

By the Committee on Financial Services and Representatives
Safley, Lippman, Maygarden, Flanagan, Bainter, Lawson, Rayson,
Ball and Dennis

1 A bill to be entitled
2 An act relating to property insurance; amending
3 s. 215.555, F.S.; specifying appropriations of
4 certain moneys in the Florida Hurricane
5 Catastrophe Fund for certain purposes; amending
6 s. 624.4071, F.S.; providing that policyholders
7 of special purpose homeowner insurance
8 companies are subject to emergency assessments;
9 amending s. 626.752, F.S.; deleting the role of
10 the market assistance plan in the removal of
11 policies from the Residential Property and
12 Casualty Joint Underwriting Association;
13 amending s. 627.0628, F.S.; providing for a
14 rebuttable presumption of correctness of
15 certain findings and facts; amending s.
16 627.0629, F.S.; authorizing insurers to
17 implement certain discounts or differentials
18 under certain circumstances; establishing a
19 program to be administered by the Florida
20 Windstorm Underwriting Association for the
21 purpose of providing grants to certain
22 homeowners for certain purposes; requiring the
23 Department of Community Affairs to establish
24 certain standards for certain purposes;
25 providing requirements; requiring the Florida
26 Windstorm Underwriting Association to identify
27 areas of the state for certain purposes;
28 amending s. 627.351, F.S.; providing standards
29 for membership in the Florida Windstorm
30 Underwriting Association; providing exclusions
31 from membership; providing definitions;

1 requiring retention of profits; providing for
2 participation in regular assessments by member
3 insurers; prohibiting credits, exemptions,
4 limitations, deferment, or other relief from
5 participation in emergency assessments
6 collected from policyholders; conforming
7 references; creating a limitation upon an
8 assessment; providing for participation in
9 emergency assessments; providing for the
10 financing of bond or other indebtedness;
11 providing for a market equalization surcharge;
12 authorizing local governments to issue bonds
13 and pay for fund reimbursement; authorizing
14 limited apportionment for companies writing a
15 specified percentage of the total countrywide
16 property insurance premiums in this state;
17 providing for rates of the association;
18 limiting liability of association members under
19 certain circumstances; requiring underwriting
20 criteria; providing standards for eligibility
21 of new and covered risks; providing for
22 establishment of operational procedures;
23 providing for a notice to be placed in the
24 association policy; authorizing the
25 establishment of a partnership, a trust, and a
26 limited liability company; providing for
27 certain powers; providing legislative intent;
28 providing for the protection of creditors;
29 providing for membership in the Residential
30 Property and Casualty Joint Underwriting
31 Association; providing definitions; providing

1 for the payment of regular assessments;
2 requiring participation in emergency
3 assessments collected from policyholders
4 without credit, limitation, deferment, or
5 exemption; creating a limitation upon an
6 assessment; providing technical corrections;
7 providing for agent commissions; providing for
8 a market equalization surcharge; providing for
9 rates; authorizing local governments to issue
10 bonds; limiting credits, limitations,
11 exemptions, or deferments from regular
12 assessments to period of time; authorizing the
13 sale of revenue bonds; amending s. 627.3511,
14 F.S.; providing for the cancellation of
15 policies; providing terms for the payment for
16 the removal of policies; providing definitions;
17 providing for exemptions and credits from
18 regular assessments but not emergency
19 assessments for a limited period of time;
20 providing terms for replacement of policies;
21 making technical corrections; providing for
22 release of moneys from escrow accounts;
23 expanding the condominium association take-out
24 plan to all commercial residential policies;
25 providing terms for the assumption of policies;
26 providing for the calculation of regular and
27 emergency assessments for certain insurers;
28 amending s. 627.3512, F.S.; providing for
29 recoupment of residual market deficit
30 assessments under certain circumstances;
31 creating s. 627.3513, F.S.; providing standards

1 and procedures for underwriting associations to
2 issue bonds; creating s. 627.3516, F.S.;
3 providing for a residual property insurance
4 market coordinating council; providing for
5 duties and membership; amending s. 627.4025,
6 F.S.; revising a definition of residential
7 coverage; amending s. 627.701, F.S.; providing
8 for certain offers up to a specified
9 deductible; authorizing alternative deductibles
10 for certain property; conforming cross
11 references; providing an effective date.

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

Section 1. Paragraph (c) of subsection (7) of section 215.555, Florida Statutes, 1996 Supplement, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(7) ADDITIONAL POWERS AND DUTIES.--

(c)1. Each fiscal year, the Legislature shall appropriate from the investment income of the Florida Hurricane Catastrophe Fund an amount no less than \$10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve hurricane preparedness, reduce potential losses in the event of a hurricane, provide research into means to reduce such losses, educate or inform the public as to means to reduce hurricane losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades,

1 or protect local infrastructure from potential damage from a
2 hurricane. It is the intent of the Legislature that these
3 moneys be appropriated in such a manner as to maximize
4 potential reductions in hurricane damage while minimizing
5 costs. Moneys shall first be available for appropriation under
6 this paragraph in fiscal year 1997-1998. Moneys in excess of
7 the \$10 million specified in this paragraph shall not be
8 available for appropriation under this paragraph if the State
9 Board of Administration finds that an appropriation of
10 investment income from the fund would jeopardize the actuarial
11 soundness of the fund.

12 2. Moneys made available under this paragraph shall be
13 appropriated as follows:

14 a.(I) Eighty-five percent of the moneys appropriated
15 under this paragraph in any fiscal year shall be allocated to
16 the Department of Community Affairs for programs to improve
17 the wind resistance of residences, including loan subsidies,
18 grants, and demonstration projects; cooperative programs with
19 local governments, the Federal Government, and the Insurance
20 Institute for Property Loss Reduction; and other efforts to
21 prevent or reduce losses or reduce the cost of rebuilding
22 after a disaster.

23 (II) Eligibility for loan subsidies and other forms of
24 direct assistance to property owners is limited to
25 policyholders of the Florida Windstorm Underwriting
26 Association. Actions taken by a property owner pursuant to
27 such loan subsidies and direct assistance qualify the property
28 owner for premium discounts as filed by the association
29 approved by the Department of Insurance and do not constitute
30 changes, additions, or improvements to homestead property
31 within the meaning of chapter 193. No more than 25 percent of

1 the total value of such loan subsidies and direct assistance
2 shall be awarded on the basis of the income of the recipient.
3 At least 10 percent of the total value of such loan subsidies
4 and direct assistance shall be used for mobile homes,
5 including programs to inspect and improve tie-downs.

6 (III) The Department of Community Affairs shall
7 develop the program in consultation with an advisory council
8 consisting of: representatives of the Department of
9 Insurance, the Residential Property and Casualty Joint
10 Underwriting Association, the Florida Windstorm Underwriting
11 Association, mortgage lenders, home builders, building
12 officials, insurance companies, the Insurance Institute for
13 Property Loss Reduction, Federation of Mobile Home Owners, a
14 code development agency, and the Federal Emergency Management
15 Agency; the Insurance Consumer Advocate; and the Chief
16 Operating Officer of the Florida Hurricane Catastrophe Fund.

17 (IV) Moneys appropriated under this sub-subparagraph
18 are intended to supplement other funding sources of the
19 Department of Community Affairs and may not supplant other
20 sources of funding for the Department of Community Affairs.

