9 adopted under such section, except for those lines identified
10 as accident and health insurance. The annual assessments under
11 this subparagraph shall continue as long as the revenue bonds
12 issued with respect to which the assessment was imposed are
13 outstanding, unless adequate provision has been made for the
14 payment of such bonds pursuant to the documents authorizing
15 issuance of the bonds. An insurer shall not at any time be
16 subject to aggregate annual assessments under this
17 subparagraph of more than 2 percent of premium, except that in
18 the case of a declared emergency, an insurer shall not at any
19 time be subject to aggregate annual assessments under this
20 subparagraph of more than 4 percent of premium. Any rate
21 filing or portion of a rate filing reflecting a rate change
22 attributable entirely to the assessment levied under this
23 subparagraph shall be deemed approved when made, subject to
24 the authority of the Department of Insurance to require
25 actuarial justification as to the adequacy of any rate at any
26 time. If the rate filing reflects only a rate change
27 attributable to the assessment under this paragraph, the
28 filing may consist of a certification so stating.

29 b. Notwithstanding any other provision to the contrary
30 and subject to this subparagraph, at such time as the
31 Residential and Casualty Joint Underwriting Association,

1 established under s. 627.351(6), certifies to the department
2 that the association no longer has any residential policies in
3 force and arrangements have been made to satisfy the
4 association's outstanding liabilities, including liabilities
5 arising under letters of credit, bonding, or other financing
6 mechanisms, and the department has verified the matters set
7 forth in the certification, the department shall enter an
8 order deactivating the association and terminating its plan of
9 operation. Upon deactivation of the association, the premium
10 assessment of up to 4 percent under sub-subparagraph a. and
11 the aggregate assessment of up to 4 percent under
12 sub-subparagraph a. shall be augmented by additional
13 assessment authority, applicable against each insurer writing
14 property and casualty business in this state. Pursuant to the
15 augmented assessment, and upon declaration by the Governor of
16 a state of emergency under s. 252.36 due to the occurrence of
17 a covered event, each insurer shall pay an additional amount
18 set by the board not exceeding 6 percent of such insurer's
19 gross direct written premium for the prior year from all
20 property and casualty business in this state except for
21 workers compensation, accident and health, and motor vehicle
22 insurance. If the Internal Revenue Service issues a ruling
23 that the fund can issue tax-exempt financing prior to the
24 effective date of the augmentation, the department shall not
25 proceed with the augmentation order. The augmentation of the
26 fund's assessment authority under this sub-subparagraph shall
27 not take effect until such time as the board certifies to the
28 department that the board has obtained confirmation from the
29 Internal Revenue Service that the augmentation would not
30 result in the loss of the fund's exemption from federal income
31 tax on accumulated funds.

1 (7) ADDITIONAL POWERS AND DUTIES.--

2 (a) The board may procure reinsurance from reinsurers
3 approved under s. 624.610 for the purpose of maximizing the
4 capacity of the fund.

5 (b) In addition to borrowing under subsection (6), the
6 board may also borrow from, or enter into other financing
7 arrangements with, any market sources at prevailing interest
8 rates.

9 (c) Each fiscal year, the Legislature shall
10 appropriate from the investment income of the Florida
11 Hurricane Catastrophe Fund an amount no less than \$10 million
12 and no more than 35 percent of the investment income from the
13 prior fiscal year for the purpose of providing funding for
14 local governments, state agencies, public and private
15 educational institutions, and nonprofit organizations to
16 support programs intended to improve hurricane preparedness,
17 reduce potential losses in the event of a hurricane, provide
18 research into means to reduce such losses, educate or inform
19 the public as to means to reduce hurricane losses, assist the
20 public in determining the appropriateness of particular
21 upgrades to structures or in the financing of such upgrades,
22 or other actions to reduce the risk of ~~protect local~~
23 ~~infrastructure from potential~~ damage from a hurricane. Moneys
24 shall first be available for appropriation under this
25 paragraph in fiscal year 1997-1998. Moneys in excess of the
26 \$10 million specified in this paragraph shall not be available
27 for appropriation under this paragraph if the State Board of
28 Administration finds that an appropriation of investment
29 income from the fund would jeopardize the actuarial soundness
30 of the fund.

31

1 (d) Of the moneys appropriated under paragraph (c) in
2 any fiscal year:

3 1. Eighty-five percent shall be appropriated to the
4 Department of Community Affairs for programs to improve the
5 wind resistance of residences, including loan subsidies,
6 grants, and demonstration projects; for cooperative programs
7 with local governments, the federal government, and the
8 Institute for Business and Home Safety; and for other efforts
9 to prevent or reduce losses or reduce the cost of rebuilding
10 after a disaster.

11 2. Ten percent shall be appropriated to the State
12 University System to fund programs and projects that have the
13 primary goal of reducing hurricane losses to residences.

14 3. Five percent shall be appropriated to the
15 Department of Insurance to fund consumer education programs
16 with the primary focus of reducing property insurance costs to
17 consumers.

18 ~~(e)~~(d) The board may allow insurers to comply with
19 reporting requirements and reporting format requirements by
20 using alternative methods of reporting if the proper
21 administration of the fund is not thereby impaired and if the
22 alternative methods produce data which is consistent with the
23 purposes of this section.

24 ~~(f)~~(e) In order to assure the equitable operation of
25 the fund, the board may impose a reasonable fee on an insurer
26 to recover costs involved in reprocessing inaccurate,
27 incomplete, or untimely exposure data submitted by the
28 insurer.

29 Section 3. Subsections (2), (3), and (4) of section
30 626.916, Florida Statutes, are renumbered as subsections (3),
31

1 (4), and (5), respectively, and new subsection (2) is added to
2 said section, to read:

3 626.916 Eligibility for export.--

4 (2)(a) Notwithstanding any other provision of this
5 section, prior to assignment of policies pursuant to s.
6 627.351(2)(g) and (6)(q), eligible surplus lines insurers that
7 have a Best's rating of B++ or better and capital and surplus
8 of at least \$25 million shall be eligible to remove policies
9 from the Residential Property and Casualty Joint Underwriting
10 Association and the Florida Windstorm Underwriting Association
11 and to insure such policies. The policies may be removed
12 without undertaking due diligence pursuant to paragraph (1)(a)
13 and shall be written at rates and on forms no less favorable
14 to the policyholder than those provided by the association
15 from which the policies are removed. The removal shall be
16 subject to approval by the department based upon the criteria
17 set forth in s. 627.351(2)(a) and (c). All surplus lines
18 insurers taking association policies pursuant to this
19 paragraph shall purchase, and maintain for as long as the
20 risks remain covered by the insurer, reinsurance by entering
21 into a reimbursement contract with the State Board of
22 Administration, which reinsurance shall be applicable only to
23 the removed policies.

24 (b) Pursuant to s. 627.351(2)(b)1., no risk for which
25 property coverage has been exported is eligible for windstorm
26 coverage through the Florida Windstorm Underwriting
27 Association.

28 Section 4. Subsections (1), (3), (8), (9), (10), and
29 (11) of section 627.0629, Florida Statutes, are amended, and
30 subsections (12) and (13) are added to said section, to read:

31

1 627.0629 Residential property insurance; rate
2 filings.--

3 (1) Effective July 1, 1994, a rate filing for
4 residential property insurance must include appropriate
5 discounts, credits, or other rate differentials, or
6 appropriate reductions in deductibles, for properties on which
7 fixtures ~~actuarially~~ demonstrated to reduce the amount of loss
8 in a windstorm have been installed. The department, by rule,
9 shall adopt appropriate credits to be used by each insurer in
10 residential property insurance rate filings unless the insurer
11 establishes by credible data maintained by the insurer that
12 different credits or rate differentials are supported for such
13 insurer's book of business.

14 (3) A rate filing made on or after July 1, 1995, for
15 mobile home owner's insurance must include appropriate
16 discounts, credits, or other rate differentials for a mobile
17 home ~~homes~~ constructed to comply with American Society of
18 Civil Engineers Standard ANSI/ASCE 7-88, adopted by the United
19 States Department of Housing and Urban Development on July 13,
20 1994, provided the policyholder has, with respect to the
21 mobile home which is the subject of the discount, complied and
22 ~~that also comply~~ with all applicable tie-down requirements
23 provided by state law. The discount authorized under this
24 subsection shall be in addition to any other discounts,
25 credits, or rate differentials authorized under this code,
26 including those authorized under subsection (8).

27 (8) An insurer shall ~~may~~ implement appropriate
28 discounts or other rate differentials of up to 10 percent of
29 the annual premium to mobile home owners who provide to the
30 insurer evidence of a current inspection of tie-downs for the
31 mobile home, certifying that the tie-downs have been properly

1 installed and are in good condition. Any discount or other
2 rate differential implemented under this subsection shall be
3 in addition to any discount, credit, or rate differential
4 authorized under any other provision of this code including
5 those authorized under subsection (3). The insurer shall not
6 raise its base rate in order to offset the amount of the
7 discount.

8 (9) The department, by rule, shall adopt the credits
9 to be used by an insurer with respect to the rate charged for
10 a policy of residential property insurance excluding wind
11 coverage. Such credit shall be used by the insurer unless the
12 insurer demonstrates that some other credit is actuarially
13 justified. In adopting the rule, the department shall consider
14 statistical data, if any, furnished by one or more rating
15 organizations or other relevant insurer data.

16 (10)~~(9)~~ EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
17 SOUNDNESS; ESTABLISHMENT OF THE BLUE RIBBON HOMES PROGRAM.--

18 (a) It is the intent of the Legislature to provide a
19 program whereby homeowners may obtain an evaluation of the
20 wind resistance of their homes with respect to preventing
21 damage from hurricanes, together with a recommendation of
22 reasonable steps that may be taken to upgrade their homes to
23 better withstand hurricane force winds. Further, it is the
24 intent of the Legislature that the program provide for loan
25 subsidies and grants designed to improve the wind resistance
26 of owner-occupied residential properties.

27 (b) To the extent that funds are provided for this
28 purpose in the General Appropriations Act, the Legislature
29 hereby authorizes the establishment of the Blue Ribbon Homes a
30 Program to be administered by the Florida Windstorm
31 Underwriting Association in consultation with the Department

1 of Community Affairs and the Institute for Business and Home
2 Safety.

3 (c) The program shall provide grants to homeowners,
4 for the purpose of providing homeowner applicants with funds
5 to conduct an evaluation of the integrity of their homes with
6 respect to withstanding hurricane force winds, recommendations
7 to retrofit the homes to better withstand damage from such
8 winds, and the estimated cost to make the recommended
9 retrofits. Applicants who are insured by the Florida Windstorm
10 Underwriting Association shall be given priority for both
11 evaluations and mitigation funds.

12 (d) The Department of Community Affairs shall
13 establish by rule standards to govern the quality of the
14 evaluation, the quality of the recommendations for
15 retrofitting, the eligibility of the persons conducting the
16 evaluation, and the selection of applicants under the program.
17 In establishing the rule, the department shall consult with
18 the advisory committee to minimize the possibility of fraud or
19 abuse in the evaluation and retrofitting process, and to
20 ensure that funds spent by homeowners acting on the
21 recommendations achieve positive results.

22 (e) The Florida Windstorm Underwriting Association
23 shall identify areas of this state with the greatest wind risk
24 to residential properties and recommend annually to the
25 department priority target areas for such evaluations and
26 inclusion with the associated residential construction
27 mitigation program.

28 (11)~~(10)~~ A property insurance rate filing that
29 includes any adjustments related to premiums paid to the
30 Florida Hurricane Catastrophe Fund must include a complete
31 calculation of the insurer's catastrophe load, and the

1 information in the filing may not be limited solely to
2 recovery of moneys paid to the fund.

3 (12) The Department of Insurance shall contract with
4 one or more institutions of higher learning which are a part
5 of the State University System for the development of a model
6 or improved actuarial methodologies to be used by insurers as
7 the standard in assessing hurricane risk and to project
8 hurricane losses to be used in the development of rates for
9 residential property insurance located in this state. In
10 developing the model or methodologies, the Department of
11 Insurance may, without a bidding process, negotiate and enter
12 into a contract or contracts with one or more institutions of
13 higher learning located in this state and, as necessary or
14 appropriate, with individual professionals or consultants
15 working in relation with such institutions, if any. The model
16 or methodologies shall include items or factors that should be
17 considered in light of local or regional conditions that may
18 affect the accuracy and reliability of the model when used in
19 specific rate filings. Any model or methodologies so developed
20 may be used by insurers in rate filings, and shall be used by
21 the Florida Hurricane Catastrophe Fund established under s.
22 215.555 in determining its reimbursement premiums, but shall
23 be subject to further review by the department on a
24 case-by-case basis. The model or methodologies shall be
25 nonproprietary and available for use in this state by insurers
26 in developing rates with respect to assessing hurricane risk
27 and hurricane losses.

28 (13) When considering the reimbursement capacity of
29 the Florida Hurricane Catastrophe Fund, a rate filing for
30 residential property insurance shall include the effect of
31

1 premiums to be received by the fund during the policy period
2 for which the rates are to be in effect.

3 Section 5. Subsection (13) of section 627.0651,
4 Florida Statutes, is amended to read:

5 627.0651 Making and use of rates for motor vehicle
6 insurance.--

7 (13)(a) Underwriting rules not contained in rating
8 manuals shall be filed for private passenger automobile
9 insurance and residential coverage as described in s.
10 627.4025(1), including homeowners' insurance.

11 (b) An insurer shall use only underwriting rules that
12 have been filed with the department pursuant to this
13 subsection or that are contained in an approved rating manual
14 of a licensed rating organization of which the insurer is a
15 subscriber or member.

16 (c)~~(b)~~ The submission of rates, rating schedules, and
17 rating manuals to the department by a licensed rating
18 organization of which an insurer is a member or subscriber
19 will be sufficient compliance with this subsection for any
20 insurer maintaining membership or subscribership in such
21 organization, to the extent that the insurer uses the rates,
22 rating schedules, and rating manuals of such organization.
23 All such information shall be available for public inspection,
24 upon receipt by the department, during usual business hours.

25 (d)~~(c)~~ The filing requirements of this subsection do
26 not apply to commercial inland marine risks.

27 Section 6. Subsection (2) and paragraph (d) of
28 subsection (6) of section 627.351, Florida Statutes, are
29 amended, and paragraphs (o), (p), and (q) are added to
30 subsection (6) of said section, to read:

31 627.351 Insurance risk apportionment plans.--

1 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

2 (a) Agreements may be made among property insurers
3 with respect to the equitable apportionment among them of
4 insurance which may be afforded applicants who are in good
5 faith entitled to, but are unable to procure, such insurance
6 through ordinary methods; and such insurers may agree among
7 themselves on the use of reasonable rate modifications for
8 such insurance. Such agreements and rate modifications shall
9 be subject to the applicable provisions of this chapter.

10 (b) The department shall require all insurers holding
11 a certificate of authority to transact property insurance on a
12 direct basis in this state, other than joint underwriting
13 associations and other entities formed pursuant to this
14 section, to provide windstorm coverage to applicants from
15 areas determined to be eligible pursuant to paragraph (c) who
16 in good faith are entitled to, but are unable to procure, such
17 coverage through ordinary means; or it shall adopt a
18 reasonable plan or plans for the equitable apportionment or
19 sharing among such insurers of windstorm coverage, which may
20 include formation of an association for this purpose. As used
21 in this subsection, the term "property insurance" means
22 insurance on real or personal property, as defined in s.
23 624.604, including insurance for fire, industrial fire, allied
24 lines, farmowners' multiperil, homeowners' multiperil,
25 commercial multiperil, and mobile homes, and including
26 liability coverages on all such insurance, but excluding
27 inland marine as defined in s. 624.607(3) and excluding
28 vehicle insurance as defined in s. 624.605(1)(a) other than
29 insurance on mobile homes used as permanent dwellings. The
30 department shall adopt rules that provide a formula for the
31 recovery and repayment of any deferred assessments.

1 1. For the purpose of this section, properties
2 eligible for such windstorm coverage are defined as dwellings,
3 buildings, and other structures, including mobile homes which
4 are used as dwellings and which are tied down in compliance
5 with mobile home tie-down requirements prescribed by the
6 Department of Highway Safety and Motor Vehicles pursuant to s.
7 320.8325, and the contents of all such properties. An
8 applicant or policyholder is eligible for coverage only if an
9 offer of coverage cannot be obtained by or for the applicant
10 or policyholder from an admitted insurer at approved rates. No
11 applicant or policyholder is eligible for association coverage
12 if his or her property insurance is placed with a surplus
13 lines insurer pursuant to s. 626.916.

14 2. Notwithstanding the provisions of subparagraph 1.,
15 after July 1, 2000, properties that are residential risks as
16 described in s. 627.4025 and that are not located in Monroe
17 County, on a coastal barrier island, or seaward of the
18 intracoastal waterway shall no longer be eligible for coverage
19 by the association. Further, pursuant to paragraph (e),
20 eligibility for coverage by the association shall not be
21 extended to any area that was not eligible on March 1, 1997.

22 ~~3.2~~.a.(I) All insurers required to be members of such
23 association shall participate in its writings, expenses, and
24 losses. Surplus of the association shall be retained for the
25 payment of claims and shall not be distributed to the member
26 insurers. Such participation by member insurers shall be in
27 the proportion that the net direct premiums of each member
28 insurer written for property insurance in this state during
29 the preceding calendar year bear to the aggregate net direct
30 premiums for property insurance of all member insurers, as
31 reduced by any credits for voluntary writings, in this state

1 during the preceding calendar year. For the purposes of this
2 subsection, the term "net direct premiums" means direct
3 written premiums for property insurance, reduced by premium
4 for liability coverage and for the following if included in
5 allied lines: rain and hail on growing crops; livestock;
6 association direct premiums booked; National Flood Insurance
7 Program direct premiums; and similar deductions specifically
8 authorized by the plan of operation and approved by the
9 department. A member's participation shall begin on the first
10 day of the calendar year following the year in which it is
11 issued a certificate of authority to transact property
12 insurance in the state and shall terminate 1 year after the
13 end of the calendar year during which it no longer holds a
14 certificate of authority to transact property insurance in the
15 state. The commissioner, after review of annual statements,
16 other reports, and any other statistics that the commissioner
17 deems necessary, shall certify to the association the
18 aggregate direct premiums written for property insurance in
19 this state by all member insurers.

20 (II) The plan of operation shall provide for a board
21 of directors consisting of the Insurance Consumer Advocate
22 appointed under s. 627.0613, 1 consumer representative
23 appointed by the Insurance Commissioner, 1 consumer
24 representative appointed by the Governor, and 12 additional
25 members appointed as specified in the plan of operation. One
26 of the 12 additional members shall be elected by the domestic
27 companies of this state on the basis of cumulative weighted
28 voting based on the net direct premiums of domestic companies
29 in this state. Nothing in the 1997 amendments to this
30 paragraph terminates the existing board or the terms of any
31 members of the board.

1 (III) The plan of operation shall provide a formula
2 whereby a company voluntarily providing windstorm coverage in
3 affected areas will be relieved wholly or partially from
4 apportionment of a regular assessment pursuant to
5 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

6 (IV) A company which is a member of a group of
7 companies under common management may elect to have its
8 credits applied on a group basis, and any company or group may
9 elect to have its credits applied to any other company or
10 group.

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

14 (VI) The plan of operation may also provide for the
15 award of credits, for a period not to exceed 3 years, from a
16 regular assessment pursuant to sub-sub-subparagraph d.(I) or
17 sub-sub-subparagraph d.(II) as an incentive for taking
18 policies out of the Residential Property and Casualty Joint
19 Underwriting Association, the FAIR Plan established under s.
20 627.3518, or the association. In order to qualify for the
21 exemption under this sub-sub-subparagraph, the take-out plan
22 must provide that at least 40 percent of the policies removed
23 from the Residential Property and Casualty Joint Underwriting
24 Association cover risks located in Dade, Broward, and Palm
25 Beach Counties or at least 30 percent of the policies so
26 removed cover risks located in Dade, Broward, and Palm Beach
27 Counties and an additional 50 percent of the policies so
28 removed cover risks located in other coastal counties, and
29 must also provide that no more than 15 percent of the policies
30 so removed may exclude windstorm coverage. With the approval
31 of the department, the association may waive these geographic

1 criteria for a take-out plan that removes at least the lesser
2 of 100,000 Residential Property and Casualty Joint
3 Underwriting Association policies or 15 percent of the total
4 number of Residential Property and Casualty Joint Underwriting
5 Association policies, provided the governing board of the
6 Residential Property and Casualty Joint Underwriting
7 Association certifies that the take-out plan will materially
8 reduce the Residential Property and Casualty Joint
9 Underwriting Association's 100-year probable maximum loss from
10 hurricanes. With the approval of the department, the board
11 may extend such credits for an additional year if the insurer
12 guarantees an additional year of renewability for all policies
13 removed from the Residential Property and Casualty Joint
14 Underwriting Association, or for 2 additional years if the
15 insurer guarantees 2 additional years of renewability for all
16 policies removed from the Residential Property and Casualty
17 Joint Underwriting Association.

18 (VII) The plan of the association shall provide for a
19 method whereby insurers who voluntarily assume policies from
20 the association may receive a reduction in the number of
21 assignments such insurers would otherwise receive pursuant to
22 paragraph (g). Nothing in this sub-sub-paragraph shall
23 preclude the incorporation into the plan of other incentives
24 to encourage voluntary writings of residential property
25 insurance which have high windstorm or hurricane risk.

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

29 c. The Legislature finds that the potential for
30 unlimited deficit assessments under this subparagraph may
31 induce insurers to attempt to reduce their writings in the

1 voluntary market, and that such actions would worsen the
2 availability problems that the association was created to
3 remedy. It is the intent of the Legislature that insurers
4 remain fully responsible for paying regular assessments and
5 collecting emergency assessments for any deficits of the
6 association; however, it is also the intent of the Legislature
7 to provide a means by which assessment liabilities may be
8 amortized over a period of years.

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

15 (II) When the deficit incurred in a particular
16 calendar year exceeds 10 percent of the aggregate statewide
17 direct written premium for property insurance for the prior
18 calendar year for all member insurers, the association shall
19 levy an assessment on member insurers in an amount equal to
20 the greater of 10 percent of the deficit or 10 percent of the
21 aggregate statewide direct written premium for property
22 insurance for the prior calendar year for member insurers. Any
23 remaining deficit shall be recovered through emergency
24 assessments under sub-sub-subparagraph (III).

25 (III) Upon a determination by the board of directors
26 that a deficit exceeds the amount that will be recovered
27 through regular assessments on member insurers, pursuant to
28 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
29 board shall levy, after verification by the department,
30 emergency assessments to be collected by member insurers and
31 by underwriting associations created pursuant to this section

1 | which write property insurance, upon issuance or renewal of
2 | property insurance policies other than National Flood
3 | Insurance policies in the year or years following levy of the
4 | regular assessments. The amount of the emergency assessment
5 | collected in a particular year shall be a uniform percentage
6 | of that year's direct written premium for property insurance
7 | for all member insurers and underwriting associations,
8 | excluding National Flood Insurance policy premiums, as
9 | annually determined by the board and verified by the
10 | department. The department shall verify the arithmetic
11 | calculations involved in the board's determination within 30
12 | days after receipt of the information on which the
13 | determination was based. Notwithstanding any other provision
14 | of law, each member insurer and each underwriting association
15 | created pursuant to this section shall collect emergency
16 | assessments from its policyholders without such obligation
17 | being affected by any credit, limitation, exemption, or
18 | deferment. The emergency assessments so collected shall be
19 | transferred directly to the association on a periodic basis as
20 | determined by the association. The aggregate amount of
21 | emergency assessments levied under this sub-sub-subparagraph
22 | in any calendar year may not exceed the greater of 10 percent
23 | of the amount needed to cover the original deficit, plus
24 | interest, fees, commissions, required reserves, and other
25 | costs associated with financing of the original deficit, or 10
26 | percent of the aggregate statewide direct written premium for
27 | property insurance written by member insurers and underwriting
28 | associations for the prior year, plus interest, fees,
29 | commissions, required reserves, and other costs associated
30 | with financing the original deficit. The board may pledge the
31 | proceeds of the emergency assessments under this

1 sub-sub-subparagraph as the source of revenue for bonds, to
2 retire any other debt incurred as a result of the deficit or
3 events giving rise to the deficit, or in any other way that
4 the board determines will efficiently recover the deficit. The
5 emergency assessments under this sub-sub-subparagraph shall
6 continue as long as any bonds issued or other indebtedness
7 incurred with respect to a deficit for which the assessment
8 was imposed remain outstanding, unless adequate provision has
9 been made for the payment of such bonds or other indebtedness
10 pursuant to the document governing such bonds or other
11 indebtedness. Emergency assessments collected under this
12 sub-sub-subparagraph are not part of an insurer's rates, are
13 not premium, and are not subject to premium tax, fees, or
14 commissions; however, failure to pay the emergency assessment
15 shall be treated as failure to pay premium.

16 (IV) Each member insurer's share of the total regular
17 assessments under sub-sub-subparagraph (I) or
18 sub-sub-subparagraph (II) shall be in the proportion that the
19 insurer's net direct premium for property insurance in this
20 state, for the year preceding the assessment bears to the
21 aggregate statewide net direct premium for property insurance
22 of all member insurers, as reduced by any credits for
23 voluntary writings for that year.

24 (V) If regular deficit assessments are made under
25 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
26 the Residential Property and Casualty Joint Underwriting
27 Association under sub-subparagraph (6)(b)3.a. or
28 sub-subparagraph (6)(b)3.b., the association shall levy upon
29 the association's policyholders, as part of its next rate
30 filing, or by a separate rate filing solely for this purpose,
31 a market equalization surcharge in a percentage equal to the

1 total amount of such regular assessments divided by the
2 aggregate statewide direct written premium for property
3 insurance for member insurers for the prior calendar year.
4 Market equalization surcharges under this sub-sub-subparagraph
5 are not considered premium and are not subject to commissions,
6 fees, or premium taxes; however, failure to pay a market
7 equalization surcharge shall be treated as failure to pay
8 premium.

9 e. The governing body of any unit of local government,
10 any residents of which are insured under the plan, may issue
11 bonds as defined in s. 125.013 or s. 166.101 to fund an
12 assistance program, in conjunction with the association, for
13 the purpose of defraying deficits of the association. In order
14 to avoid needless and indiscriminate proliferation,
15 duplication, and fragmentation of such assistance programs,
16 any unit of local government, any residents of which are
17 insured by the association, may provide for the payment of
18 losses, regardless of whether or not the losses occurred
19 within or outside of the territorial jurisdiction of the local
20 government. Revenue bonds may not be issued until validated
21 pursuant to chapter 75, unless a state of emergency is
22 declared by executive order or proclamation of the Governor
23 pursuant to s. 252.36 making such findings as are necessary to
24 determine that it is in the best interests of, and necessary
25 for, the protection of the public health, safety, and general
26 welfare of residents of this state and the protection and
27 preservation of the economic stability of insurers operating
28 in this state, and declaring it an essential public purpose to
29 permit certain municipalities or counties to issue bonds as
30 will provide relief to claimants and policyholders of the
31 association and insurers responsible for apportionment of plan

1 losses. Any such unit of local government may enter into such
2 contracts with the association and with any other entity
3 created pursuant to this subsection as are necessary to carry
4 out this paragraph. Any bonds issued under this
5 sub-subparagraph shall be payable from and secured by moneys
6 received by the association from assessments under this
7 subparagraph, and assigned and pledged to or on behalf of the
8 unit of local government for the benefit of the holders of
9 such bonds. The funds, credit, property, and taxing power of
10 the state or of the unit of local government shall not be
11 pledged for the payment of such bonds. If any of the bonds
12 remain unsold 60 days after issuance, the department shall
13 require all insurers subject to assessment to purchase the
14 bonds, which shall be treated as admitted assets; each insurer
15 shall be required to purchase that percentage of the unsold
16 portion of the bond issue that equals the insurer's relative
17 share of assessment liability under this subsection. An
18 insurer shall not be required to purchase the bonds to the
19 extent that the department determines that the purchase would
20 endanger or impair the solvency of the insurer. The authority
21 granted by this sub-subparagraph is additional to any bonding
22 authority granted by subparagraph 6.

23 ~~4.3.~~ The plan shall also provide that any member with
24 a surplus as to policyholders of \$20 million or less writing
25 25 percent or more of its total countrywide property insurance
26 premiums in this state may petition the department, within the
27 first 90 days of each calendar year, to qualify as a limited
28 apportionment company. The apportionment of such a member
29 company in any calendar year for which it is qualified shall
30 not exceed its gross participation, which shall not be
31 affected by the formula for voluntary writings. In no event

1 shall a limited apportionment company be required to
2 participate in any apportionment of losses pursuant to
3 sub-sub-subparagraph 3.d.(I)~~2.d.(I)~~ or sub-sub-subparagraph
4 3.d.(II)~~2.d.(II)~~ in the aggregate which exceeds \$50 million
5 after payment of available plan funds in any calendar year.
6 However, a limited apportionment company shall collect from
7 its policyholders any emergency assessment imposed under
8 sub-sub-subparagraph 3.d.(III)~~2.d.(III)~~. The plan shall
9 provide that, if the department determines that any regular
10 assessment will result in an impairment of the surplus of a
11 limited apportionment company, the department may direct that
12 all or part of such assessment be deferred. However, there
13 shall be no limitation or deferment of an emergency assessment
14 to be collected from policyholders under sub-sub-subparagraph
15 3.d.(III)~~2.d.(III)~~.

16 5.4. The plan shall provide for the deferment, in
17 whole or in part, of a regular assessment of a member insurer
18 under sub-sub-subparagraph 3.d.(I)~~2.d.(I)~~ or
19 sub-sub-subparagraph 3.d.(II)~~2.d.(II)~~, but not for an
20 emergency assessment collected from policyholders under
21 sub-sub-subparagraph 3.d.(III)~~2.d.(III)~~, if, in the opinion
22 of the commissioner, payment of such regular assessment would
23 endanger or impair the solvency of the member insurer. In the
24 event a regular assessment against a member insurer is
25 deferred in whole or in part, the amount by which such
26 assessment is deferred may be assessed against the other
27 member insurers in a manner consistent with the basis for
28 assessments set forth in sub-sub-subparagraph 3.d.(I)~~2.d.(I)~~
29 or sub-sub-subparagraph 3.d.(II)~~2.d.(II)~~.

30 6.5.a. The plan of operation may include deductibles
31 and rules for classification of risks and rate modifications

1 consistent with the objective of providing and maintaining
2 funds sufficient to pay catastrophe losses.

3 b. ~~The association may require arbitration of a rate~~
4 ~~filing under s. 627.062(6).~~ It is the intent of the
5 Legislature that the rates for coverage provided by the
6 association be actuarially sound and not competitive with
7 approved rates charged in the admitted voluntary market such
8 that the association functions as a residual market mechanism
9 to provide insurance only when the insurance cannot be
10 procured in the voluntary market. The plan of operation shall
11 provide a mechanism to assure that, beginning no later than
12 January 1, 1999, the rates charged by the association for each
13 line of business are reflective of approved rates in the
14 voluntary market for hurricane coverage for each line of
15 business in the various areas eligible for association
16 coverage.