21 b. Five percent of the moneys appropriated under this
22 subparagraph in any fiscal year shall be allocated to the
23 Office of the Insurance Consumer Advocate of the Department of
24 Insurance for the purpose of consumer education, information,
25 and outreach to encourage consumers to take actions that will
26 reduce their property insurance costs, including a statewide
27 media public awareness campaign utilizing television and radio
28 which must be matched by at least an equal amount of in-kind
29 services, with a goal of three times the funds being matched
30 by in-kind services. Moneys appropriated under this
31 sub-subparagraph are intended to supplement other funding

1 sources of the Insurance Consumer Advocate and may not
2 supplant other funding for the Office of the Insurance
3 Consumer Advocate. The Insurance Consumer Advocate shall
4 consult with the Department of Community Affairs prior to
5 expending funds under this sub-subparagraph.

6 c. Ten percent of the moneys appropriated under this
7 paragraph in any fiscal year shall be allocated to the State
8 University System to support programs of research and
9 development, including demonstration projects, with regard to
10 hurricane loss reduction devices and techniques for residences
11 and mobile homes and the calculation of potential loss
12 reduction for use in insurers' rate filings. Research and
13 development programs under this sub-subparagraph must be
14 matched by at least an equal amount of funds or in-kind
15 services from entities other than the State University System.
16 The State University System shall consult with the Department
17 of Community Affairs prior to expending funds under this
18 sub-subparagraph.

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20 On January 1, 1999, and annually thereafter, the Department of
21 Community Affairs shall provide a full report and accounting
22 of activities under this paragraph and an evaluation of such
23 activities to the Speaker of the House of Representatives and
24 the President of the Senate and Majority and Minority Leaders
25 of the House of Representatives and the Senate.

26 Section 2. Subsection (2) of section 624.4071, Florida
27 Statutes, 1996 Supplement, is amended to read:

28 624.4071 Special purpose homeowner insurance
29 company.--

30 (2) A special purpose homeowner insurance company must
31 have a parent company, and both companies must meet the

1 requirements of this subsection in order for the subsidiary to
2 qualify for and maintain a certificate of authority under this
3 section.

4 (a) The parent company must be an admitted insurer in
5 at least one state in the United States and must have over \$50
6 million in capital and surplus.

7 (b) The parent company must have and maintain at least
8 51 percent of the equity and at least 51 percent of the
9 control of the special purpose homeowner insurance company.

10 (c) An insurer not authorized to transact business in
11 this state, but that otherwise meets the requirements of this
12 section, may apply as a special purpose homeowner insurance
13 company.

14 (d) The special purpose homeowner insurance company
15 must:

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

18 2. Be a member of the Florida Insurance Guaranty
19 Association and the Florida Hurricane Catastrophe Fund, and be
20 subject to any of their required assessments and premium
21 charges. However, a special purpose homeowner insurance
22 company may not be a member of the Florida Windstorm
23 Underwriting Association or the Florida Residential Property
24 and Casualty Joint Underwriting Association, and neither the
25 company nor its policyholders are subject to any assessments
26 by these associations except for emergency assessments
27 collected from policyholders pursuant to s.
28 627.351(2)(b)2.d.(III), and s. 627.351(6)(b)3.d. For the sole
29 purpose of levying and collecting emergency assessments and
30 determining the statewide written premium for property
31 insurance, special purpose homeowner insurance companies shall

1 be considered member insurers of the Florida Windstorm
2 Underwriting Association and the Florida Residential Property
3 and Casualty Joint Underwriting Association.

4 3. Offer coverage for all perils, including windstorm,
5 in providing residential coverage as defined in s. 627.4025. A
6 special purpose homeowner insurance company's rates must be
7 filed with the department. After a period of 1 year from the
8 date a company receives a certificate of authority, the
9 company's rates are subject to department approval under s.
10 627.062.

11 Section 3. Subsection (5) of section 626.752, Florida
12 Statutes, is amended to read:

13 626.752 Exchange of business.--

14 (5) Within 15 days after the last day of each month,
15 any insurer accepting business under this section shall report
16 to the department the name, address, telephone number, and
17 social security number of each agent from which the insurer
18 received more than 24 personal lines risks during the calendar
19 year, except for risks being removed from the Residential
20 Property and Casualty Joint Underwriting Association and
21 placed with that insurer ~~through the market assistance plan~~ by
22 a brokering agent. Once the insurer has reported pursuant to
23 this subsection an agent's name to the department, additional
24 reports on the same agent shall not be required. However, the
25 fee set forth in s. 624.501 shall be paid for the agent by the
26 insurer for each year until the insurer notifies the
27 department that the insurer is no longer accepting business
28 from the agent pursuant to this section. The insurer may
29 require that the agent reimburse the insurer for the fee.

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1 Section 4. Paragraph (c) of subsection (3) of section
2 627.0628, Florida Statutes, 1996 Supplement, is amended to
3 read:

4 627.0628 Florida Commission on Hurricane Loss
5 Projection Methodology.--

6 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

7 (c) With respect to a rate filing under s. 627.062, an
8 insurer may employ actuarial methods, principles, standards,
9 models, or output ranges found by the commission to be
10 accurate or reliable to determine hurricane loss factors for
11 use in a rate filing under s. 627.062, which findings and
12 factors are admissible and relevant in consideration of a rate
13 filing by the department or in any arbitration or
14 administrative or judicial review.

15 Section 5. Subsections (8), (9), (10), and (11) are
16 added to section 627.0629, Florida Statutes, 1996 Supplement,
17 to read:

18 627.0629 Residential property insurance; rate
19 filings.--

20 (8) An insurer may implement appropriate discounts or
21 other rate differentials of up to 10 percent of the annual
22 premium to mobile home owners who provide to the insurer
23 evidence of a current inspection of tie-downs for the mobile
24 home, certifying that the tie-downs have been properly
25 installed and are in good condition.

26 (9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
27 SOUNDNESS.--

28 (a) It is the intent of the Legislature to provide a
29 program whereby homeowners may obtain an evaluation of the
30 wind resistance of their homes with respect to preventing
31 damage from hurricanes, together with a recommendation of

1 reasonable steps that may be taken to upgrade their homes to
2 better withstand hurricane force winds.

3 (b) The Legislature hereby authorizes the
4 establishment of a program to be administered by the Florida
5 Windstorm Underwriting Association.

6 (c) The program shall provide grants to homeowners,
7 for the purpose of providing homeowner applicants with funds
8 to conduct an evaluation of the integrity of their homes with
9 respect to withstanding hurricane force winds, recommendations
10 to retrofit the homes to better withstand damage from such
11 winds, and the estimated cost to make the recommended
12 retrofits.

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

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

29 (10) A property insurance rate filing that includes
30 any adjustments related to the Florida Hurricane Catastrophe
31 Fund must include a complete calculation of the insurer's

1 catastrophe load, and may not be limited solely to recovery of
2 moneys paid to the fund.

3 (11) For the purposes of all filings that include a
4 catastrophe load, including filings of the Residential
5 Property and Casualty Joint Underwriting Association and the
6 Florida Windstorm Underwriting Association, a 100-year or 1
7 percent probability probable maximum loss shall be considered
8 the standard in determining the insurer's catastrophic needs.

9 Section 6. Subsections (2) and (6) of section 627.351,
10 Florida Statutes, 1996 Supplement, are amended to read:

11 627.351 Insurance risk apportionment plans.--

12 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

13 (a) Agreements may be made among property insurers
14 with respect to the equitable apportionment among them of
15 insurance which may be afforded applicants who are in good
16 faith entitled to, but are unable to procure, such insurance
17 through ordinary methods; and such insurers may agree among
18 themselves on the use of reasonable rate modifications for
19 such insurance. Such agreements and rate modifications shall
20 be subject to the applicable provisions of this chapter.