17 c. The association shall provide for windstorm
18 coverage on residential properties in limits up to \$10 million
19 for commercial lines residential risks and up to \$1 million
20 for personal lines residential risks. If coverage with the
21 association is sought for a residential risk valued in excess
22 of these limits, coverage shall be available to the risk up to
23 the replacement cost or actual cash value of the property, at
24 the option of the insured, if coverage for the risk cannot be
25 located in the authorized market. The association must accept
26 a commercial lines residential risk with limits above \$10
27 million or a personal lines residential risk with limits above
28 \$1 million if coverage is not available in the authorized
29 market. The association may write coverage above the limits
30 specified in this subparagraph with or without facultative or
31

1 other reinsurance coverage, as the association determines
2 appropriate.

3 d. The plan of operation must provide objective
4 criteria and procedures, approved by the department, to be
5 uniformly applied for all applicants in determining whether an
6 individual risk is so hazardous as to be uninsurable. In
7 making this determination and in establishing the criteria and
8 procedures, the following shall be considered:

9 (I) Whether the likelihood of a loss for the
10 individual risk is substantially higher than for other risks
11 of the same class; and

12 (II) Whether the uncertainty associated with the
13 individual risk is such that an appropriate premium cannot be
14 determined.

15
16 The acceptance or rejection of a risk by the association
17 pursuant to such criteria and procedures must be construed as
18 the private placement of insurance, and the provisions of
19 chapter 120 do not apply.

20 e. The policies issued by the association must provide
21 that if the association obtains an offer from an authorized
22 insurer to cover the risk at its approved rates under either a
23 standard policy including wind coverage or, if consistent with
24 the insurer's underwriting rules as filed with the department,
25 a basic policy including wind coverage, the risk is no longer
26 eligible for coverage through the association. Upon
27 termination of eligibility, the association shall provide
28 written notice to the policyholder and agent of record stating
29 that the association policy must be canceled as of 60 days
30 after the date of the notice because of the offer of coverage
31 from an authorized insurer. Other provisions of the insurance

1 code relating to cancellation and notice of cancellation do
2 not apply to actions under this sub-subparagraph.

3 f. Association policies and applications must include
4 a notice that the association policy could, under this
5 section, be replaced with a policy issued by an authorized
6 insurer that does not provide coverage identical to the
7 coverage provided by the association. The notice shall also
8 specify that acceptance of association coverage creates a
9 conclusive presumption that the applicant or policyholder is
10 aware of this potential.

11 7.6-a. The plan of operation may authorize the
12 formation of a private nonprofit corporation, a private
13 nonprofit unincorporated association, a partnership, a trust,
14 a limited liability company, or a nonprofit mutual company
15 which may be empowered, among other things, to borrow money by
16 issuing bonds or by incurring other indebtedness and to
17 accumulate reserves or funds to be used for the payment of
18 insured catastrophe losses. The plan may authorize all actions
19 necessary to facilitate the issuance of bonds, including the
20 pledging of assessments or other revenues.

21 b. Any entity created under this subsection, or any
22 entity formed for the purposes of this subsection, may sue and
23 be sued, may borrow money; issue bonds, notes, or debt
24 instruments; pledge or sell assessments, market equalization
25 surcharges and other surcharges, rights, premiums, contractual
26 rights, projected recoveries from the Florida Hurricane
27 Catastrophe Fund, other reinsurance recoverables, and other
28 assets as security for such bonds, notes, or debt instruments;
29 enter into any contracts or agreements necessary or proper to
30 accomplish such borrowings; and take other actions necessary
31 to carry out the purposes of this subsection. The association

1 may issue bonds or incur other indebtedness, or have bonds
2 issued on its behalf by a unit of local government pursuant to
3 subparagraph (g)2., in the absence of a hurricane or other
4 weather-related event, upon a determination by the association
5 subject to approval by the department that such action would
6 enable it to efficiently meet the financial obligations of the
7 association and that such financings are reasonably necessary
8 to effectuate the requirements of this subsection. Any such
9 entity may accumulate reserves and retain surpluses as of the
10 end of any association year to provide for the payment of
11 losses incurred by the association during that year or any
12 future year. The association shall incorporate and continue
13 the plan of operation and articles of agreement in effect on
14 the effective date of chapter 76-96, Laws of Florida, to the
15 extent that it is not inconsistent with chapter 76-96, and as
16 subsequently modified consistent with chapter 76-96. The board
17 of directors and officers currently serving shall continue to
18 serve until their successors are duly qualified as provided
19 under the plan. The assets and obligations of the plan in
20 effect immediately prior to the effective date of chapter
21 76-96 shall be construed to be the assets and obligations of
22 the successor plan created herein.

23 c. In recognition of s. 10, Art. I of the State
24 Constitution, prohibiting the impairment of obligations of
25 contracts, it is the intent of the Legislature that no action
26 be taken whose purpose is to impair any bond indenture or
27 financing agreement or any revenue source committed by
28 contract to such bond or other indebtedness issued or incurred
29 by the association or any other entity created under this
30 subsection.

31

1 8.7. On such coverage, an agent's remuneration shall
2 be that amount of money payable to the agent by the terms of
3 his or her contract with the company with which the business
4 is placed. However, no commission will be paid on that portion
5 of the premium which is in excess of the standard premium of
6 that company.

7 9.8. Subject to approval by the department, the
8 association may establish different eligibility requirements
9 and operational procedures for any line or type of coverage
10 for any specified eligible area or portion of an eligible area
11 if the board determines that such changes to the eligibility
12 requirements and operational procedures are justified due to
13 the voluntary market being sufficiently stable and competitive
14 in such area or for such line or type of coverage and that
15 consumers who, in good faith, are unable to obtain insurance
16 through the voluntary market through ordinary methods would
17 continue to have access to coverage from the association. When
18 coverage is sought in connection with a real property
19 transfer, such requirements and procedures shall not provide
20 for an effective date of coverage later than the date of the
21 closing of the transfer as established by the transferor, the
22 transferee, and, if applicable, the lender.

23 10.9. Notwithstanding any other provision of law:

24 a. The pledge or sale of, the lien upon, and the
25 security interest in any rights, revenues, or other assets of
26 the association created or purported to be created pursuant to
27 any financing documents to secure any bonds or other
28 indebtedness of the association shall be and remain valid and
29 enforceable, notwithstanding the commencement of and during
30 the continuation of, and after, any rehabilitation,
31 insolvency, liquidation, bankruptcy, receivership,

1 conservatorship, reorganization, or similar proceeding against
2 the association under the laws of this state or any other
3 applicable laws.

4 b. No such proceeding shall relieve the association of
5 its obligation, or otherwise affect its ability to perform its
6 obligation, to continue to collect, or levy and collect,
7 assessments, market equalization or other surcharges,
8 projected recoveries from the Florida Hurricane Catastrophe
9 Fund, reinsurance recoverables, or any other rights, revenues,
10 or other assets of the association pledged.

11 c. Each such pledge or sale of, lien upon, and
12 security interest in, including the priority of such pledge,
13 lien, or security interest, any such assessments, emergency
14 assessments, market equalization or renewal surcharges,
15 projected recoveries from the Florida Hurricane Catastrophe
16 Fund, reinsurance recoverables, or other rights, revenues, or
17 other assets which are collected, or levied and collected,
18 after the commencement of and during the pendency of or after
19 any such proceeding shall continue unaffected by such
20 proceeding.

21 d. As used in this subsection, the term "financing
22 documents" means any agreement, instrument, or other document
23 now existing or hereafter created evidencing any bonds or
24 other indebtedness of the association or pursuant to which any
25 such bonds or other indebtedness has been or may be issued and
26 pursuant to which any rights, revenues, or other assets of the
27 association are pledged or sold to secure the repayment of
28 such bonds or indebtedness, together with the payment of
29 interest on such bonds or such indebtedness, or the payment of
30 any other obligation of the association related to such bonds
31 or indebtedness.

1 e. Any such pledge or sale of assessments, revenues,
2 contract rights or other rights or assets of the association
3 shall constitute a lien and security interest, or sale, as the
4 case may be, that is immediately effective and attaches to
5 such assessments, revenues, contract, or other rights or
6 assets, whether or not imposed or collected at the time the
7 pledge or sale is made. Any such pledge or sale is effective,
8 valid, binding, and enforceable against the association or
9 other entity making such pledge or sale, and valid and binding
10 against and superior to any competing claims or obligations
11 owed to any other person or entity, including policyholders in
12 this state, asserting rights in any such assessments,
13 revenues, contract, or other rights or assets to the extent
14 set forth in and in accordance with the terms of the pledge or
15 sale contained in the applicable financing documents, whether
16 or not any such person or entity has notice of such pledge or
17 sale and without the need for any physical delivery,
18 recordation, filing, or other action.

19 f. There shall be no liability on the part of, and no
20 cause of action of any nature shall arise against, any member
21 insurer or its agents or employees, agents or employees of the
22 association, members of the board of directors of the
23 association, or the department or its representatives, for any
24 action taken by them in the performance of their duties or
25 responsibilities under this subsection. Such immunity does not
26 apply to actions for breach of any contract or agreement
27 pertaining to insurance, or any willful tort.

28 (c) The provisions of paragraph (b) are applicable
29 only with respect to:

30 1. Those areas that were eligible for coverage under
31 this subsection on April 9, 1993; or

1 2. Any county or area as to which the department,
2 after public hearing, finds that the following criteria exist:

3 a. Due to the lack of windstorm insurance coverage in
4 the county or area so affected, economic growth and
5 development is being deterred or otherwise stifled in such
6 county or area, mortgages are in default, and financial
7 institutions are unable to make loans;

8 b. The county or area so affected has adopted and is
9 enforcing the structural requirements of the State Minimum
10 Building Codes, as defined in s. 553.73, for new construction
11 and has included adequate minimum floor elevation requirements
12 for structures in areas subject to inundation; and

13 c. Extending windstorm insurance coverage to such
14 county or area is consistent with and will implement and
15 further the policies and objectives set forth in applicable
16 state laws, rules, and regulations governing coastal
17 management, coastal construction, comprehensive planning,
18 beach and shore preservation, barrier island preservation,
19 coastal zone protection, and the Coastal Zone Protection Act
20 of 1985.

21
22 Any time after the department has determined that the criteria
23 referred to in this subparagraph do not exist with respect to
24 any county or area of the state, it may, after a subsequent
25 public hearing, declare that such county or area is no longer
26 eligible for windstorm coverage through the plan.

27 (d) For the purpose of evaluating whether the criteria
28 of paragraph (c) are met, such criteria shall be applied as
29 the situation would exist if policies had not been written by
30 the Florida Residential Property and Casualty Joint
31

1 Underwriting Association and property insurance for such
2 policyholders was not available.

3 (e) Notwithstanding the provisions of subparagraph
4 (c)2. or paragraph (d), eligibility shall not be extended to
5 any area that was not eligible on March 1, 1997, except that
6 the department may act with respect to any petition on which a
7 hearing was held prior to the effective date of this act. ~~This~~
8 ~~paragraph is repealed on October 1, 1998.~~

9 (f)1. The association shall afford to all insurers an
10 opportunity to remove packages of policies from the
11 association. Policies shall be packaged by the association
12 with each package of policies to include specified rates,
13 forms, renewal conditions, and method of removal, including
14 whether the removal shall take effect upon policy cancellation
15 by the association or upon association policy expiration, as
16 approved by the department. Each policy shall be written for
17 at least one full annual policy term, using the specified
18 rates and forms. Thereafter, each policy shall be renewed for
19 at least two additional 1-year terms using either the
20 specified rates and forms or the insurer's rates and forms,
21 which forms must provide substantially similar coverage.

22 2. The association may act as an excess-of-loss
23 reinsurer of an insurer withdrawing policies from the
24 association. The coverage provided by the association may be
25 on an occurrence basis or an annual aggregate basis. The term
26 of any such reinsurance may not exceed 12 months plus
27 additional time, if required, for runoff protection. The
28 association may agree to write more than one renewal of the
29 reinsurance contract but may not make any contractual
30 commitment of more than 36 months' total duration. The terms
31 and conditions of the reinsurances written by the association

1 shall generally follow those available to insurers in the
2 commercial market, except that the premium cost of coverage
3 may be less than in the commercial market in recognition of
4 the fact that it is in the association's interests to
5 facilitate the removal of policies from the association by
6 insurers. The association shall appoint a three-member
7 reinsurance advisory committee to analyze all proposed
8 reinsurance transactions and make recommendations to the
9 association. The department shall approve each reinsurance
10 contract entered into by the association after determination
11 that the contract is a reasonable and prudent means by which
12 to depopulate the association.

13 (g)1. Beginning January 1, 2000, every authorized
14 insurer writing residential coverage in this state must accept
15 assignments of policies from the association, as provided in
16 this paragraph.

17 2. Assigned policies shall be written on association
18 forms at association rates. Assignment of a policy shall not
19 affect the producing agent's entitlement to unearned
20 commission. If the policy is assigned to an insurer with which
21 the producing agent has a contract, the producing agent shall
22 retain the business. If the policy is assigned to an insurer
23 that is using the services of a managing general agent, the
24 producing agent is entitled to act as the brokering agent. If
25 the agent is not appointed or offered an appointment with the
26 assuming insurer or not brokering the business with a managing
27 general agent being used by the assuming insurer, the agent
28 shall receive an assignment fee of \$50, payable by the
29 association.

30 3. If an insurer believes that the assignment of risks
31 would result in the insurer's insolvency or impair the

1 insurer's capital and surplus under the respective definitions
2 provided in s. 631.011(9), (10), and (11), and reasonable
3 means to avoid the insolvency or impairment are not available,
4 the insurer may petition the department for deferment or
5 revision, in whole or in part, of the selection and assignment
6 of such risks. The insurer shall bear the burden of proving
7 such resulting insolvency or impairment of capital or surplus.
8 If a deferment or revision of assignment of risks is granted,
9 the insurer shall remain subject to assignment of risks in
10 response to subsequent annual filings.

11 4.a. The association shall identify the commercial
12 lines residential policies and the personal lines residential
13 policies that must be assigned to each insurer. The identified
14 policies may not include any risk located in Monroe County, on
15 a coastal barrier island as defined in s. 161.54, or seaward
16 of the intracoastal waterway. The selection and subsequent
17 assignment shall be coordinated by the association among the
18 various insurers by allocating the distribution of the removed
19 policies among such insurers in such a manner as to limit
20 adverse solvency consequences, to avoid excess concentration
21 of policies in any one area with respect to the insurer's
22 personal lines residential coverage book of business, to take
23 into account the characteristics of risks underwritten in the
24 voluntary market by the assigned insurer and to attempt to
25 match assigned risks as closely as possible to the insurer's
26 expertise, and to take into account variations in the market
27 value of the assigned risks. The association shall provide for
28 credits to insurers for removing policies pursuant to
29 paragraph (f) with respect to assignments made pursuant to
30 this paragraph.

31

1 b. If the nonwind property coverage for a risk
2 assigned is underwritten by a surplus lines insurer, an offer
3 to underwrite such coverage by the insurer to which the wind
4 coverage is assigned shall preclude renewal by the surplus
5 lines insurer, as the risk shall no longer be eligible for
6 export.