21 (b) The department shall require all insurers holding
22 a certificate of authority ~~licensed~~ to transact property
23 insurance on a direct basis in this state, other than joint
24 underwriting associations and other entities formed pursuant
25 to this section, to provide windstorm coverage to applicants
26 from areas determined to be eligible pursuant to paragraph (c)
27 who in good faith are entitled to, but are unable to procure,
28 such coverage through ordinary means; or it shall adopt a
29 reasonable plan or plans for the equitable apportionment or
30 sharing among such insurers of windstorm coverage, which may
31 include formation of an association for this purpose. As used

1 in this subsection, the term "property insurance" means
2 insurance on real or personal property, as defined in s.
3 624.604, including insurance for fire, industrial fire, allied
4 lines, farmowners multi-peril, homeowners' multi-peril,
5 commercial multi-peril, and mobile homes, and including
6 liability coverages on all such insurance, but excluding
7 inland marine as defined in s. 624.607(3) and excluding
8 vehicle insurance as defined in s. 624.605(1)(a) other than
9 insurance on mobile homes used as permanent dwellings.The
10 department commissioner shall adopt promulgate rules that
11 which provide a formula for the recovery and repayment of any
12 deferred assessments.

13 1. For the purpose of this section, properties
14 eligible for such windstorm coverage are defined as dwellings,
15 buildings, and other structures, including mobile homes which
16 are used as dwellings and which are tied down in compliance
17 with mobile home tie-down requirements prescribed by the
18 Department of Highway Safety and Motor Vehicles pursuant to s.
19 320.8325, and the contents of all such properties. An
20 applicant or policyholder is eligible for coverage only if an
21 offer of coverage cannot be obtained by or for the applicant
22 or policyholder from an admitted insurer at approved rates.

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

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

22 (II) The plan of operation shall provide for a board
23 of directors consisting of the Insurance Consumer Advocate
24 appointed under s. 627.0613, two consumer representatives
25 appointed by the Insurance Commissioner, and 12 additional
26 members appointed as specified in the plan of operation. One
27 of the 12 additional members shall ~~that one additional~~
28 ~~domestic member of the board of directors~~ be elected by the
29 domestic companies of this state on the basis of cumulative
30 weighted voting based on the net direct written premiums of
31 domestic companies in this state. Nothing in the 1997

1 amendments to this paragraph terminates the existing board or
2 the terms of any members of the board.

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

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

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

16 (VI) The plan of operation may also provide for the
17 award of credits, for a period not to exceed 3 years, from a
18 regular assessment pursuant to sub-sub-subparagraph d.(I) or
19 sub-sub-subparagraph d.(II) as an incentive for taking
20 policies out of the Residential Property and Casualty Joint
21 Underwriting Association, provided at least 60 percent of the
22 policies removed from the Residential Property and Casualty
23 Joint Underwriting Association by the insurer cover properties
24 located in Dade, Broward, or Palm Beach Counties. With the
25 approval of the department, the board may extend such credits
26 for an additional year if the insurer guarantees an additional
27 year of renewability for all policies removed from the
28 Residential Property and Casualty Joint Underwriting
29 Association, or for 2 additional years if the insurer
30 guarantees 2 additional years of renewability for all policies
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1 removed from the Residential Property and Casualty Joint
2 Underwriting Association.

3 b. Assessments to pay deficits in the association plan
4 under this subparagraph shall be included as an appropriate
5 factor in the making of rates as provided in s. 627.3512.

6 c. The Legislature finds that the potential for
7 unlimited deficit assessments under this subparagraph may
8 induce insurers to attempt to reduce their writings in the
9 voluntary market, and that such actions would worsen the
10 availability problems that the association plan was created to
11 remedy. It is the intent of the Legislature that insurers
12 remain fully responsible for paying regular assessments and
13 collecting emergency assessments for covering any deficits of
14 the association plan; however, it is also the intent of the
15 Legislature to provide a means by which assessment liabilities
16 may be amortized over a period of years.

17 d.(I) When the deficit incurred in a particular
18 calendar year is 10 percent or less of the aggregate statewide
19 direct written premium for property insurance for the prior
20 calendar year for all member insurers, the association shall
21 levy an assessment on member insurers in an amount equal to
22 the deficit.

23 (II)~~(I)~~ When the deficit incurred in a particular
24 calendar year exceeds 10 percent of the aggregate statewide
25 direct written premium for property insurance for the prior
26 calendar year ~~as defined in s. 624.404~~ for all member insurers
27 ~~licensed to transact property insurance on a direct basis in~~
28 ~~this state~~, the association shall levy an assessment on member
29 ~~such~~ insurers in an amount equal to the greater of 10 percent
30 of the deficit or 10 percent of the aggregate statewide direct
31 written premium for property insurance for the prior calendar

1 year for member insurers. Any remaining deficit shall be
2 recovered through emergency assessments under
3 sub-sub-subparagraph (III) ~~(II)~~.
4 (III) ~~(II)~~ Upon a determination by the board of
5 directors ~~governors~~ that a deficit exceeds the amount that
6 will be recovered through regular assessments on member of
7 insurers, pursuant to sub-sub-subparagraph (I) or
8 sub-sub-subparagraph (II), the board shall levy, after
9 verification by the department, emergency assessments to be
10 collected by member insurers and by, ~~including joint~~
11 underwriting associations created pursuant to this section
12 which write property insurance, upon issuance or renewal of
13 property insurance policies other than National Flood
14 Insurance policies in the year or years following levy of the
15 regular assessments. The amount of the emergency assessment
16 collected in a particular year shall be a uniform percentage
17 of that year's direct written premium for property insurance
18 for all member insurers and underwriting associations,
19 excluding National Flood Insurance policy premiums as defined
20 in s. ~~624.404~~, as annually determined by the board and
21 verified by the department. The department shall verify the
22 arithmetic calculations involved in the board's determination
23 within 30 days after receipt of the information on which the
24 determination was based. Notwithstanding any other provision
25 of law, each member insurer and each underwriting association
26 created pursuant to this section shall collect emergency
27 assessments from its policyholders without such obligation
28 being affected by any credit, limitation, exemption, or
29 deferment. The emergency assessments so collected shall be
30 transferred directly to the association on a periodic basis as
31 determined by the association. The aggregate amount of

1 emergency assessments levied under this sub-sub-subparagraph
2 ~~sub-subparagraph~~ in any calendar year may not exceed the
3 greater of 10 percent of the amount needed to cover the
4 original deficit, plus interest, fees, commissions, required
5 reserves, and other costs associated with financing of the
6 original deficit, or 10 percent of the aggregate statewide
7 direct written premium for property insurance written by
8 member insurers and underwriting associations ~~subject lines of~~
9 ~~business~~ for the prior year, plus interest, fees, commissions,
10 required reserves, and other costs associated with financing
11 the original deficit. The board may pledge the proceeds of the
12 emergency assessments under this sub-sub-subparagraph
13 ~~sub-subparagraph~~ as the source of revenue for bonds, to retire
14 any other debt incurred as a result of the deficit or events
15 giving rise to the deficit, or in any other way that the board
16 determines will efficiently recover the deficit. The emergency
17 assessments under this sub-sub-subparagraph shall continue as
18 long as any bonds issued or other indebtedness incurred with
19 respect to a deficit for which the assessment was imposed
20 remain outstanding, unless adequate provision has been made
21 for the payment of such bonds or other indebtedness pursuant
22 to the document governing such bonds or other indebtedness.

23 Emergency assessments collected under this
24 sub-sub-subparagraph ~~subparagraph~~ are not part of an insurer's
25 rates, are not premium, and are not subject to premium tax,
26 fees, or commissions; however, failure to pay the emergency
27 assessment shall be treated as failure to pay premium.

28 (IV) ~~(III)~~ Each member insurer's share of the total
29 regular assessments ~~assessment~~ under sub-sub-subparagraph (I)
30 or sub-sub-subparagraph (II) ~~this sub-subparagraph~~ shall be in
31 the proportion that the insurer's net ~~direct written~~ premium

1 for property insurance in this state,~~as defined in s. 624.404~~
2 for the year preceding the assessment bears to the aggregate
3 statewide net direct written premium for property insurance of
4 all member insurers, as reduced by any credits for voluntary
5 writings as defined in s. 624.404 for that year.

6 (V)(IV) If regular deficit assessments are made under
7 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
8 the Residential Property and Casualty Joint Underwriting
9 Association under sub-subparagraph (6)(b)3.a. or
10 sub-subparagraph (6)(b)3.b., the association shall levy upon
11 the association's policyholders, as part of its next rate
12 filing, or by a separate rate filing solely for this purpose,
13 a market equalization surcharge in a percentage equal to the
14 total amount of such regular assessments divided by the
15 aggregate statewide direct written premium for property
16 insurance for member insurers for the prior calendar year.
17 Market equalization surcharges under this sub-sub-subparagraph
18 are not considered premium and are not subject to commissions,
19 fees, or premium taxes; however, failure to pay a market
20 equalization surcharge shall be treated as failure to pay
21 premium.

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

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

1 required to purchase the bonds to the extent that the
2 department determines that the purchase would endanger or
3 impair the solvency of the insurer. The authority granted by
4 this sub-subparagraph is additional to any bonding authority
5 granted by subparagraph 6.

6 3. The plan shall also provide that any member with a
7 surplus as to policyholders of \$20 million or less writing 25
8 percent or more of its total countrywide property insurance
9 premiums in this state may petition the department, ~~within 90~~
10 ~~days of the effective date of chapter 76-96, Laws of Florida,~~
11 ~~and thereafter~~ within the first 90 days of each calendar year,
12 to qualify as a limited apportionment company. The
13 apportionment of such a member company in any calendar year
14 for which it is qualified shall not exceed its gross
15 participation, which shall not be affected by the formula for
16 voluntary writings. In no event shall a limited apportionment
17 company be required to participate in any apportionment of
18 losses pursuant to sub-sub-subparagraph 2.d.(I) or
19 sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
20 \$50 million after payment of available plan funds in any
21 calendar year. However, a limited apportionment company shall
22 collect from its policyholders any emergency assessment
23 imposed under sub-sub-subparagraph 2.d.(III). The plan shall
24 provide that, if the department determines that any regular
25 assessment will result in an impairment of the surplus of a
26 limited apportionment company, the department may direct that
27 all or part of such assessment be deferred. However, there
28 shall be no limitation or deferment of an emergency assessment
29 to be collected from policyholders under sub-sub-subparagraph
30 2.d.(III).
31

1 4. The plan shall provide for the deferment, in whole
2 or in part, of a regular ~~the~~ assessment of a member insurer
3 under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph
4 2.d.(II), but not for an emergency assessment collected from
5 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
6 opinion of the commissioner, payment of such regular ~~the~~
7 assessment would endanger or impair the solvency of the member
8 insurer. In the event a regular ~~an~~ assessment against a member
9 insurer is deferred in whole or in part, the amount by which
10 such assessment is deferred may be assessed against the other
11 member insurers in a manner consistent with the basis for
12 assessments set forth in sub-sub-subparagraph 2.d.(I) or
13 sub-sub-subparagraph 2.d.(II)~~subparagraph 2.~~

14 5.a. The plan of operation may include deductibles and
15 rules for classification of risks and rate modifications
16 consistent with the objective of providing and maintaining
17 funds sufficient to pay catastrophe losses.

18 b. The association may require arbitration of a rate
19 filing under s. 627.062(6). It is the intent of the
20 Legislature that the rates for coverage provided by the
21 association be actuarially sound and not competitive with
22 approved rates charged in the admitted voluntary market such
23 that the association functions as a residual market mechanism
24 to provide insurance only when the insurance cannot be
25 procured in the voluntary market. As an interim measure, with
26 respect to personal lines residential coverage, the
27 association shall adopt rating plans that provide, for each
28 county, that the typical rates of the association for each
29 line of business are no lower than the typical rates charged
30 by the insurer that had the highest average rate in that
31 county among the 20 insurers with the greatest total direct

1 written premium in the state for that line of business in the
2 preceding year, except, with respect to mobile home coverages,
3 the typical rates of the association shall be no lower than
4 the typical rates charged by the insurer that had the highest
5 average rate in that county among the 5 insurers with the
6 greatest total written premium for mobile home owner's
7 policies in the state in the preceding year. An insurer's
8 typical rate is the premium the insurer charges for a
9 specified coverage on a residential property the insured value
10 of which is equal to the median residential property value in
11 that county. If the county encompasses more than one rating
12 territory, the average typical rate in the county shall be
13 weighted to reflect the population of the rating territories.
14 It is the intent of the Legislature that such interim rating
15 plans be phased in, with average rates reflecting at least
16 half of the difference between the then-current association
17 rate and the full interim rate taking effect with policies
18 issued or renewed on or after January 1, 1999, and with full
19 interim rates taking effect with policies issued or renewed on
20 or after January 1, 2000. Nothing in this subparagraph
21 requires the association to adopt inadequate rates or to
22 reduce rates approved under s. 627.062.

23 c. The association plan shall provide for windstorm
24 coverage on residential properties in limits up to \$10 million
25 for commercial lines residential risks and up to \$1 million
26 for personal lines residential risks. If coverage with the
27 association is sought for a residential risk valued in excess
28 of these limits, coverage shall be available to the risk up to
29 the replacement cost or actual cash value of the property, at
30 the option of the insured, if coverage for the risk cannot be
31 located in the authorized market. The association must accept

1 a commercial lines residential risk with limits above \$10
2 million or a personal lines residential risk with limits above
3 \$1 million if coverage is not available in the authorized
4 market. The association may write coverage above the limits
5 specified in this subparagraph with or without facultative or
6 other reinsurance coverage, as the association determines
7 appropriate.

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

14 (I) Whether the likelihood of a loss for the
15 individual risk is substantially higher than for other risks
16 of the same class; and

17 (II) Whether the uncertainty associated with the
18 individual risk is such that an appropriate premium cannot be
19 determined.

20
21 The acceptance or rejection of a risk by the association
22 pursuant to such criteria and procedures must be construed as
23 the private placement of insurance, and the provisions of
24 chapter 120 do not apply.

25 e. The policies issued by the association must provide
26 that if the association obtains an offer from an authorized
27 insurer to cover the risk at its approved rates under either a
28 standard policy including wind coverage or, if consistent with
29 the insurer's underwriting rules as filed with the department,
30 a basic policy including wind coverage, the risk is no longer
31 eligible for coverage through the association. Upon

1 termination of eligibility, the association shall provide
2 written notice to the policyholder and agent of record stating
3 that the association policy must be canceled as of 60 days
4 after the date of the notice because of the offer of coverage
5 from an authorized insurer. Other provisions of the insurance
6 code relating to cancellation and notice of cancellation do
7 not apply to actions under this sub-subparagraph.