7 c. The initial selection of policies to be assigned
8 shall be accomplished no later than January 1, 2000, and the
9 actual assignment shall be accomplished no later than July 1,
10 2000. However, the failure of the association to meet the July
11 1, 2000, deadline shall not constitute a defense to acceptance
12 of the assignment by the insurer. The assignments shall be
13 made to each insurer such that each insurer's share of the
14 total property exposure assigned is approximately equal to
15 such insurer's proportional share of net direct premium for
16 the second year preceding the assignment as set forth in
17 sub-sub-subparagraph (b)4.a.(I), less any credits. Sequential
18 rounds of assignments shall be made to each insurer at such
19 insurer's proportional share until all policies that are
20 subject to assignment have been assigned.

21 d. If more than one insurer within an insurer group is
22 authorized to write residential coverage in this state,
23 insurers in the group receiving the assignments may cede the
24 assignments among authorized members of the group as the group
25 desires so long as the assuming insurer meets all statutory
26 requirements with respect to solvency, the cession will not
27 adversely affect the interests of the policyholders to be
28 placed, and the ceding insurer retains liability for losses on
29 the policies if the assuming insurer is unable to meet its
30 obligations under the policies.

31

1 e. Groups of insurers not under common ownership or
2 management may form a limited assignment distribution
3 arrangement.

4 f. No insurer receiving assignments under this
5 paragraph shall be eligible for any association assessment
6 credits or bonuses authorized under this paragraph or under s.
7 627.3511 with respect to assigned policies.

8 5. Each insurer with which policies are assigned must
9 assume each policy for the duration of the policy's term, at
10 association rates on association forms, and must renew each
11 policy for at least one additional 1-year term, using
12 association rates and forms, unless canceled by the insurer
13 for a lawful reason other than reduction of hurricane exposure
14 or unless nonrenewed by the policyholder. Thereafter, the
15 policy shall be renewed for at least two 1-year terms at
16 association rates and on association forms, or at the
17 insurer's rates, which rates shall be no greater than the
18 association rates, and on its forms, which forms shall include
19 substantially similar terms. Nothing in this subparagraph
20 shall preclude an insurer from offering an assigned
21 policyholder coverage for nonwind perils. If such offer is
22 accepted, the insurer may satisfy its assignment obligations
23 with regard to that risk by writing all perils coverage at
24 such insurer's approved rates and on its approved forms. For
25 each assigned policy canceled or nonrenewed by the insurer for
26 any reason during the coverage period required by this
27 paragraph, the insurer shall accept from the association, if
28 available, one additional policy covering a risk similar to
29 the risk covered by the canceled or nonrenewed policy.

30 6. If an insurer fails to accept the residential
31 policies selected by the association, the failure shall be

1 treated as a willful violation of the Florida Insurance Code.
2 Each policy refused or rejected by an insurer shall constitute
3 a separate violation.

4 7. For the purposes of this paragraph:

5 a. "Residential coverage" has the same meaning as
6 provided in s. 627.4025.

7 b. "Insurer" means an insurer, other than a joint
8 underwriting association, authorized to write property and
9 casualty insurance in this state; however, if the insurer is a
10 member of an insurer group of which more than one member is
11 authorized to write property and casualty insurance in this
12 state, "insurer" means all authorized members of the group,
13 collectively or individually as the group elects, which
14 election shall be indicated in the reports required under this
15 section, and once made, shall not be changed for the calendar
16 year, binding the group by such election. As used in this
17 subsection, "insurer group" means the insurer group required
18 to be reported in the holding company registration statement
19 as provided in s. 628.801 and rules adopted under that
20 section.

21 8.a. The department may adopt rules to implement the
22 provisions of this subsection. In adopting such rules, the
23 department may adopt any reasonable methods to accomplish the
24 essential purpose of this subsection, which is to depopulate
25 the association of residential risks through voluntary writing
26 and by requiring insurers to accept assignments of policies
27 from the association. The rules may provide for the method of
28 assignment, including take-outs, assumptions, and other
29 methods as appropriate and alternative methods of selection
30 and assignment directed to limiting adverse solvency
31 consequences to affected insurers.

1 b. The department may require the revision or
2 amendment of the association's plan of operation or bylaws as
3 necessary to implement this section or to accomplish the
4 section's purpose.

5 c. The department may require the revision or
6 amendment of the plan of operation or bylaws of the market
7 assistance plan, established under s. 627.3515, if any, as
8 necessary to implement this section or to accomplish the
9 purpose of this section.

10 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
11 UNDERWRITING ASSOCIATION.--

12 (d)1. It is the intent of the Legislature that the
13 rates for coverage provided by the association be actuarially
14 sound and not competitive with approved rates charged in the
15 admitted voluntary market, so that the association functions
16 as a residual market mechanism to provide insurance only when
17 the insurance cannot be procured in the voluntary market.
18 Rates shall include an appropriate catastrophe loading factor
19 that reflects the actual catastrophic exposure of the
20 association and recognizes that the association has little or
21 no capital or surplus; and the association shall carefully
22 review each rate filing to assure that provider compensation
23 is not excessive.

24 2. For each county, the average rates of the
25 association for each line of business for personal lines
26 residential policies shall be no lower than the average rates
27 charged by the insurer that had the highest average rate in
28 that county among the 20 insurers with the greatest total
29 direct written premium in the state for that line of business
30 in the preceding year, except that with respect to mobile home
31 coverages, the average rates of the association shall be no

1 lower than the average rates charged by the insurer that had
2 the highest average rate in that county among the 5 insurers
3 with the greatest total written premium for mobile home
4 owner's policies in the state in the preceding year.

5 3. Rates for commercial residential coverage shall not
6 be subject to the requirements of subparagraph 2., but shall
7 be subject to all other requirements of this paragraph and s.
8 627.062.

9 4. Nothing in this paragraph shall require or allow
10 the association to adopt a rate that is inadequate under s.
11 627.062 or to reduce rates approved under s. 627.062.

12 5. ~~The association may require arbitration of a filing~~
13 ~~pursuant to s. 627.062(6).~~Rate filings of the association
14 under this paragraph shall be made on a use and file basis
15 under s. 627.062(2)(a)2. The association shall make a rate
16 filing at least once a year, but no more often than quarterly.

17 (o) The association shall afford to all insurers an
18 opportunity to remove packages of policies from the
19 association. Policies shall be packaged by the association
20 with each package of policies to include specified rates,
21 forms, and method of removal, including whether the removal
22 shall take effect upon policy cancellation by the association
23 or upon association policy expiration, as approved by the
24 department. Each policy shall be written for at least one full
25 annual policy term using the specified rates and forms.
26 Thereafter, each policy shall be renewed for at least two
27 additional 1-year terms either using the specified rates and
28 forms or the insurer's rates and forms, which forms must
29 provide substantially similar coverage.

30 (p) Prior to January 1, 1999, the FAIR Plan
31 established under s. 627.3518 shall analyze policies insured

1 by the association and designate those policies for removal by
2 the FAIR Plan. Policies designated by the FAIR Plan shall
3 remain eligible for takeout by any method provided in this
4 paragraph or s. 627.3511 until removed by the FAIR Plan. All
5 designated policies remaining in the association on July 1,
6 1999, shall be removed by the FAIR Plan and upon removal shall
7 be underwritten by the FAIR Plan in such a manner as to avoid
8 any coverage gap. The association shall pay to the FAIR Plan
9 all unearned premium for the policies removed. The designated
10 policies shall be those policies that cover substandard or
11 low-value risks determined by the FAIR Plan to be eligible for
12 coverage under its plan of operation.

13 (g)1. Beginning on January 1, 1999, every authorized
14 insurer writing residential coverage in this state must accept
15 assignments of policies from the association, as provided in
16 this paragraph. The assigned policies shall not include
17 policies designated for removal by the FAIR Plan.

18 2. Assigned policies shall be written on association
19 forms at association base rates. Assignment of a policy shall
20 not affect the producing agent's entitlement to unearned
21 commission. If the policy is assigned to an insurer with which
22 the producing agent has a contract, the producing agent shall
23 retain the business. If the policy is assigned to an insurer
24 that is using the services of a managing general agent, the
25 producing agent is entitled to act as the brokering agent. If
26 the agent is not appointed or offered an appointment with the
27 assuming insurer or not brokering the business with a managing
28 general agent being used by the assuming insurer, the agent
29 shall receive an assignment fee of \$50, payable by the
30 association.

31

1 3. If an insurer believes that the assignment of risks
2 would result in the insurer's insolvency or impair the
3 insurer's capital and surplus under the respective definitions
4 provided in s. 631.011(9), (10), and (11), and reasonable
5 means to avoid the insolvency or impairment are not available,
6 the insurer may petition the department for deferment or
7 revision, in whole or in part, of the selection and assignment
8 of such risks. The insurer shall bear the burden of proving
9 such resultant insolvency or impairment of capital and
10 surplus. If a deferment or revision of assignment of risks is
11 granted, the insurer shall remain subject to assignment of
12 risks in response to subsequent annual filings.

13 4.a. The association shall select the policies that
14 must be assigned to each insurer. The selection and subsequent
15 assignment shall be coordinated by the association among the
16 various insurers by allocating the distribution of the removed
17 policies among such insurers in such a manner as to limit
18 adverse solvency consequences, to avoid excess concentration
19 of policies in any one area with respect to the insurer's
20 personal lines residential coverage book of business, to take
21 into account the characteristics of risks underwritten in the
22 voluntary market by the assigned insurer and to attempt to
23 match assigned risks as closely as possible to the insurer's
24 expertise, and to take into account variations in the market
25 value of the assigned risks. The association shall provide for
26 credits to insurers for removing policies pursuant to
27 paragraph (o) with respect to assignments made pursuant to
28 this paragraph.

29 b. The initial selection of policies to be assigned
30 shall be accomplished by January 1, 1999, or as soon
31 thereafter as reasonably possible. The actual assignments

1 shall be accomplished no later than July 1, 1999. However, the
2 failure of the association to meet the July 1, 1999, deadline
3 shall not constitute a defense to acceptance of the assignment
4 by the insurer. Assignments shall continue until there are no
5 policies with the association. The assignments shall be made
6 to each insurer such that each insurer's share of the total
7 property exposure assigned is approximately equal to such
8 insurer's proportional share of direct written premium as
9 provided in sub-subparagraph (b)3.c. Sequential rounds of
10 assignments shall be made to each insurer at such insurer's
11 proportional share until all policies that are subject to
12 assignment have been assigned.

13 c. If more than one insurer within an insurer group is
14 authorized to write residential coverage in this state,
15 insurers in the group receiving the assignments may cede the
16 assignments among authorized members of the group as the group
17 desires so long as the assuming insurer meets all statutory
18 requirements with respect to solvency, the cession will not
19 adversely affect the interests of the policyholders to be
20 placed, and the ceding insurer retains liability for losses on
21 the policies if the assuming insurer is unable to meet its
22 obligations under the policies.

23 d. Groups of insurers not under common ownership or
24 management may form a limited assignment distribution
25 arrangement.

26 e. No insurer receiving assignments under this
27 paragraph shall be eligible for association assessment credits
28 or bonuses authorized under this subsection or under s.
29 627.3511 with respect to assigned policies.

30 5. Each insurer with which policies are assigned must
31 assume each policy for the duration of the policy's term, at

1 association rates on association forms, and must renew each
2 policy for at least one additional 1-year term using
3 association rates and forms, unless canceled by the insurer
4 for a lawful reason other than reduction of hurricane exposure
5 or unless nonrenewed by the policyholder. Thereafter, the
6 policy shall be renewed for at least two 1-year terms at
7 association rates and on association forms, or at the
8 insurer's rates, which rates shall be no greater than the
9 association rates, and on the insurer's forms, which forms
10 shall include substantially similar terms. For each assigned
11 policy canceled or nonrenewed by the insurer for any reason
12 during the coverage period required by this paragraph, the
13 insurer shall accept from the association, if available, one
14 additional policy covering a risk similar to the risk covered
15 by the canceled or nonrenewed policy.

16 6. If an insurer fails to accept the personal lines
17 residential policies selected by the association, the failure
18 shall be treated as a willful violation of the Florida
19 Insurance Code. Each policy refused or rejected by an insurer
20 shall constitute a separate violation.

21 7. For the purposes of this paragraph:

22 a. "Residential coverage" has the same meaning
23 provided in s. 627.4025.

24 b. "Insurer" means an insurer, other than a joint
25 underwriting association, authorized to write property and
26 casualty insurance in this state; however, if the insurer is a
27 member of an insurer group of which more than one member is
28 authorized to write property and casualty insurance in this
29 state, "insurer" means all authorized members of the group,
30 collectively or individually as the group elects, which
31 election shall be indicated in the reports required under this

1 section, and once made, shall not be changed for the reporting
2 year, binding the group by such election. As used in this
3 section, "insurer group" means the insurer group required to
4 be reported in the holding company registration statement as
5 provided in s. 628.801 and rules adopted under that section.

6 8.a. The department may adopt rules to implement the
7 provisions of this subsection. In adopting the rules, the
8 department may adopt any reasonable methods to accomplish the
9 essential purpose of this section, which is to depopulate the
10 association of personal lines residential risks through
11 voluntary writings and by requiring insurers to accept
12 assignments of policies from the association. The rules may
13 provide for the method of assignment, including take-outs,
14 assumptions, and other methods as appropriate and alternative
15 methods of selection and assignment directed to limiting
16 adverse solvency consequences to affected insurers.

17 b. The department may require the revision or
18 amendment of the association's plan of operation or bylaws as
19 necessary to implement this section or to accomplish the
20 section's purpose.

21 c. The department may require the revision or
22 amendment of the plan of operation or bylaws of the market
23 assistance plan established under s. 627.3515, if any, as
24 necessary to implement this section or to accomplish the
25 section's purpose.

26 9. The plan of the association shall provide for a
27 method whereby insurers who voluntarily assume policies from
28 the association may receive a reduction in the number of
29 assignments such insurers would otherwise receive from the
30 association. Nothing in this subparagraph shall preclude the
31 incorporation into the plan of other incentives to encourage

1 voluntary writings of residential property insurance which
2 have a high windstorm or hurricane risk.

3 Section 7. Paragraph (b) of subsection (1) and
4 subsection (5) of section 627.3513, Florida Statutes, are
5 amended to read:

6 627.3513 Standards for sale of bonds by underwriting
7 associations.--

8 (1)

9 (b) "Association" or "associations," for purposes of
10 this section, means the Florida Windstorm Underwriting
11 Association and the Residential Property and Casualty Joint
12 Underwriting Association as established pursuant to s.
13 627.351(2) and (6), the FAIR Plan established under s.
14 627.3518, and any corporation or other entity established
15 pursuant to those subsections.

16 (5) This section is not intended to restrict or
17 prohibit the employment of professional services relating to
18 bonds issued under s. 627.351(2) or (6) or s. 627.3518 or the
19 issuance of bonds by the associations.

20 Section 8. Section 627.3515, Florida Statutes, is
21 amended to read:

22 627.3515 Market assistance plan; property and casualty
23 risks.--

24 (1)(a) The department shall adopt a market assistance
25 plan to assist in the placement of risks of applicants who are
26 unable to procure property insurance as defined in s. 624.604,
27 ~~or~~ casualty insurance as defined in s. 624.605(1)(b), (e),
28 (f), (g), or (h), or residential coverage as described in s.
29 627.4025 from authorized insurers when such insurance is
30 otherwise generally available from insurers authorized to
31 transact and actually writing that kind and class of insurance

1 in this state. Through such measures as are found appropriate
2 by the board of governors, the market assistance plan shall
3 take affirmative steps to assist in the removal from the
4 Residential Property and Casualty Joint Underwriting
5 Association established under s. 627.351, the Florida
6 Windstorm Underwriting Association established under s.
7 627.351, and the FAIR Plan established under s. 627.3518 any
8 risk that can be placed in the voluntary market. All property
9 and casualty insurers licensed in this state shall participate
10 in the plan.

11 (b) The market assistance plan shall actively assist
12 the Florida Windstorm Underwriting Association, the
13 Residential Property and Casualty Joint Underwriting
14 Association, and the FAIR Plan with respect to depopulation or
15 policy take-outs or assumptions by authorized insurers from
16 those associations and, to that end, the market assistance
17 plan, the Florida Windstorm Underwriting Association, the
18 Residential Property and Casualty Joint Underwriting
19 Association, and the FAIR Plan shall work together, cooperate,
20 and coordinate depopulation or policy removal efforts.

21 (c)1. The market assistance plan shall analyze the
22 residential risks insured by the Florida Windstorm
23 Underwriting Association on an ongoing basis. The analysis
24 shall include, but not be limited to:

25 a. A review of whether the underlying insurer is an
26 authorized insurer or an eligible surplus lines insurer.

27 b. The location of the risk.

28 c. The characteristics of the risk, such as
29 substandard conditions, including conditions relating to
30 construction, heating, wiring, evidence of previous fires, or
31 general deterioration.

1 d. Housekeeping factors that affect insurability, such
2 as vacancy, overcrowding, and storage of rubbish or flammable
3 materials.

4 e. Other specific factors of ownership, condition,
5 occupancy, or maintenance which violate public policy and
6 result in unreasonable exposure to loss.

7 f. Hurricane risk factors, including geographic
8 factors that result in high risk of hurricane loss exposure.

9 2. The purposes of the analysis shall be:

10 a. To develop a plan to identify risks that are likely
11 to be insurable in the authorized market.

12 b. To package such risks for removal or take-out from
13 the Florida Windstorm Underwriting Association.

14 c. To obtain a better overall view of the legitimate
15 factors that make a risk uninsurable or difficult to place on
16 the authorized market.

17 3. Beginning 90 days after the effective date of this
18 act, the market assistance plan shall provide to the
19 department quarterly reports reflecting the ongoing risk
20 analysis, with a final report prior to January 1, 2000. The
21 reports shall include recommendations to enhance policy
22 removal and takeouts and may include legislative
23 recommendations. The analysis may be conducted by a
24 consultant.

25 (d) Beginning on July 1, 1999, the market assistance
26 plan shall begin placement of residential coverage risks
27 unable to procure coverage in the voluntary market through
28 assignment or placement with the FAIR Plan, as appropriate.
29 Every authorized insurer writing residential coverage in this
30 state shall accept assignments of policies from the market
31 assistance plan, as follows:

1 1. No risk shall be placed with the FAIR Plan without
2 first being reviewed by the market assistance plan. In
3 reviewing the risk, the market assistance plan shall identify
4 those risks that may be eligible for placement with the FAIR
5 Plan, which risks shall be forwarded to the FAIR Plan. All
6 other residential coverage risks, except those that do not
7 meet the minimum underwriting standards of the FAIR Plan,
8 shall be assigned by the market assistance plan. The FAIR Plan
9 shall underwrite the risks forwarded by the market assistance
10 plan and may reject risks that the Plan determines are
11 ineligible for coverage either because such risks do not meet,
12 or because such risks exceed, underwriting standards.

13 2. Assigned policies shall be written on forms and at
14 rates filed by the market assistance plan with, and approved
15 by, the department, pursuant to ss. 627.062, 627.0629,
16 627.410, and 627.411, and for such purpose the market
17 assistance plan may file forms and rates for use by assigned
18 insurers. The market assistance plan may contract with a
19 rating organization, licensed pursuant to s. 627.221, to
20 compile data and file rates in accordance with this
21 subparagraph. The initial rates and forms of the market
22 assistance plan shall be those approved for use by the
23 Residential Property and Casualty Joint Underwriting
24 Association as of July 1, 1999. The assignments shall be
25 provided for in the plan and shall be made on a continuing
26 rotating basis to each insurer such that each insurer's share
27 of the total property exposure assignment is approximately
28 equal to such insurer's proportional share of net direct
29 written premium for residential property insurance issued in
30 this state for the preceding year as that share bears to the
31 aggregate statewide direct written premium for residential

1 property insurance written in this state for that year for all
2 insurers subject to the assignments.

3 3. If an insurer believes that the assignment of risks
4 would result in the insurer's insolvency or impair the
5 insurer's capital and surplus under the respective definitions
6 provided in s. 631.011(9), (10), and (11), the insurer may
7 petition the department for deferment or revision, in whole or
8 in part, of the selection and assignment of such risks. The
9 insurer shall bear the burden of proving such resulting
10 insolvency or impairment of capital or surplus. If a deferment
11 or revision of assignment of risks is granted, the insurer
12 shall remain subject to assignment of risks in response to
13 subsequent annual filings.

14 4.a. The market assistance plan shall identify the
15 commercial lines residential policies and the personal lines
16 residential policies that must be assigned to each insurer.
17 The identified policies shall not include wind coverage for
18 any risk located in any
19 Florida-Windstorm-Underwriting-Association-eligible area, and
20 any such risk shall be forwarded to the Florida Windstorm
21 Underwriting Association for wind coverage and assigned for
22 all other covered perils. The identified policies shall not
23 include any policy covering a substandard or low-value risk
24 eligible for placement with the FAIR Plan established under s.
25 627.3518. The selection and subsequent assignment shall be
26 coordinated by the market assistance plan among the various
27 insurers by allocating the distribution of the removed
28 policies among such insurers in such a manner as to limit
29 adverse solvency consequences, to avoid excess concentration
30 of policies in any one area with respect to the insurer's
31 residential coverage book of business, to take into account

1 the characteristics of risks underwritten in the voluntary
2 market by the assigned insurer and to attempt to match
3 assigned risks as closely as possible to the insurer's
4 expertise, and to take into account variations in the market
5 value of the assigned risks.

6 b. If more than one insurer within an insurer group is
7 to write residential coverage in this state, insurers in the
8 group receiving the assignments may cede the assignments among
9 authorized members of the group as the group desires so long
10 as the assuming insurer meets all statutory requirements with
11 respect to solvency, the cession will not adversely affect the
12 interests of the policyholders to be placed, and the ceding
13 insurer retains liability for losses on the policies if the
14 assuming insurer is unable to meet its obligations under the
15 policies.

16 c. No insurer receiving assignments under this
17 paragraph shall be eligible for any assessment credits or
18 bonuses authorized under s. 627.3511 with respect to assigned
19 policies.

20 5. Each insurer with assigned policies must renew each
21 policy at rates and on forms specified by the market
22 assistance plan for at least three additional 1-year terms,
23 unless canceled by the insurer for a lawful reason other than
24 reduction of hurricane exposure or unless nonrenewed by the
25 policyholder. For each assigned policy canceled or nonrenewed
26 by the insurer for any reason during the coverage period
27 required by this paragraph, the insurer shall accept from the
28 market assistance plan, if available, one additional policy
29 covering a risk similar to the risk covered by the canceled or
30 nonrenewed policy.

31

1 6. If an insurer fails to accept the residential
2 policies selected by the market assistance plan, the failure
3 shall be treated as a willful violation of the Florida
4 Insurance Code. Each policy refused or rejected by an insurer
5 shall constitute a separate violation.

6 7. For the purposes of this paragraph and paragraphs
7 (b) and (c):

8 a. "Residential coverage" has the same meaning
9 provided in s. 627.4025.

10 b. "Insurer" means an insurer, other than a joint
11 underwriting association, authorized to write residential
12 coverage insurance in this state; however, if the insurer is a
13 member of an insurer group of which more than one member is
14 authorized to write residential coverage insurance in this
15 state, "insurer" means all authorized members of the group,
16 collectively or individually as the group elects, which
17 election shall be indicated in the reports required under this
18 section, and once made, shall not be changed for the calendar
19 year, binding the group by such election. As used in this
20 section, "insurer group" means the insurer group required to
21 be reported in the holding company registration statement as
22 provided in s. 628.801 and rules adopted under that section.

23 8.a. The department may adopt rules to implement the
24 provisions of this subsection. In adopting the rules, the
25 department may adopt any reasonable methods to accomplish the
26 essential purpose of this subsection, which is to properly
27 distribute insurable risks within the voluntary market and
28 substandard or low-value risks to the FAIR Plan. The rules may
29 provide for the method of assignment, including limiting
30 adverse solvency consequences to affected insurers.

31

1 b. The department may require the revision or
2 amendment of the market assistance plan's plan of operation or
3 bylaws as necessary to implement this section or to accomplish
4 the section's purpose.

5 9. Groups of insurers not under common ownership or
6 management may form a limited assignment distribution
7 arrangement whereby one or more members of the arrangement
8 write assigned risk business on behalf of the members of the
9 arrangement in return for consideration from the other
10 participating insurers for not writing the business.

11 (2)(a) Each person serving as a member of the board of
12 governors of the Residential Property and Casualty Joint
13 Underwriting Association shall also serve as a member of the
14 board of governors of the market assistance plan.

15 (b) The plan shall be funded through payments from the
16 Residential Property and Casualty Joint Underwriting
17 Association and annual assessments of residential property
18 insurers in the amount of \$450. After July 1, 1999, the
19 plan-funding obligations of the Residential Property and
20 Casualty Joint Underwriting Association shall be transferred
21 to the FAIR Plan.

22 (c) The plan is not required to assist in the
23 placement of any workers' compensation, employer's liability,
24 malpractice, or motor vehicle insurance coverage.

25 Section 9. Section 627.3516, Florida Statutes, is
26 amended to read:

27 627.3516 Residential property insurance market
28 coordinating council.--The Florida Windstorm Underwriting
29 Association,~~and~~ the Residential Property and Casualty Joint
30 Underwriting Association, while in existence, the FAIR Plan,
31 after being established, and the market assistance plan shall

1 create a residual property insurance market coordinating
2 council to assure that each association is informed of the
3 activities and plans of the other. The coordinating council
4 shall consist of the insurance consumer advocate, who shall
5 chair the council, the executive director of each of the
6 associations, and the chair of the governing board of each of
7 the associations. The coordinating council may, from time to
8 time, recommend to the Insurance Commissioner ~~presiding~~
9 ~~officers of the Legislature~~ proposals to improve coordination
10 between the associations or eliminate unnecessary duplication
11 of efforts; however, any such recommendation must also include
12 an analysis of the impact of the recommendation on the
13 financial arrangements of each association and on the state's
14 efforts to restore the voluntary property insurance market.
15 The coordinating council shall, on March 1 of each year,
16 provide a report of its activities during the preceding year
17 to the Insurance Commissioner ~~presiding officers of the~~
18 ~~Legislature~~.

19 Section 10. Section 627.3518, Florida Statutes, is
20 created read:

21 627.3518 Fair Access to Insurance Requirements (FAIR)
22 Plan.--

23 (1) PURPOSES.--

24 (a) The purpose of this section is to assure, by
25 establishment of a plan to ensure fair access to insurance
26 requirements, the availability of residential property
27 insurance for risks that are owner-occupied, low-value, and
28 high-hazard, and that are unable to obtain residential
29 property insurance in the authorized market due to the
30 condition of the property, the structural soundness of the
31

1 property, or other matters relating to the condition of the
2 home, other than risk of loss due to hurricane damage.

3 (b) The purpose of this section is also to authorize
4 the plan to act as a facilitator in assisting in the upgrading
5 of owner-occupied, low-value, high-hazard residential property
6 and in obtaining necessary resources to accomplish the
7 purposes of this section. To this end the association shall
8 cooperate with state and local government as well as financial
9 institutions, nonprofit foundations, and other entities.

10 (2) DEFINITIONS.--For purposes of this section, unless
11 the provision of this section or the context otherwise
12 requires:

13 (a) "Association" means the FAIR Plan Association
14 created under subsection (3) to assist eligible persons in
15 securing residential insurance coverage.

16 (b) "High hazard" means a residential coverage risk
17 that presents a greater hazard of risk than a typical
18 residential property due to:

- 19 1. The physical condition of the property;
- 20 2. A building code violation;
- 21 3. Construction under an antiquated building code or a
22 former construction not meeting current building codes;
- 23 4. Deteriorated or improper wiring; or
- 24 5. The present condition of the residential property
25 as to housekeeping, including, but not limited to,
26 overcrowding or storage of rubbish or flammable materials.

27
28 The term "high-hazard" does not include hazard relating to
29 hurricane or windstorm factors.

30 (c) "Residential coverage" means personal lines
31 residential coverage as provided in s. 627.4025.

1 (d) "Net direct written premium" means gross direct
2 premiums charged with respect to property in this state on all
3 policies of residential coverage including the residential
4 coverage premium components of all multi-peril policies, less
5 return premiums, dividends paid or credited to policyholders,
6 or the unused or unabsorbed portions of premium deposits.

7 (e) "Insurer" or "member insurer" means an authorized
8 insurer, as defined by s. 624.09, as to residential coverage
9 in this state.

10 (3) FAIR Plan Association; membership.--

11 (a) The FAIR Plan Association is hereby created. The
12 association shall operate under the supervision and approval
13 of a board of governors consisting of 15 individuals,
14 including one who is elected as chairperson. The board shall
15 be established under the direction of the department on or
16 before July 1, 1998, and shall consist of the insurance
17 consumer advocate appointed under s. 627.0613 and 14 members
18 appointed by the Insurance Commissioner, consisting of:

19 1. Four consumer representatives, two of whom must be
20 individuals who are minority persons as defined in s.
21 288.703(3), and one of whom shall have expertise in the field
22 of mortgage lending.

23 2. Two representatives of the insurance industry, at
24 least one of whom must be an individual who is a minority
25 person as defined in s. 288.703(3).

26 3. Three representatives of the member insurers, two
27 of whom shall be representatives of insurers with expertise in
28 the underwriting of low-value residential coverage.

29 4. One member who is a representative of residential
30 property and casualty insurance agents.

31

1 5. Two individuals representing nonprofit
2 organizations involved in assistance to low-income persons.

3 6. Two individuals who are experts with respect to
4 residential building codes used in this state.

5 (b)1. Each insurer, as a condition of authority to
6 transact insurance with respect to residential coverage in
7 this state, shall participate in the association in accordance
8 with this section and an approved plan of operation. A member
9 insurer's participation shall begin on the first day of the
10 calendar year following the year in which the member was
11 issued a certificate of authority to transact insurance for
12 residential coverage lines of business in this state and shall
13 terminate one year after the end of the first calendar year
14 during which the member no longer holds such certificate.

15 2. To the extent necessary to secure funds for payment
16 of covered claims and also to pay reasonable costs to
17 administer such payments and other costs and expenses of the
18 association, including, but not limited to, those relating to
19 association debts, letters of credit, bonds, and the funding
20 of the market assistance plan pursuant to s. 627.3515(2)(b),
21 the department, upon certification of the board, shall levy
22 assessments in the proportion that each insurer's net direct
23 written premiums in this state bears to the total of such net
24 direct written premiums received in this state by all such
25 insurers for the preceding calendar year. Assessments shall be
26 remitted to and administered by the board in the manner
27 specified by the approved plan of operation. Each insurer so
28 assessed shall have at least 30 days' written notice as to the
29 date the assessment is due and payable. Each assessment shall
30 be made as a uniform percentage applicable to the net direct
31 written premiums of each insurer. Assessments levied against

1 any insurer shall not exceed in a single year more than 2
2 percent of that insurer's net direct written premiums in this
3 state during the calendar year next preceding the date of such
4 assessments. The board shall certify to the department the
5 need for annual assessments as to a particular calendar year
6 and any startup or interim assessments that the board deems to
7 be necessary to sustain operations as to a particular year,
8 pending the receipt of annual assessments. Upon verification,
9 the department shall approve such certification, and the board
10 shall levy such annual, startup, or interim assessments. The
11 board shall take all reasonable and prudent steps necessary to
12 collect the amount of assessment due from each member insurer,
13 including, if prudent, filing suit to collect such assessment.
14 If the board is unable to collect an assessment from any
15 member insurer, the uncollected assessments shall be levied as
16 an additional assessment against the participating member
17 insurers and any member insurer required to pay an additional
18 assessment as a result of such failure to pay shall have a
19 cause of action against such nonpaying member insurer.