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

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

26 b. Any ~~The~~ entity created under this subsection
27 ~~subparagraph~~, or any entity formed for the purposes of this
28 subsection, may sue and be sued ~~subparagraph 2.~~, may borrow
29 money; issue bonds, notes, or debt instruments; pledge or sell
30 assessments, market equalization surcharges and other
31 surcharges, rights, premiums, contractual rights, projected

1 recoveries from the Florida Hurricane Catastrophe Fund, other
2 reinsurance recoverables, and other assets as security for
3 such bonds, notes, or debt instruments; enter into any
4 contracts or agreements necessary or proper to accomplish such
5 borrowings; and take other actions necessary to carry out the
6 purposes of this subsection. The association may issue bonds
7 or incur other indebtedness, or have bonds issued on its
8 behalf by a unit of local government pursuant to subparagraph
9 (g)2., in the absence of a hurricane or other weather-related
10 event, upon a determination by the association subject to
11 approval by the department that such action would enable it to
12 efficiently meet the financial obligations of the association
13 and that such financings are reasonably necessary to
14 effectuate the requirements of this subsection. Any such ~~The~~
15 entity may accumulate reserves and retain surpluses as of the
16 end of any association year to provide for the payment of
17 losses incurred by the association during that year or any
18 future year. The association plan shall incorporate and
19 continue the plan of operation and articles of agreement in
20 effect on the effective date of chapter 76-96, Laws of
21 Florida, to the extent that it is not inconsistent with
22 chapter 76-96, and as subsequently modified consistent with
23 chapter 76-96. The board of directors and officers currently
24 -serving shall continue to serve until their successors are
25 duly qualified as provided under the plan. The assets and
26 obligations of the plan in effect immediately prior to the
27 effective date of chapter 76-96 shall be construed to be the
28 assets and obligations of the successor plan created herein.
29 c. In recognition of s. 10, Art. I of the State
30 Constitution, prohibiting the impairment of obligations of
31 contracts, it is the intent of the Legislature that no action

1 be taken whose purpose is to impair any bond indenture or
2 financing agreement or any revenue source committed by
3 contract to such bond or other indebtedness issued or incurred
4 by the association or any other entity created under this
5 subsection.

6 7. On such coverage, an agent's remuneration shall be
7 that amount of money payable to him by the terms of his
8 contract with the company with which the business is placed.
9 However, no commission will be paid on that portion of the
10 premium which is in excess of the standard premium of that
11 company.

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

28 9. Notwithstanding any other provision of law:

29 a. The pledge or sale of, the lien upon, and the
30 security interest in any rights, revenues, or other assets of
31 the association created or purported to be created pursuant to

1 any financing documents to secure any bonds or other
2 indebtedness of the association shall be and remain valid and
3 enforceable, notwithstanding the commencement of and during
4 the continuation of, and after, any rehabilitation,
5 insolvency, liquidation, bankruptcy, receivership,
6 conservatorship, reorganization, or similar proceeding against
7 the association under the laws of this state or any other
8 applicable laws.

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

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

26 d. As used in this subsection, the term "financing
27 documents" means any agreement, instrument, or other document
28 now existing or hereafter created evidencing any bonds or
29 other indebtedness of the association or pursuant to which any
30 such bonds or other indebtedness has been or may be issued and
31 pursuant to which any rights, revenues, or other assets of the

1 association are pledged or sold to secure the repayment of
2 such bonds or indebtedness, together with the payment of
3 interest on such bonds or such indebtedness, or the payment of
4 any other obligation of the association related to such bonds
5 or indebtedness.

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

24 f. There shall be no liability on the part of, and no
25 cause of action of any nature shall arise against, any member
26 insurer or its agents or employees, agents or employees of the
27 association, members of the board of directors of the
28 association, or the department or its representatives, for any
29 action taken by them in the performance of their duties or
30 responsibilities under this subsection. Such immunity does not
31

1 apply to actions for breach of any contract or agreement
2 pertaining to insurance, or any willful tort.

3 (c) The provisions of paragraph (b) are applicable
4 only with respect to:

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

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

9 a. Due to the lack of windstorm insurance coverage in
10 the county or area so affected, economic growth and
11 development is being deterred or otherwise stifled in such
12 county or area, mortgages are in default, and financial
13 institutions are unable to make loans;

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

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

27
28 Any time after the department has determined that the criteria
29 referred to in this subparagraph do not exist with respect to
30 any county or area of the state, it may, after a subsequent
31

1 public hearing, declare that such county or area is no longer
2 eligible for windstorm coverage through the plan.

3 (d) For the purpose of evaluating whether the criteria
4 of paragraph (c) are met, such criteria shall be applied as
5 the situation would exist if policies had not been written by
6 the Florida Residential Property and Casualty Joint
7 Underwriting Association and property insurance for such
8 policyholders was not available.

9 (e) Notwithstanding the provisions of subparagraph
10 (c)2. or paragraph (d), eligibility shall not be extended to
11 any area that was not eligible on March 1, 1997, except that
12 the department may act with respect to any petition on which a
13 hearing was held prior to March 1, 1997. This paragraph is
14 repealed on October 1, 1998.

15 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
16 UNDERWRITING ASSOCIATION.--

17 (a) There is created a joint underwriting association
18 for equitable apportionment or sharing among insurers of
19 property and casualty insurance covering residential property,
20 for applicants who are in good faith entitled, but are unable,
21 to procure insurance through the voluntary market. The
22 association shall operate pursuant to a plan of operation
23 approved by order of the department. The plan is subject to
24 continuous review by the department. The department may, by
25 order, withdraw approval of all or part of a plan if the
26 department determines that conditions have changed since
27 approval was granted and that the purposes of the plan require
28 changes in the plan. For the purposes of this subsection,
29 residential coverage includes both personal lines residential
30 coverage, which consists of the type of coverage provided by
31 homeowner's, mobile home owner's, dwelling, tenant's,

1 condominium unit owner's, and similar policies, and commercial
2 lines residential coverage, which consists of the type of
3 coverage provided by condominium association, apartment
4 building, and similar policies.

5 (b)1. All insurers authorized to write subject lines
6 of business ~~such insurance~~ in this state, other than
7 underwriting associations or other entities created under this
8 section, must participate in and be members of the Residential
9 Property and Casualty Joint Underwriting Association. A
10 member's participation shall begin on the first day of the
11 calendar year following the year in which the member was
12 issued a certificate of authority to transact insurance for
13 subject lines of business in this state and shall terminate 1
14 year after the end of the first calendar year during which the
15 member no longer holds a certificate of authority to transact
16 insurance for subject lines of business in this state.

17 2. All revenues, assets, liabilities, losses, and
18 expenses of the association shall be divided into two separate
19 accounts, one of which is for personal lines residential
20 coverages and the other of which is for commercial lines
21 residential coverages. Revenues, assets, liabilities, losses,
22 and expenses not attributable to particular coverages shall be
23 prorated between the accounts.

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

25 a. When the deficit incurred in a particular calendar
26 year is not greater than 10 percent of the aggregate statewide
27 direct written premium for the subject lines of business for
28 the prior calendar year for all member insurers, the entire
29 deficit shall be recovered through assessments of member
30 insurers under paragraph (g).

31

1 b. When the deficit incurred in a particular calendar
2 year exceeds 10 percent of the aggregate statewide direct
3 written premium for the subject lines of business for the
4 prior calendar year for all member insurers, the association
5 shall levy an assessment on member insurers in an amount equal
6 to the greater of 10 percent of the deficit or 10 percent of
7 the aggregate statewide direct written premium for the subject
8 lines of business for the prior calendar year for all member
9 insurers. Any remaining deficit shall be recovered through
10 emergency assessments under sub-subparagraph d.

11 c. Each member insurer's share of the total assessment
12 under sub-subparagraph a. or sub-subparagraph b. shall be in
13 the proportion that the member insurer's direct written
14 premium for the subject lines of business for the year
15 preceding the assessment bears to the aggregate statewide
16 direct written premium for the subject lines of business for
17 that year for all member insurers.

18 d. Upon a determination by the board of governors that
19 a deficit in an account exceeds the amount that will be
20 recovered through regular assessments on member ~~of~~ insurers
21 under sub-subparagraph a. or sub-subparagraph b., the board
22 shall levy, after verification by the department, emergency
23 assessments to be collected by member insurers and by
24 ~~including joint~~ underwriting associations created under this
25 section which write subject lines of business, upon issuance
26 or renewal of policies for subject lines of business,
27 excluding National Flood Insurance policies, in the year or
28 years following levy of the regular assessments. The amount
29 of the emergency assessment collected in a particular year
30 shall be a uniform percentage of that year's direct written
31 premium for subject lines of business for all member insurers

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

25 e. The board may pledge the proceeds of assessments,
26 projected recoveries ~~revenues~~ from the Florida Hurricane
27 Catastrophe Fund, other insurance and reinsurance
28 recoverables, market equalization surcharges and other
29 surcharges, and other funds available to the association as
30 the source of revenue for and to secure bonds issued under
31 paragraph (g), bonds or other indebtedness issued under

1 subparagraph (c)3., or lines of credit or ~~of~~ other financing
2 mechanisms issued or created under this subsection
3 ~~subparagraph (c)10.~~, or to retire any other debt incurred as a
4 result of deficits ~~the deficit~~ or events giving rise to
5 deficits ~~the deficit~~, or in any other way that the board
6 determines will efficiently recover such deficits ~~the deficit~~.
7 The purpose of the lines of credit or other financing
8 mechanisms is to provide additional resources to assist the
9 association in covering claims and expenses attributable to a
10 catastrophe. As used in this subsection, the term
11 "assessments" includes regular assessments under
12 sub-subparagraph a., sub-subparagraph b., or subparagraph
13 (g)1. and emergency assessments under ~~this~~ sub-subparagraph d.
14 Emergency assessments collected under sub-subparagraph d. ~~this~~
15 ~~subparagraph~~ are not part of an insurer's rates, are not
16 premium, and are not subject to premium tax, fees, or
17 commissions; however, failure to pay the emergency assessment
18 shall be treated as failure to pay premium. The emergency
19 assessments under sub-subparagraph d. shall continue as long
20 as any bonds issued or other indebtedness incurred with
21 respect to a deficit for which the assessment was imposed
22 remain outstanding, unless adequate provision has been made
23 for the payment of such bonds or other indebtedness pursuant
24 to the documents governing such bonds or other indebtedness.
25 ~~f.e.~~ As used in this subsection ~~subparagraph~~, the term
26 "subject lines of business" means, with respect to the
27 personal lines account, any personal lines policy defined in
28 s. 627.4025, and means, with respect to the commercial lines
29 account, all commercial property and commercial fire
30 insurance.
31 (c) The plan of operation of the association:

1 1. May provide for one or more designated insurers,
2 able and willing to provide policy and claims service, to act
3 on behalf of the association to provide such service. Each
4 licensed agent shall be entitled to indicate the order of
5 preference regarding who will service the business placed by
6 the agent. The association shall adhere to each agent's
7 preferences unless after consideration of other factors in
8 assigning agents, including, but not limited to, servicing
9 capacity and fee arrangements, the association has reason to
10 believe it is in the best interest of the association to make
11 a different assignment.

12 2. Must provide for adoption of residential property
13 and casualty insurance policy forms, which forms must be
14 approved by the department prior to use. The association
15 shall adopt the following policy forms:

16 a. Standard personal lines policy forms including wind
17 coverage, which are multiperil policies providing what is
18 generally considered to be full coverage of a residential
19 property similar to the coverage provided under an HO-2, HO-3,
20 HO-4, or HO-6 policy.

21 b. Standard personal lines policy forms without wind
22 coverage, which are the same as the policies described in
23 sub-subparagraph a. except that they do not include wind
24 coverage.

25 c. Basic personal lines policy forms including wind
26 coverage, which are policies similar to an HO-8 policy or a
27 dwelling fire policy that provide coverage meeting the
28 requirements of the secondary mortgage market, but which
29 coverage is more limited than the coverage under a standard
30 policy.

31

1 d. Basic personal lines policy forms without wind
2 coverage, which are the same as the policies described in
3 sub-subparagraph c. except that they do not include wind
4 coverage.

5 e. Commercial lines residential policy forms including
6 wind coverage that are generally similar to the basic perils
7 of full coverage obtainable for commercial residential
8 structures in the admitted voluntary market.

9 f. Commercial lines residential policy forms without
10 wind coverage, which are the same as the policies described in
11 sub-subparagraph e. except that they do not include wind
12 coverage.

13 3. May provide that the association may employ or
14 otherwise contract with individuals or other entities to
15 provide administrative or professional services that may be
16 appropriate to effectuate the plan. The association shall
17 have the power to borrow funds, by issuing bonds or by
18 incurring other indebtedness, and shall have other powers
19 reasonably necessary to effectuate the requirements of this
20 subsection. The association may issue bonds or incur other
21 indebtedness, or have bonds issued on its behalf by a unit of
22 local government pursuant to subparagraph (g)2., in the
23 absence of a hurricane or other weather-related event, upon a
24 determination by the association, subject to approval by the
25 department, that such action would enable it to efficiently
26 meet the financial obligations of the association and that
27 such financings are reasonably necessary to effectuate the
28 requirements of this subsection. The association is
29 authorized to take all actions needed to facilitate tax-free
30 status for any such bonds or indebtedness, including formation
31 of trusts or other affiliated entities. The association shall

1 have the authority to pledge assessments, projected recoveries
2 from the Florida Hurricane Catastrophe Fund, other reinsurance
3 recoverables, market equalization and other surcharges, and
4 other funds available to the association as security for bonds
5 or other indebtedness. In recognition of s. 10, Art. I of the
6 State Constitution, prohibiting the impairment of obligations
7 of contracts, it is the intent of the Legislature that no
8 action be taken whose purpose is to impair any bond indenture
9 or financing agreement or any revenue source committed by
10 contract to such bond or other indebtedness.

11 4. Must require that the association operate subject
12 to the supervision and approval of a board of governors
13 consisting of 13 individuals, including 1 who is elected as
14 chairman. The board shall consist of:

15 a. The insurance consumer advocate appointed under s.
16 627.0613.

17 b. Five members designated by the insurance industry.

18 c. Five consumer representatives appointed by the
19 Insurance Commissioner. Two of the consumer representatives
20 must, at the time of appointment, be holders of policies
21 issued by the association, who are selected with consideration
22 given to reflecting the geographic balance of association
23 policyholders. Two of the consumer members must be individuals
24 who are minority persons as defined in s. 288.703(3). One of
25 the consumer members shall have expertise in the field of
26 mortgage lending.

27 d. Two representatives of the insurance industry
28 appointed by the Insurance Commissioner. Of the two insurance
29 industry representatives appointed by the Insurance
30 Commissioner, at least one must be an individual who is a
31 minority person as defined in s. 288.703(3).

1
2 Any board member may be disapproved or removed and replaced by
3 the commissioner at any time for cause. All board members,
4 including the chairman, must be appointed to serve for 3-year
5 terms beginning annually on a date designated by the plan.