20 3. If sufficient funds from such assessments, together
21 with funds previously raised, are not available in any year to
22 make all the payments or reimbursements owing to insurers for
23 such year, the funds available shall be prorated and the
24 unpaid portion shall be paid as soon thereafter as funds
25 become available. The costs of forming the board and
26 establishing a plan of operation shall be borne by the
27 Residential Property and Casualty Joint Underwriting
28 Association.

29 4. Assessments shall be included as an appropriate
30 factor in the making of rates.

31

1 5. Except as otherwise provided, no state funds of any
2 kind shall be allocated or paid to such association or any
3 account of the association.

4 6.a.(I) In addition to assessments otherwise
5 authorized in subparagraph 2., as a temporary measure related
6 to costs and expenses caused by a catastrophic event, and to
7 the extent necessary to secure the funds necessary to pay or
8 to retire indebtedness, including, without limitation, the
9 principal, redemption premium, if any, and interest on, and
10 related costs of issuance of, bonds issued under s. 125.013 or
11 s. 166.111 or otherwise, and the funding of any reserves and
12 other payments required under the bond resolution or trust
13 indenture pursuant to which such bonds have been issued, the
14 department, upon certification by the board, shall levy
15 additional assessments upon insurers holding a certificate of
16 authority. The assessments payable under this
17 sub-sub-subparagraph by any insurer shall not exceed in any
18 year more than 2 percent of that insurer's direct written
19 premiums, net of refunds, in this state during the preceding
20 calendar year.

21 (II) The governing body of any unit of local
22 government, any residents of which are insured by the
23 association, may issue bonds, as defined in s. 125.013 or s.
24 166.101, from time to time to fund an assistance program, in
25 conjunction with the association, for the purpose of defraying
26 deficits of the association. In order to avoid needless and
27 indiscriminate proliferation, duplication, and fragmentation
28 of such assistance programs, any such unit of local government
29 may provide for the payment of losses, regardless of whether
30 or not the losses occurred within or outside of the
31 territorial jurisdiction of the local government. Revenue

1 bonds may not be issued until validated pursuant to chapter
2 75, unless a state of emergency is declared by executive order
3 or proclamation of the Governor pursuant to s. 252.36 making
4 such findings as are necessary to determine that it is in the
5 best interests of, and necessary for, the protection of the
6 public health, safety, and general welfare of residents of
7 this state and the protection and preservation of the economic
8 stability of insurers operating in this state, and declaring
9 it an essential public purpose to permit certain
10 municipalities or counties to issue such bonds as will permit
11 relief to claimants and policyholders of the joint
12 underwriting association and insurers responsible for
13 apportionment of association losses. Any such unit of local
14 government may enter into such contracts with the association
15 and with any other entity created pursuant to this subsection
16 as are necessary to implement this sub-sub-subparagraph. Any
17 bonds issued under this sub-sub-subparagraph shall be payable
18 from and secured by moneys received by the association from
19 assessments under this subparagraph and assigned and pledged
20 to or on behalf of the unit of local government for the
21 benefit of the holders of such bonds. The funds, credit,
22 property, and taxing power of the state or of the unit of
23 local government shall not be pledged for the payment of such
24 bonds. If any of the bonds remain unsold 60 days after
25 issuance, the department shall require all insurers subject to
26 assessment to purchase the bonds, which shall be treated as
27 admitted assets. Each insurer shall be required to purchase
28 that percentage of the unsold portion of the bond issue that
29 equals the insurer's relative share of assessment liability
30 under this subparagraph. An insurer shall not be required to
31 purchase the bonds to the extent that the department

1 determines that the purchase would endanger or impair the
2 solvency of the insurer.

3 (III) Any assessments authorized under this
4 subparagraph shall be levied by the department upon insurers,
5 upon certification by the board as to the need for such
6 assessments, in each year that bonds are outstanding, in such
7 amounts up to the 2 percent limit as required in order to
8 provide for the full and timely payment of the principal of,
9 redemption premium, if any, and interest on, such bonds and
10 any related costs of issuing such bonds. The assessments
11 provided for in this subparagraph are hereby assigned and
12 pledged to any bond agent, for the benefit of the holders of
13 such bonds, in order to enable the bond agent to provide for
14 the payment of the principal of, redemption premium, if any,
15 and interest on such bonds, the cost of issuing such bonds,
16 and the funding of any reserves and other payments required
17 under the bond resolution or trust indenture pursuant to which
18 such bonds have been issued, without the necessity for any
19 further action by the association, the department, or any
20 other party. To the extent that bonds are issued under this
21 subparagraph, the proceeds of assessments levied under this
22 subparagraph shall be remitted directly to and administered by
23 the trustee appointed for such bonds.

24 (IV) The assessments authorized under this
25 subparagraph shall continue as long as any bonds issued or
26 other indebtedness incurred with respect to a deficit for
27 which the assessment was imposed remain outstanding, unless
28 adequate provision has been made for the payment of such bonds
29 or other indebtedness pursuant to the documents governing such
30 bonds or other indebtedness.

31

1 b. In order to ensure that insurers paying assessments
2 levied under this subparagraph continue to charge rates that
3 are not inadequate or excessive, within 90 days after being
4 notified of such assessments, each insurer that is to be
5 assessed pursuant to this subparagraph shall make a property
6 insurance rate filing pursuant to s. 627.062. If the filing
7 reflects a rate change that, as a percentage, is equal to the
8 difference between the rate of such assessment and the rate of
9 the previous year's assessment under this subparagraph, the
10 filing shall consist of a certification containing a statement
11 to that effect and shall be deemed approved when made, subject
12 to the department's continuing authority to require actuarial
13 justification as to the adequacy of any rate at any time. Any
14 rate change of a different percentage shall be subject to the
15 standards and procedures of s. 627.062.

16 (c) The FAIR Plan is not a state agency, board, or
17 commission. However, for the purposes of s. 199.183(1), the
18 FAIR Plan shall be considered a political subdivision of the
19 state and shall be exempt from the corporate income tax.

20 (d) Notwithstanding any other provision of law:

21 1. The pledge or sale of, the lien upon, and the
22 security interest in any rights, revenues, or other assets of
23 the association, created or purported to be created pursuant
24 to any financing documents to secure any bonds or other
25 indebtedness of the association, are valid and shall remain
26 valid and enforceable, notwithstanding the commencement of,
27 during the continuation of, and after any rehabilitation,
28 insolvency, liquidation, bankruptcy, receivership,
29 conservatorship, reorganization, or similar proceeding against
30 the association under the laws of this state.

31

1 2. No such proceeding shall relieve the association of
2 its obligation, or otherwise affect its ability to perform its
3 obligation, to continue to collect, or levy and collect,
4 assessments, market equalization surcharges, or other
5 surcharges under paragraph (b), or any other rights, revenues,
6 or other assets of the association pledged pursuant to any
7 financing documents.

8 3. Each such pledge or sale of, lien upon, and
9 security interest in, including the priority of such pledge,
10 lien, or security interest, any such assessments, market
11 equalization surcharges, or other surcharges, or other rights,
12 revenues, or other assets that are collected, or levied and
13 collected, after the commencement of and during the pendency
14 of, or after, any such proceeding, shall continue unaffected
15 by such proceeding. As used in this subsection, the term
16 "financing documents" means any agreement, instrument, or
17 other document now existing or hereafter created evidencing
18 any bonds or other indebtedness of the association or pursuant
19 to which any such bonds or other indebtedness has been or may
20 be issued and pursuant to which any rights, revenues, or other
21 assets of the association are pledged or sold to secure the
22 repayment of such bonds or indebtedness, together with the
23 payment of interest on such bonds or such indebtedness, or the
24 payment of any other obligation of the association related to
25 such bonds or indebtedness.

26 4. Any such pledge or sale of assessments, revenues,
27 contract rights, or other rights or assets of the association
28 shall constitute a lien and security interest, or sale, as the
29 case may be, that is immediately effective and attaches to
30 such assessments, revenues, or contract rights or other rights
31 or assets, whether or not imposed or collected at the time the

1 pledge or sale is made. Any such pledge or sale is effective,
2 valid, binding, and enforceable against the association or
3 other entity making such pledge or sale, and valid and binding
4 against and superior to any competing claims or obligations
5 owed to any other person or entity, including policyholders in
6 this state, asserting rights in any such assessments,
7 revenues, or contract rights or other rights or assets to the
8 extent set forth in and in accordance with the terms of the
9 pledge or sale contained in the applicable financing
10 documents, whether or not any such person or entity has notice
11 of such pledge or sale and without the need for any physical
12 delivery, recordation, filing, or other action.

13 (e) The association shall contract with the Florida
14 Hurricane Catastrophe Fund, established under s. 215.555, with
15 respect to the association's covered policies and pay the
16 appropriate reimbursement premium for such policies.

17 (4) THE PLAN OF OPERATION.--

18 (a) Within 90 days after the effective date of this
19 act, the association shall submit to the department for review
20 a proposed plan of operation, consistent with the provisions
21 of this section, creating an association consisting of all
22 insurers licensed to write and engaged in writing in this
23 state, on a direct basis, residential coverage or any
24 component of such coverage in homeowner's or other dwelling
25 multi-peril policies. Every such insurer shall be a member of
26 the association and shall remain a member as a condition of
27 its authority to transact insurance business in this state.

28 (b) The plan shall be subject to the approval of the
29 department by order and shall go into effect upon approval by
30 the department. The department may, at any time, withdraw
31 approval or may, at any time after approval has been given,

1 revoke the approval if necessary to carry out the purposes of
2 this section. The withdrawal or revocation of approval shall
3 not affect the validity of any policies executed prior to the
4 date of the withdrawal or revocation. If the department
5 disapproves or withdraws or revokes approval to any part of
6 the plan of operation, the association shall within 30 days
7 after such disapproval, withdrawal, or revocation submit to
8 the department for review an appropriately revised plan or
9 part of such plan, and if the association fails to do so, or
10 if the revision is unacceptable, the department shall approve,
11 by order, such plan of operation or part of such plan as the
12 department deems necessary to carry out the purpose of this
13 section.

14 (c)1. The association may, on its own initiative or at
15 the request of the department, amend the plan of operation,
16 subject to approval by order of the department.

17 2. The department or any person designated by the
18 department may review and examine all the books, records,
19 files, papers, and documents that relate to operation of the
20 association, and may summon, qualify, and examine as witnesses
21 all persons having knowledge of such operations, including
22 officers, agents, or employees of the association.

23 (d) The plan shall provide for the identification of
24 policies of the Residential Property and Casualty Joint
25 Underwriting Association eligible for coverage by the
26 association and assumption of such policies pursuant to s.
27 627.351(6)(p).

28 (e) The plan shall provide for effective dates for
29 coverage consistent with industry practice, provided the
30 effective date of the coverage system adopted under the plan
31 is selected to provide an adequate system of control to limit

1 or eliminate the possibility of fraud in the establishment of
2 effective dates.

3 (f)1. The plan shall require that a certificate of
4 eligibility accompany the application for coverage. To be
5 eligible, the insurance applicant must be unable to procure
6 residential coverage from authorized insurers for reasons
7 other than risk of loss due to hurricane damage. The applicant
8 shall be required to document a diligent effort by filing a
9 certificate of eligibility evidencing rejections, and the
10 reasons for such rejections, by three authorized insurers who,
11 at the time of rejection, were authorized to write and
12 actually writing the kind and class of insurance sought by the
13 applicant. In addition, to be eligible for coverage by the
14 association, the applicant must meet the requirements of this
15 section. The certificate shall indicate the names of the
16 insurers and the insurers' representatives that rejected the
17 residential property coverage for the applicant.

18 2. The certificate shall be attested to by an agent to
19 verify its accuracy and completeness.

20 3. Upon a determination by the association that a
21 certificate of eligibility is defective due to an omission or
22 mistake that is immaterial to determining the eligibility of
23 the applicant for coverage, the association shall immediately
24 provide written notice of any defect to the insured and to the
25 agent of record. The notice shall inform the applicant that
26 the applicant has a reasonable period as specified in the
27 plan, but at least 10 days after the postmark date of the
28 notice, to correct any defect and postmark the correction or
29 missing information for return to the plan.

30 4. If any defect is not corrected within such time
31 period, the policy shall be cancelable upon 10 days' notice by

1 registered or certified mail to the policyholders. Providing a
2 photocopy of the application or certificate denoting any
3 specific defects shall be adequate to comply with the
4 requirement to specify the defects in the certificate.

5 5. For purposes of this paragraph, failure to provide
6 a required telephone number, time of day, producer number,
7 producer signature, date, or information that is omitted but
8 can be determined by questions answered or information
9 provided in other sections of the application, or documents
10 submitted as part of the application, shall be considered an
11 omission or mistake immaterial to determining the eligibility
12 of the applicant for the plan coverage. A certificate of
13 eligibility that is submitted to the association as to which
14 the applicant's agent did not demonstrate a good-faith effort
15 in completing or in which the applicant's agent has made a
16 willful misrepresentation shall not be subject to this
17 paragraph. If the defect is material to determining the
18 eligibility of the applicant for coverage, the policy may be
19 canceled in accordance with the provisions of subparagraph 4.

20 (g) In no case shall the association underwrite a
21 residential risk exceeding \$60,000 in property damage coverage
22 for the insured structure or such lower limits of coverage as
23 the plan of operation may provide. The \$60,000 maximum limit
24 for property damage coverage shall be adjusted annually based
25 on the most recent consumer price index.

26 (h) Only owner-occupied residential risks shall be
27 eligible for coverage by the association.

28 (i) Windstorm coverage from a risk underwritten by the
29 FAIR Plan, which risk is located within an eligible area under
30 the Florida Windstorm Underwriting Association, shall be
31 placed with the Florida Windstorm Underwriting Association.

1 (j) The standards and criteria used in underwriting by
2 the association shall be reasonable and specified in or
3 incorporated by reference in the plan of operation of the
4 association and shall be designed to allow coverage for risks
5 that are low-value and high-hazard.

6 (k) The plan of operation shall include minimum
7 underwriting standards which risks must meet or exceed to be
8 eligible for coverage by the association. Prohibited
9 conditions include:

10 1. The existence of an order of condemnation or other
11 order requiring that the property be vacated or demolished.

12 2. The existence of specific characteristics of
13 ownership, condition, occupancy, or maintenance which violate
14 public policy.

15 3. The existence of specific characteristics of
16 ownership, condition, occupancy, or maintenance which result
17 in unreasonable exposure to loss.

18 4. The existence of hazardous conditions or use within
19 the control of the owner to correct.

20 5. Vacancy of the premises.

21 (l) The plan of operation shall include rating
22 criteria, including, but not limited to:

23 1. Condition of the structure.

24 2. Age of the structure.

25 3. Prior loss history.

26 4. Housekeeping factors that affect insurability, such
27 as vacancy, overcrowding, and storage of rubbish or flammable
28 materials.

29 (m) Neighborhood or area location, or any hazard
30 beyond the control of the residential property owner, shall
31 not be deemed to be acceptable criteria for rejecting a risk.