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

8 a. With respect to personal lines residential risks,
9 ~~the procedures shall require that the authorized insurer that~~
10 ~~last provided coverage of the risk shall first be given an~~
11 ~~opportunity to insure the risk at its approved rate. Upon~~
12 ~~rejection by such insurer, the risk shall be submitted to the~~
13 ~~market assistance plan.~~ if the risk market assistance plan is
14 offered coverage able to obtain an offer from an authorized
15 insurer to insure the risk at the insurer's its approved rate
16 under either a standard policy including wind coverage or, if
17 consistent with the insurer's underwriting rules as filed with
18 the department, a basic policy including wind coverage, the
19 risk is not eligible for any policy issued by the association
20 ~~in the event that the risk accepts the offer of coverage, if~~
21 ~~the producing agent who submitted the application to the plan~~
22 ~~is not currently appointed by the insurer, the insurer shall~~
23 ~~either appoint the agent to service the risk or, if the~~
24 ~~insurer places the coverage through a new agent, require the~~
25 ~~new agent who then writes the policy to pay not less than 50~~
26 ~~percent of his first year's commission to the producing agent~~
27 ~~who submitted the application to the plan, except that if the~~
28 ~~new agent is an employee or exclusive agent of the insurer,~~
29 ~~the new agent shall pay a policy fee of \$50 to the producing~~
30 ~~agent in lieu of splitting the commission. If the risk accepts~~
31 an offer of coverage through the market assistance plan or an

1 offer of coverage through a mechanism established by the
2 association before a policy is issued to the risk by the
3 association or during the first 30 days of coverage by the
4 association, and the producing agent who submitted the
5 application to the plan or to the association is not currently
6 appointed by the insurer, the insurer shall either appoint the
7 agent to service the risk or, if the insurer places the
8 coverage through a new agent, require the new agent who then
9 writes the policy to pay not less than 50 percent of the first
10 year's commission to the producing agent who submitted the
11 application to the plan or the association, except that if the
12 new agent is an employee or exclusive agent of the insurer,
13 the new agent shall pay a policy fee of \$50 to the producing
14 agent in lieu of splitting the commission. If the risk market
15 ~~assistance plan~~ is not able to obtain any such offer, the risk
16 is eligible for either a standard policy including wind
17 coverage or a basic policy including wind coverage issued by
18 the association; however, if the risk could not be insured
19 under a standard policy including wind coverage regardless of
20 market conditions, the risk shall be eligible for a basic
21 policy including wind coverage unless rejected under
22 subparagraph 8. The association shall determine the type of
23 policy to be provided on the basis of objective standards
24 specified in the underwriting manual and based on generally
25 accepted underwriting practices.

26 b. With respect to commercial lines residential risks,
27 ~~the procedures shall require that the authorized insurer that~~
28 ~~last provided coverage of the risk shall first be given an~~
29 ~~opportunity to insure the risk at its approved rate. Upon~~
30 ~~rejection by such insurer, the risk shall be submitted to the~~
31 ~~market assistance plan.~~ if the risk market assistance plan is

614-102C-97

1 ~~offered coverage able to obtain an offer to insure the risk~~
2 under a policy including wind coverage from an authorized
3 insurer at its approved rate ~~or from a surplus lines insurer~~
4 ~~at no more than 25 percent above the association rate,~~ the
5 risk is not eligible for any policy issued by the association.
6 If the risk accepts an offer of coverage through the market
7 assistance plan or an offer of coverage through a mechanism
8 established by the association before a policy is issued to
9 the risk by the association, and the producing agent who
10 submitted the application to the plan or the association is
11 not currently appointed by the insurer, the insurer shall
12 either appoint the agent to service the risk or, if the
13 insurer places the coverage through a new agent, require the
14 new agent who then writes the policy to pay not less than 50
15 percent of the first year's commission to the producing agent
16 who submitted the application to the plan, except that if the
17 new agent is an employee or exclusive agent of the insurer,
18 the new agent shall pay a policy fee of \$50 to the producing
19 agent in lieu of splitting the commission. ~~however, an offer~~
20 ~~from a surplus lines insurer does not disqualify a condominium~~
21 ~~association, cooperative, or homeowners' association from~~
22 ~~eligibility for coverage by the association in the event that~~
23 ~~the risk accepts the offer of coverage, if the producing agent~~
24 ~~who submitted the application to the plan is not currently~~
25 ~~appointed by the insurer, the insurer shall either appoint the~~
26 ~~agent to service the risk or, if the insurer places the~~
27 ~~coverage through a new agent, require the new agent who then~~
28 ~~writes the policy to pay not less than 50 percent of his first~~
29 ~~year's commission to the producing agent who submitted the~~
30 ~~application to the plan, except that if the new agent is an~~
31 ~~employee or exclusive agent of the insurer, the new agent~~

1 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
2 ~~of splitting the commission. If the risk market assistance~~
3 ~~plan is not able to obtain any such offer, the risk is~~
4 ~~eligible for a policy including wind coverage issued by the~~
5 ~~association. After December 31, 1996, an offer from a surplus~~
6 ~~lines insurer does not disqualify an applicant from obtaining~~
7 ~~coverage from the association.~~

8 c. This subparagraph does not require the association
9 to provide wind coverage or hurricane coverage in any area in
10 which such coverage is available through the Florida Windstorm
11 Underwriting Association.

12 6. Must include rules for classifications of risks and
13 rates therefor.

14 7. Must provide that if premium and investment income
15 attributable to a particular plan year are in excess of
16 projected losses and expenses of the plan attributable to that
17 year, such excess shall be held in surplus. Such surplus shall
18 be available to defray deficits as to future years and shall
19 be used for that purpose prior to assessing member insurers as
20 to any plan year.

21 8. Must provide objective criteria and procedures to
22 be uniformly applied for all applicants in determining whether
23 an individual risk is so hazardous as to be uninsurable. In
24 making this determination and in establishing the criteria and
25 procedures, the following shall be considered:

26 a. Whether the likelihood of a loss for the individual
27 risk is substantially higher than for other risks of the same
28 class; and

29 b. Whether the uncertainty associated with the
30 individual risk is such that an appropriate premium cannot be
31 determined.

1
2 The acceptance or rejection of a risk by the association shall
3 be construed as the private placement of insurance, and the
4 provisions of chapter 120 shall not apply.
5 9. Must provide that the association shall make its
6 best efforts to procure catastrophe reinsurance at reasonable
7 rates, as determined by the board of governors.
8 10. Must provide that in the event of regular deficit
9 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
10 (b)3.b., or by the Florida Windstorm Underwriting Association
11 under sub-sub-subparagraph (2)(b)2.d.(I) or
12 sub-sub-subparagraph (2)(b)2.d.(II), the association shall
13 levy upon association policyholders in its next rate filing,
14 or by a separate rate filing solely for this purpose, a market
15 equalization surcharge in a percentage equal to the total
16 amount of such regular assessments divided by the aggregate
17 statewide direct written premium for subject lines of business
18 for member insurers for the prior calendar year ~~equal to the~~
19 ~~percentage assessment attributable to such deficit.~~ Such
20 ~~surcharges, together with projected recoveries from the~~
21 ~~Florida Hurricane Catastrophe Fund, other reinsurance~~
22 ~~recoverables, assessment proceeds, and any other funds~~
23 ~~available to the association, may be used to fund lines of~~
24 ~~credit and other financing mechanisms to the extent available~~
25 ~~from public or private sources. The purpose of the lines of~~
26 ~~credit or other financing mechanism is to provide additional~~
27 ~~resources to assist the association in covering claims and~~
28 ~~expenses attributable to a catastrophe.~~ Market equalization
29 surcharges under this subparagraph are not considered premium
30 and are not subject to commissions, fees, or premium taxes;
31

1 however, failure to pay a market equalization surcharge shall
2 be treated as failure to pay premium.

3 11. The policies issued by the association must
4 provide that ~~for personal lines residential risks~~, if the
5 association or the market assistance plan obtains an offer
6 from an authorized insurer to cover the risk at its approved
7 rates under either a standard policy including wind coverage
8 or a basic policy including wind coverage, the risk is no
9 longer eligible for coverage through the association. However,
10 if the risk is located in an area in which Florida Windstorm
11 Underwriting Association coverage is available, such an offer
12 of a standard or basic policy terminates eligibility
13 regardless of whether or not the offer includes wind coverage.
14 Upon termination of eligibility, the association shall provide
15 written notice to the policyholder and agent of record stating
16 that the association policy shall be canceled as of 60 ~~30~~ days
17 after the date of the notice because of the offer of coverage
18 from an authorized insurer. Other provisions of the insurance
19 code relating to cancellation and notice of cancellation do
20 not apply to actions under this subparagraph.