1 The association shall establish a coverage review committee
2 that shall include one or more persons familiar with the
3 coverage concerns of mortgagors of residential dwellings,
4 including, but not limited to, licensed financial
5 institutions. The committee shall make recommendations to the
6 association of coverage standards which meet the needs of
7 mortgagees. The association shall provide to the department
8 copies of the recommendations when making related form
9 filings.

10 (n) If the risk does not meet the minimum underwriting
11 standards but can be improved to meet or exceed the standards,
12 the association shall promptly advise the applicant or
13 policyholder what improvements should be made to the risk, and
14 the notification and advice to the applicant or policyholder
15 shall state which improvements by the applicant or
16 policyholder are necessary for continued coverage by the
17 association. When the applicant has made the necessary
18 improvements, the applicant may notify the association, which,
19 when so notified, shall verify that the necessary improvements
20 have been made.

21 (o) The acceptance or rejection of a risk by the
22 association shall be construed as the private placement of
23 insurance and the provisions of chapter 120 shall not apply.

24 (p) If the property is subject to one or more
25 substandard conditions, but the property is still eligible for
26 coverage through the association, surcharges may be imposed in
27 conformity with any applicable high hazard rating plan
28 approved for use by the association.

29 (q)1. The plan shall provide for methods by which to
30 encourage persons to secure residential coverage through the
31 voluntary market from an insurer authorized to transact

1 residential coverage in this state by informing such persons
2 of the necessary steps to take in order to secure such
3 insurance. The plan shall provide for the involvement of the
4 association in programs designed to aid persons in the
5 rehabilitation of their properties so as to become eligible
6 for coverage in the voluntary market. The plan shall provide
7 for the association to cooperate with the state and local
8 government, financial institutions, and nonprofit foundations
9 and other entities in facilitating the rehabilitation of such
10 properties.

11 2. Nothing in this section precludes an insurer
12 authorized to transact residential coverage from removing a
13 risk from the association at any time for coverage by the
14 insurer removing such risk. Each policyholder, as a part of
15 the coverage document, shall agree to the possibility of a
16 removal by any means whatsoever, which may include a novation
17 of the association-issued policy, mid-term policy
18 cancellation, or expiration of the term of the policy. No risk
19 is eligible for coverage by the association if an insurer
20 authorized to transact residential property coverage is
21 willing to underwrite the risk.

22 (r) The plan of the association may provide for a
23 method whereby insurers who voluntarily write residential
24 coverage on risks located in areas formerly designated as
25 eligible areas for coverage under the Florida Windstorm
26 Underwriting Association may receive a reduction in the
27 insurer's assessments that the insurer would otherwise receive
28 from the association. Nothing in this subsection precludes the
29 incorporation in the plan of other incentives to voluntary
30 writings of residential coverage for owner-occupied,
31 low-value, and high-hazard risks.

1 (s) The proposed plan shall authorize the association
2 to assume and cede reinsurance.

3 (t) Under the plan, each insurer shall participate in
4 the writings, expenses, and losses of the association in the
5 proportion that the insurer's premiums written during the
6 preceding calendar year bear to the aggregate premiums written
7 by all insurers in the program, excluding that portion of the
8 premiums written attributable to the operation of the
9 association as governed by paragraph (c).

10 (u) The plan shall provide for the deferment, in whole
11 or in part, of the assessment of a member insurer if the
12 department finds that payment of the assessment would endanger
13 or impair the solvency of the insurer. If an assessment
14 against a member insurer is deferred in whole or in part, the
15 amount by which such assessment is deferred may be assessed
16 against the other member insurers in a manner consistent with
17 the basis for assessments set forth in paragraph (3)(b).

18 (v) The plan shall provide that if assessments are
19 made under paragraph (3)(b), or by the Florida Windstorm
20 Underwriting Association under s. 627.351(2)(b)3.d.(I) or
21 (II), the association shall levy upon association
22 policyholders in the association's next rate filing, or by a
23 separate rate filing solely for this purpose, a market
24 equalization surcharge in a percentage equal to the total
25 amount of such regular assessments divided by the aggregate
26 statewide direct written premium for residential coverage for
27 member insurers for the prior calendar year. Market
28 equalization surcharges under this paragraph are not
29 considered premium and are not subject to commissions, fees,
30 or premium taxes; however, failure to pay a market
31

1 equalization surcharge shall be treated as failure to pay
2 premium.

3 (w) The plan shall provide that association policies
4 and applications must include a notice that the association
5 policy could, under this section or s. 627.3511, be replaced
6 with a policy issued by an admitted insurer that does not
7 provide coverage identical to the coverage provided by the
8 association. The notice shall also specify that acceptance of
9 association coverage creates a conclusive presumption that the
10 applicant or policyholder is aware of such potential.

11 (5) IMMUNITY FROM LIABILITY; PROCUREMENT.--

12 (a)1. There shall be no liability on the part of, and
13 no cause of action of any nature shall arise against, any
14 member insurer or agents or employees of a member insurer, the
15 association or agents or employees of the association, or the
16 members of the board of governors for any action taken by such
17 persons or association in the performance of duties required
18 under this section. Such immunity does not apply to actions
19 for breach of any contract or agreement pertaining to
20 insurance, or any other willful tort.

21 2. There shall be no liability on the part of, and no
22 cause of action of any nature shall arise against, the
23 Insurance Commissioner or the department or employees or
24 agents of the department for any action taken by such persons
25 or the department in the performance of duties required under
26 this section. The provisions of s. 768.28 shall apply with
27 respect to any such action.

28 (b) The association shall not be subject to the
29 requirements of chapter 287 or any other law or rule governing
30 procurement of commodities or services or to any state law
31 governing leasing of office space. However, to the extent

1 practicable, the association, except when purchasing legal,
2 auditing, or appraisal services, shall apply the principles of
3 competitive procurement by formal invitation to bid or by
4 requests for proposals and negotiated procurement.

5 (6) FEDERAL REINSURANCE PROGRAM.--In addition to any
6 powers conferred upon the department by this section or any
7 other law, the department may do anything necessary to enable
8 this state and any insurer participating in any program
9 approved by the department to fully participate in any federal
10 program of reinsurance which may be enacted for purposes
11 similar to the purposes of this section.

12 (7) REPORTS CONCERNING RISKS INSURED.--The department
13 may require information or reports from the FAIR Plan
14 concerning risks insured under the plan as the department
15 deems necessary to effect the purposes of this section.

16 (8) RATES AND FORMS.--Rates and forms for the FAIR
17 Plan shall be subject to ss. 627.062, 627.0629, 627.410, and
18 627.411 and other applicable provisions of the Florida
19 Insurance Code and rules adopted under the code. The plan
20 shall not return unexpended portions of premiums to members.
21 The forms shall be specifically tailored to the exigencies of
22 underwriting low-value and high-hazard risks and the rates
23 shall be actuarially sound with respect to these risks.
24 However, the rates and the forms may not include any provision
25 that would penalize the policyholder for his or her income
26 level, neighborhood, or other factors contrary to public
27 policy.

28 (9) POWERS OF THE ASSOCIATION.--The association shall
29 have all powers necessary and proper to carry out the purposes
30 of this section and may:

31

1 (a) Employ or retain necessary staff, including legal
2 staff and consultants.

3 (b) Reimburse the staff, consultants, and board
4 members for travel and expenses.

5 (c) Borrow funds necessary to effectuate the purposes
6 of this section in accordance with provisions of this section
7 and with the plan of operation.

8 (d) Sue or be sued, provided that service of process
9 shall be made upon the person registered with the department
10 as agent for the receipt of service of process.

11 (e) Negotiate and become a party to such contracts as
12 are necessary to carry out the purpose of this section.
13 Without limitation, the association may enter into such
14 contracts with a county, municipality, or bond agent as
15 necessary in order for the county, municipality, or bond agent
16 to issue bonds under s. 125.013 or s. 166.111 or under any
17 other authority. In connection with the issuance of such bonds
18 and the entering into of the necessary contracts, the
19 association may agree to such terms and conditions as it deems
20 necessary and proper.

21 (f) Provide that the association may employ or
22 otherwise contract with individuals or other entities to
23 provide administrative or professional services that may be
24 appropriate to effectuate the plan. The association shall have
25 the power to borrow funds, by issuing bonds or by incurring
26 other indebtedness, and shall have other powers reasonably
27 necessary to effectuate the requirements of this subsection.
28 The association may issue bonds or incur other indebtedness,
29 or have bonds issued on behalf of the association by a unit of
30 local government pursuant to paragraph (c) in the absence of a
31 hurricane or other weather-related event, upon a determination

1 by the association, subject to approval by the department,
2 that such action would enable the association to efficiently
3 meet its financial obligations and that such financings are
4 reasonably necessary to effectuate the requirements of this
5 subsection. The association may take any action needed to
6 facilitate tax-free status for any such bonds or indebtedness,
7 including formation of trusts or other affiliated entities.
8 The association may pledge assessments, projected recoveries
9 from the Florida Hurricane Catastrophe Fund, other reinsurance
10 recoverables, market equalization and other surcharges, and
11 other funds available to the association as security for bonds
12 or other indebtedness. Pursuant to s. 10, Art. I of the State
13 Constitution, prohibiting the impairment of obligations of
14 contracts, it is the intent of the Legislature that no action
15 be taken whose purpose is to impair any bond indenture or
16 financing agreement or any revenue source committed by
17 contract to such bond or other indebtedness.

18 (g) Exercise other powers as are necessary and proper
19 to carry out the functions and duties of the association.

20 Section 11. Subsection (2) of section 627.4091,
21 Florida Statutes, is amended to read:

22 627.4091 Specific reasons for denial, cancellation, or
23 nonrenewal.--

24 (2)(a) Each notice of nonrenewal or cancellation must
25 be accompanied by the specific reasons for nonrenewal or
26 cancellation, including the specific underwriting reasons, if
27 applicable.

28 (b) An insurer may not cancel or nonrenew a policy
29 providing residential coverage as described in s. 627.4025(1)
30 for an underwriting reason unless the insurer provides the
31 policyholder, in writing, with the underwriting reason for the

1 cancellation or nonrenewal. The reason stated must be based
2 upon a specific underwriting rule on file with the department
3 or contained in an approved rating manual of a licensed rating
4 organization of which the insurer is a subscriber or member,
5 must cite to the specific underwriting rule being invoked as a
6 basis for the cancellation or nonrenewal, and must state or
7 paraphrase such underwriting rule.

8 Section 12. Subsection (2) of section 627.4133,
9 Florida Statutes, is amended, and subsection (4) is added to
10 said section, to read:

11 627.4133 Notice of cancellation, nonrenewal, or
12 renewal premium.--

13 (2) With respect to any personal lines or commercial
14 residential property insurance policy, including, but not
15 limited to, any homeowner's, mobile home owner's, farmowner's,
16 condominium association, condominium unit owner's, apartment
17 building, or other policy covering a residential structure or
18 its contents:

19 (a) The insurer shall give the named insured at least
20 45 days' advance written notice of the renewal premium.

21 (b) The insurer shall give the named insured written
22 notice of nonrenewal, cancellation, or termination at least 90
23 days prior to the effective date of the nonrenewal,
24 cancellation, or termination. The notice must include the
25 reason or reasons for the nonrenewal, cancellation, or
26 termination, except that:

27 1. When cancellation is for nonpayment of premium, at
28 least 10 days' written notice of cancellation accompanied by
29 the reason therefor shall be given.

30 2. When such cancellation or termination occurs during
31 the first 90 days during which the insurance is in force and

1 the insurance is canceled or terminated for reasons other than
2 nonpayment of premium, at least 20 days' written notice of
3 cancellation or termination accompanied by the reason therefor
4 shall be given except where there has been a material
5 misstatement or misrepresentation that is material to the
6 acceptance of the risk or to the hazard assumed ~~or failure to~~
7 ~~comply with the underwriting requirements established by the~~
8 ~~insurer. During the 20-day notice period, if a cancellation or~~
9 ~~termination is for failure to comply with an underwriting~~
10 ~~requirement established by the insurer, the insurer shall~~
11 ~~allow the insured 20 days to correct the failure prior to the~~
12 ~~cancellation or termination, and if the failure is corrected~~
13 ~~the policy shall not be cancelled or terminated for that~~
14 ~~reason.~~

15
16 After the policy has been in effect for 90 days, the policy
17 shall not be canceled by the insurer except when there has
18 been a material misstatement, a nonpayment of premium, a
19 failure to comply with the insurer's underwriting requirements
20 within 90 days after notice to the policyholder of the failure
21 provided the policyholder does not correct the failure during
22 the 90-day period ~~established by the insurer within 90 days of~~
23 ~~the date of effectuation of coverage~~, or a substantial change
24 in the risk covered by the policy or when the cancellation is
25 for all insureds under such policies for a given class of
26 insureds. This paragraph does not apply to individually rated
27 risks having a policy term of less than 90 days.

28 (c) If the insurer fails to provide the notice
29 required by this subsection or fails to comply with the
30 requirements of s. 627.0651(13) or s. 627.4091, other than the
31 10-day nonpayment of premium notice, the coverage provided to

1 the named insured shall remain in effect until the effective
2 date of replacement coverage or until the expiration of a
3 period of days after the notice is given equal to the required
4 notice period, whichever occurs first. The premium for the
5 coverage shall remain the same during any such extension
6 period except that, in the event of failure to provide notice
7 of nonrenewal, if the rate filing then in effect would have
8 resulted in a premium reduction, the premium during such
9 extension shall be calculated based on the later rate filing.

10 (4) With respect to any personal lines residential
11 property insurance policy, if the insured property is sold,
12 and a replacement property is purchased by the named insured
13 within 6 months after the closing of the sale of the insured
14 property, the insurer providing the property insurance
15 coverage on the insured property sold shall offer coverage for
16 such replacement property if the replacement property is of a
17 type for which the insurer has approved rates and forms, and
18 does not represent a substantial change in risk covered by the
19 insurer.

20 Section 13. Section 627.4138, Florida Statutes, is
21 created to read:

22 627.4138 Residential coverage; restrictions on
23 cancellation or nonrenewal.--

24 (1) For purposes of this section, the term
25 "residential coverage" shall have the same meaning as provided
26 in s. 627.4025.

27 (2) An insurer may not cancel or nonrenew a policy of
28 residential coverage because of a property damage claim that
29 arose due to causes that were not within the control of the
30 policyholder and does not exceed 25 percent of the insured
31

1 value of the dwelling, unless there has been a similar claim
2 by the policyholder within the previous 5-year period.

3 (3) With regard to policyholders who have maintained
4 residential coverage with an insurer for a period of at least
5 10 years, such insurer may not cancel or nonrenew coverage for
6 such policyholder solely on the basis of a single claim that
7 was not intentionally or willfully caused by the policyholder.

8 (4) An insurer may not use as grounds for cancellation
9 or nonrenewal of a policy of residential coverage notice to
10 the insurer of damage to an insured property if a claim is not
11 filed.

12 (5) The provisions of this section shall supplement
13 and shall not restrict or replace any other provision of the
14 Florida Insurance Code relating to the cancellation or
15 nonrenewal of a policy of residential coverage.

16 Section 14. Legislative findings; required rate
17 reductions.--

18 (1) The Legislature finds that:

19 (a) The capability of the Florida Hurricane
20 Catastrophe Fund established under s. 215.555, Florida
21 Statutes, to provide reinsurance coverage to insurers has been
22 substantially enhanced by this act.

23 (b) The act has established the Fair Access to
24 Insurance Requirements (FAIR) Plan.

25 (c) The act has provided for the winding down of the
26 Residential Property and Casualty Insurance Joint Underwriting
27 Association established under s. 627.351(6), Florida Statutes.

28 (d) The act has provided that the Residential Property
29 and Casualty Joint Underwriting Association will cease issuing
30 policies.

31

1 (e) The act has provided that the Florida Windstorm
2 Underwriting Association, established under s. 627.351(2),
3 Florida Statutes, will reduce the geographical area in which
4 the association writes policies covering commercial and
5 noncommercial residential property insurance risks.

6 (f) As a consequence, the act has resulted in cost
7 savings in taxes, administrative costs and other expenses
8 related to overhead, and other savings in the writing of
9 residential property insurance.

10 (g) It is fair and just and the interest of the public
11 welfare requires that such savings be passed on to residential
12 property insurance policyholders in the form of premium
13 reductions.

14 (2)(a) Within 60 days after the department issues an
15 order deactivating the Residential Property and Casualty Joint
16 Underwriting Association and terminating, pursuant to s.
17 215.55(6)(a)3.b., Florida Statutes, the association's plan of
18 operation, each insurer writing residential coverage as
19 described in s. 627.4025, Florida Statutes, in this state,
20 with respect to such coverage shall reduce its rates by 15
21 percent. When an insurer files to reduce its rates by 15
22 percent, the insurer shall file a certification with the
23 department that the rate adjustment has been made, together
24 with copies of the amended rating manual pages reflecting the
25 adjustment. In lieu of filing to reduce rates by 15 percent,
26 an insurer may elect to refile its rates provided the insurer
27 demonstrates that the level of percentage savings to be passed
28 on to policyholders in view of the savings resulting from the
29 elimination of the Residential Property and Casualty Joint
30 Underwriting Association and the augmentation of the Florida
31

1 Hurricane Catastrophe Fund is justified and produces a rate
2 differential other than 15 percent.

3 (b) After July 1, 2000, each insurer writing
4 residential property insurance in this state, with respect to
5 such insurance shall reflect in such insurer's next
6 residential property insurance rate filing with the Department
7 of Insurance any savings resulting from the reduced writings
8 of the Florida Windstorm Underwriting Association and the
9 augmentation of the Florida Hurricane Catastrophe Fund. When
10 the insurer files its rates, the insurer shall justify the
11 level of percentage savings to be passed on to policyholders
12 in view of the savings indicated pursuant to this act.

13 Section 15. The Department of Insurance shall adopt
14 any rules necessary to administer the provisions of this act.

15 Section 16. Paragraph (d) of subsection (2) of section
16 624.4071, Florida Statutes, is amended to read:

17 624.4071 Special purpose homeowner insurance
18 company.--

19 (2) A special purpose homeowner insurance company must
20 have a parent company, and both companies must meet the
21 requirements of this subsection in order for the subsidiary to
22 qualify for and maintain a certificate of authority under this
23 section.

24 (d) The special purpose homeowner insurance company
25 must:

26 1. Have and maintain at least \$10 million in surplus
27 and otherwise satisfy the requirements of s. 624.4095.

28 2. Be a member of the Florida Insurance Guaranty
29 Association and the Florida Hurricane Catastrophe Fund, and be
30 subject to any of their required assessments and premium
31 charges. However, a special purpose homeowner insurance

1 company may not be a member of the Florida Windstorm
2 Underwriting Association or the Florida Residential Property
3 and Casualty Joint Underwriting Association, and neither the
4 company nor its policyholders are subject to any assessments
5 by these associations except for emergency assessments
6 collected from policyholders pursuant to s.
7 627.351(2)(b)~~3.2~~d.(III) and (6)(b)3.d. For the sole purpose
8 of levying and collecting emergency assessments and
9 determining the statewide written premium for property
10 insurance, special purpose homeowner insurance companies shall
11 be considered member insurers of the Florida Windstorm
12 Underwriting Association and the Florida Residential Property
13 and Casualty Joint Underwriting Association.

14 3. Offer coverage for all perils, including windstorm,
15 in providing residential coverage as defined in s. 627.4025. A
16 special purpose homeowner insurance company's rates must be
17 filed with the department. After a period of 1 year from the
18 date a company receives a certificate of authority, the
19 company's rates are subject to department approval under s.
20 627.062.

21 Section 17. Subsection (5) of section 626.918, Florida
22 Statutes, is amended to read:

23 626.918 Eligible surplus lines insurers.--

24 (5) When it appears that any particular insurance risk
25 which is eligible for export, but on which insurance coverage,
26 in whole or in part, is not procurable from the eligible
27 surplus lines insurers, after a search of eligible surplus
28 lines insurers, then the surplus lines agent may file a
29 supplemental signed statement setting forth such facts and
30 advising the department that such part of the risk as shall be
31 unprocurable, as aforesaid, is being placed with named

1 unauthorized insurers, in the amounts and percentages set
2 forth in the statement. Such named unauthorized insurer
3 shall, however, before accepting any risk in this state,
4 deposit with the department cash or securities acceptable to
5 the department of the market value of \$50,000 for each
6 individual risk, contract, or certificate, which deposit shall
7 be held by the department for the benefit of Florida
8 policyholders only; and the surplus lines agent shall procure
9 from such unauthorized insurer and file with the department a
10 certified copy of its statement of condition as of the close
11 of the last calendar year. If such statement reveals,
12 including both capital and surplus, net assets of at least
13 that amount required for licensure of a domestic insurer, then
14 the surplus lines agent may proceed to consummate such
15 contract of insurance. Whenever any insurance risk, or any
16 part thereof, is placed with an unauthorized insurer, as
17 provided herein, the policy, binder, or cover note shall
18 contain a statement signed by the insured and the agent with
19 the following notation: "The insured is aware that certain
20 insurers participating in this risk have not been approved to
21 transact business in Florida nor have they been declared
22 eligible as surplus lines insurers by the Department of
23 Insurance of Florida. The placing of such insurance by a duly
24 licensed surplus lines agent in Florida shall not be construed
25 as approval of such insurer by the Department of Insurance of
26 Florida. Consequently, the insured is aware that the insured
27 has severely limited the assistance available under the
28 insurance laws of Florida. The insured is further aware that
29 he or she may be charged a reasonable per policy fee, as
30 provided in s. 626.916(5)(4), ~~Florida Statutes~~, for each
31 policy certified for export." All other provisions of this

1 code shall apply to such placement the same as if such risks
2 were placed with an eligible surplus lines insurer.

3 Section 18. Subsection (6) of section 626.932, Florida
4 Statutes, is amended to read:

5 626.932 Surplus lines tax.--

6 (6) For the purposes of this section, the term
7 "premium" means the consideration for insurance by whatever
8 name called and includes any assessment, or any membership,
9 policy, survey, inspection, service, or similar fee or charge
10 in consideration for an insurance contract, which items are
11 deemed to be a part of the premium. The per-policy fee
12 authorized by s. 626.916(5)~~(4)~~ is specifically included within
13 the meaning of the term "premium." However, the service fee
14 imposed pursuant to s. 626.9325 is excluded from the meaning
15 of the term "premium."

16 Section 19. Subsection (6) of section 626.9325,
17 Florida Statutes, is amended to read:

18 626.9325 Service fee.--

19 (6) For the purposes of this section, the term
20 "premium" means the consideration for insurance by whatever
21 name called and includes any assessment, or any membership,
22 policy, survey, inspection, service, or similar fee or charge
23 in consideration for an insurance contract, which items are
24 deemed to be a part of the premium. The per-policy fee
25 authorized by s. 626.916(5)~~(4)~~ is specifically included within
26 the meaning of the term "premium."

27 Section 20. Paragraph (o) of subsection (1) of section
28 626.9541, Florida Statutes, is amended to read:

29 626.9541 Unfair methods of competition and unfair or
30 deceptive acts or practices defined.--

31

1 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
2 DECEPTIVE ACTS.--The following are defined as unfair methods
3 of competition and unfair or deceptive acts or practices:

4 (o) Illegal dealings in premiums; excess or reduced
5 charges for insurance.--

6 1. Knowingly collecting any sum as a premium or charge
7 for insurance, which is not then provided, or is not in due
8 course to be provided, subject to acceptance of the risk by
9 the insurer, by an insurance policy issued by an insurer as
10 permitted by this code.

11 2. Knowingly collecting as a premium or charge for
12 insurance any sum in excess of or less than the premium or
13 charge applicable to such insurance, in accordance with the
14 applicable classifications and rates as filed with and
15 approved by the department, and as specified in the policy;
16 or, in cases when classifications, premiums, or rates are not
17 required by this code to be so filed and approved, premiums
18 and charges in excess of or less than those specified in the
19 policy and as fixed by the insurer. This provision shall not
20 be deemed to prohibit the charging and collection, by surplus
21 lines agents licensed under part VIII of this chapter, of the
22 amount of applicable state and federal taxes, or fees as
23 authorized by s. 626.916(5)~~(4)~~, in addition to the premium
24 required by the insurer or the charging and collection, by
25 licensed agents, of the exact amount of any discount or other
26 such fee charged by a credit card facility in connection with
27 the use of a credit card, as authorized by subparagraph (q)3.,
28 in addition to the premium required by the insurer. This
29 subparagraph shall not be construed to prohibit collection of
30 a premium for a universal life or a variable or indeterminate
31

1 value insurance policy made in accordance with the terms of
2 the contract.

3 3.a. Imposing or requesting an additional premium for
4 a policy of motor vehicle liability, personal injury
5 protection, medical payment, or collision insurance or any
6 combination thereof or refusing to renew the policy solely
7 because the insured was involved in a motor vehicle accident
8 unless the insurer's file contains information from which the
9 insurer in good faith determines that the insured was
10 substantially at fault in the accident.

11 b. An insurer which imposes and collects such a
12 surcharge or which refuses to renew such policy shall, in
13 conjunction with the notice of premium due or notice of
14 nonrenewal, notify the named insured that he or she is
15 entitled to reimbursement of such amount or renewal of the
16 policy under the conditions listed below and will subsequently
17 reimburse him or her or renew the policy, if the named insured
18 demonstrates that the operator involved in the accident was:

19 (I) Lawfully parked;

20 (II) Reimbursed by, or on behalf of, a person
21 responsible for the accident or has a judgment against such
22 person;

23 (III) Struck in the rear by another vehicle headed in
24 the same direction and was not convicted of a moving traffic
25 violation in connection with the accident;

26 (IV) Hit by a "hit-and-run" driver, if the accident
27 was reported to the proper authorities within 24 hours after
28 discovering the accident;

29 (V) Not convicted of a moving traffic violation in
30 connection with the accident, but the operator of the other
31

1 automobile involved in such accident was convicted of a moving
2 traffic violation;

3 (VI) Finally adjudicated not to be liable by a court
4 of competent jurisdiction;

5 (VII) In receipt of a traffic citation which was
6 dismissed or nolle prossed; or

7 (VIII) Not at fault as evidenced by a written
8 statement from the insured establishing facts demonstrating
9 lack of fault which are not rebutted by information in the
10 insurer's file from which the insurer in good faith determines
11 that the insured was substantially at fault.

12 c. In addition to the other provisions of this
13 subparagraph, an insurer may not fail to renew a policy if the
14 insured has had only one accident in which he or she was at
15 fault within the current 3-year period. However, an insurer
16 may nonrenew a policy for reasons other than accidents in
17 accordance with s. 627.728. This subparagraph does not
18 prohibit nonrenewal of a policy under which the insured has
19 had three or more accidents, regardless of fault, during the
20 most recent 3-year period.

21 4. Imposing or requesting an additional premium for,
22 or refusing to renew, a policy for motor vehicle insurance
23 solely because the insured committed a noncriminal traffic
24 infraction as described in s. 318.14 unless the infraction is:

25 a. A second infraction committed within an 18-month
26 period, or a third or subsequent infraction committed within a
27 36-month period.

28 b. A violation of s. 316.183, when such violation is a
29 result of exceeding the lawful speed limit by more than 15
30 miles per hour.

31

1 5. Upon the request of the insured, the insurer and
2 licensed agent shall supply to the insured the complete proof
3 of fault or other criteria which justifies the additional
4 charge or cancellation.

5 6. No insurer shall impose or request an additional
6 premium for motor vehicle insurance, cancel or refuse to issue
7 a policy, or refuse to renew a policy because the insured or
8 the applicant is a handicapped or physically disabled person,
9 so long as such handicap or physical disability does not
10 substantially impair such person's mechanically assisted
11 driving ability.

12 7. No insurer may cancel or otherwise terminate any
13 insurance contract or coverage, or require execution of a
14 consent to rate endorsement, during the stated policy term for
15 the purpose of offering to issue, or issuing, a similar or
16 identical contract or coverage to the same insured with the
17 same exposure at a higher premium rate or continuing an
18 existing contract or coverage with the same exposure at an
19 increased premium.

20 8. No insurer may issue a nonrenewal notice on any
21 insurance contract or coverage, or require execution of a
22 consent to rate endorsement, for the purpose of offering to
23 issue, or issuing, a similar or identical contract or coverage
24 to the same insured at a higher premium rate or continuing an
25 existing contract or coverage at an increased premium without
26 meeting any applicable notice requirements.

27 9. No insurer shall, with respect to premiums charged
28 for motor vehicle insurance, unfairly discriminate solely on
29 the basis of age, sex, marital status, or scholastic
30 achievement.

31

1 10. Imposing or requesting an additional premium for
2 motor vehicle comprehensive or uninsured motorist coverage
3 solely because the insured was involved in a motor vehicle
4 accident or was convicted of a moving traffic violation.

5 11. No insurer shall cancel or issue a nonrenewal
6 notice on any insurance policy or contract without complying
7 with any applicable cancellation or nonrenewal provision
8 required under the Florida Insurance Code.

9 12. No insurer shall impose or request an additional
10 premium, cancel a policy, or issue a nonrenewal notice on any
11 insurance policy or contract because of any traffic infraction
12 when adjudication has been withheld and no points have been
13 assessed pursuant to s. 318.14(9) and (10). However, this
14 subparagraph does not apply to traffic infractions involving
15 accidents in which the insurer has incurred a loss due to the
16 fault of the insured.

17 Section 21. The sum of \$2,000,000 is hereby
18 appropriated from the Insurance Commissioner's Regulatory
19 Trust Fund to the Department of Insurance for fiscal year
20 1998-1999 for the purpose of funding any contract authorized
21 under s. 627.0629(12), Florida Statutes.

22 Section 22. The sum of \$300,000 is hereby appropriated
23 from the Insurance Commissioner's Regulatory Trust Fund to the
24 Department of Insurance for fiscal year 1998-1999 for the
25 purpose of funding two positions and administrative expenses
26 of the department in implementing the provisions of this act.

27 Section 23. Subsection (6) of section 627.062, Florida
28 Statutes, and section 627.0628, Florida Statutes, are
29 repealed.

30 Section 24. If any provision of this act or the
31 application thereof to any person or circumstance is held

1 invalid, the invalidity shall not affect other provisions or
2 applications of the act which can be given effect without the
3 invalid provision or application, and to this end the
4 provisions of this act are declared severable.

5 Section 25. This act shall take effect upon becoming a
6 law.

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9 LEGISLATIVE SUMMARY

10 Eliminates the Residential Property and Casualty Joint
11 Underwriting Association, reduces the geographic scope of
12 the Florida Windstorm Underwriting Association, and
13 expands the financing capabilities of the Florida
Hurricane Catastrophe Fund. Establishes the Florida
14 Access to Insurance Requirements (FAIR) Plan to ensure
15 fair access to insurance requirements, to assure the
16 availability of residential property insurance for risks
17 that are owner-occupied, low-value and high-hazard, and
that are unable to obtain residential property insurance
in the authorized market, and creates the Florida FAIR
Plan Association to facilitate in assisting in the
upgrading of owner-occupied, low-value, high-hazard
residential property. (See bill for details.)