21 12. Association policies and applications must include
22 a notice that the association policy could, under this section
23 or s. 627.3511, be replaced with a policy issued by an
24 admitted insurer that does not provide coverage identical to
25 the coverage provided by the association. The notice shall
26 also specify that acceptance of association coverage creates a
27 conclusive presumption that the applicant or policyholder is
28 aware of this potential.

29 13. May establish, subject to approval by the
30 department, different eligibility requirements and operational
31 procedures for any line or type of coverage for any specified

1 county or area if the board determines that such changes to
2 the eligibility requirements and operational procedures are
3 justified due to the voluntary market being sufficiently
4 stable and competitive in such area or for such line or type
5 of coverage and that consumers who, in good faith, are unable
6 to obtain insurance through the voluntary market through
7 ordinary methods would continue to have access to coverage
8 from the association. When coverage is sought in connection
9 with a real property transfer, such requirements and
10 procedures shall not provide for an effective date of coverage
11 later than the date of the closing of the transfer as
12 established by the transferor, the transferee, and, if
13 applicable, the lender.

14 (d)1. It is the intent of the Legislature that the
15 rates for coverage provided by the association be actuarially
16 sound and not competitive with approved rates charged in the
17 admitted voluntary market, so that the association functions
18 as a residual market mechanism to provide insurance only when
19 the insurance cannot be procured in the voluntary market.
20 ~~Beginning with the rate filing taking effect January 1, 1998,~~
21 ~~to the extent that such data is available, the rates of the~~
22 ~~plan shall be based on the association's actual loss~~
23 ~~experience and expenses.~~ Rates shall include an appropriate
24 catastrophe loading factor that reflects the actual
25 catastrophic exposure of the association and recognizes that
26 the association has little or no capital or surplus; and the
27 association shall carefully review each rate filing to assure
28 that provider compensation is not excessive. ~~As an interim~~
29 ~~measure, the association shall adopt rating plans that~~
30 ~~provide,~~

31

1 2. For each county, ~~that~~ the average rates of the
2 association for each line of business for personal lines
3 residential policies shall be no lower than ~~are the same as~~
4 the average rates charged by the insurer that had the highest
5 average rate in that county among the 20 insurers with the
6 greatest total direct written premium in the state for that
7 line of business in the preceding year, except that with
8 respect to mobile home coverages, the average rates of the
9 association shall be no lower than ~~the same as~~ the average
10 rates charged by the insurer that had the highest average rate
11 in that county among the 5 ~~8~~ insurers with the greatest total
12 written premium for mobile home owner's policies in the state
13 in the preceding year. ~~It is the intent of the Legislature~~
14 ~~that such interim rating plans be phased in, with average~~
15 ~~rates reflecting at least half of the difference between the~~
16 ~~then-current association rate and the full interim rate taking~~
17 ~~effect with policies issued or renewed on or after January 1,~~
18 ~~1996, and with the full interim rates taking effect with~~
19 ~~policies issued or renewed on or after January 1, 1997.~~

20 3. Rates for commercial residential coverage shall not
21 be subject to the requirements of subparagraph 2., but shall
22 be subject to all other requirements of this paragraph and s.
23 627.062. ~~Nothing in this subparagraph requires the association~~
24 ~~to reduce rates approved under s. 627.062 and in effect on~~
25 ~~December 31, 1995.~~

26 4. Nothing in this paragraph ~~subparagraph~~ shall
27 require or allow the association to adopt a rate that is
28 inadequate under s. 627.062 or to reduce rates approved under
29 s. 627.062.

30 5.2. The association may require arbitration of a
31 filing pursuant to s. 627.062(6). ~~Rate filings of the~~

1 association under this paragraph shall be made on a use and
2 file basis under s. 627.062(2)(a)2. The association shall make
3 a rate filing ~~under s. 627.062~~ at least once a year, but no
4 more often than quarterly.

5 (e) Coverage through the association is hereby
6 activated effective upon approval of the plan, and shall
7 remain activated until coverage is deactivated pursuant to
8 paragraph (f). Thereafter, coverage through the association
9 shall be reactivated by order of the department only under one
10 of the following circumstances:

11 1. If the market assistance plan receives a minimum of
12 100 applications for coverage within a 3-month period, or 200
13 applications for coverage within a 1-year period or less for
14 residential coverage, unless the market assistance plan
15 provides a quotation from admitted carriers at their filed
16 rates for at least 90 percent of such applicants. Any market
17 assistance plan application that is rejected because an
18 individual risk is so hazardous as to be uninsurable using the
19 criteria specified in subparagraph (c)8. shall not be included
20 in the minimum percentage calculation provided herein. In the
21 event that there is a legal or administrative challenge to a
22 determination by the department that the conditions of this
23 subparagraph have been met for eligibility for coverage in the
24 association, any eligible risk may obtain coverage during the
25 pendency of such challenge.

26 2. In response to a state of emergency declared by the
27 Governor under s. 252.36, the department may activate coverage
28 by order for the period of the emergency upon a finding by the
29 department that the emergency significantly affects the
30 availability of residential property insurance.

31

1 (f) The activities of the association shall be
2 reviewed at least annually by the board and, upon
3 recommendation by the board or petition of any interested
4 party, coverage shall be deactivated if the department finds
5 that the conditions giving rise to its activation no longer
6 exist.

7 (g)1. The board shall certify to the department its
8 needs for annual assessments as to a particular calendar year,
9 and any startup or interim assessments that it deems to be
10 necessary to sustain operations as to a particular year
11 pending the receipt of annual assessments. Upon verification,
12 the department shall approve such certification, and the board
13 shall levy such annual, startup, or interim assessments. Such
14 assessments shall be prorated as provided in paragraph (b).
15 The board shall take all reasonable and prudent steps
16 necessary to collect the amount of assessment due from each
17 participating member insurer, including, if prudent, filing
18 suit to collect such assessment. If the board is unable to
19 collect an assessment from any member insurer, the uncollected
20 assessments shall be levied as an additional assessment
21 against the participating member insurers and any
22 participating member insurer required to pay an additional
23 assessment as a result of such failure to pay shall have a
24 cause of action against such nonpaying member insurer.
25 Assessments shall be included as an appropriate factor in the
26 making of rates.

27 2. The governing body of any unit of local government,
28 any residents of which are insured by the association, may
29 issue bonds as defined in s. 125.013 or s. 166.101 from time
30 to time to fund an assistance program, in conjunction with the
31 association, for the purpose of defraying deficits of the

1 association. In order to avoid needless and indiscriminate
2 proliferation, duplication, and fragmentation of such
3 assistance programs, any unit of local government, any
4 residents of which are insured by the association, may provide
5 for the payment of losses, regardless of whether or not the
6 losses occurred within or outside of the territorial
7 jurisdiction of the local government.Revenue bonds may not be
8 issued until validated pursuant to chapter 75, unless a state
9 of emergency is declared by executive order or proclamation of
10 the Governor pursuant to s. 252.36 making such findings as are
11 necessary to determine that it is in the best interests of,
12 and necessary for, the protection of the public health,
13 safety, and general welfare of residents of this state and the
14 protection and preservation of the economic stability of
15 insurers operating in this state, and declaring it an
16 essential public purpose to permit certain municipalities or
17 counties to issue such bonds as will permit relief to
18 claimants and policyholders of the joint underwriting
19 association and insurers responsible for apportionment of
20 association losses. Any such ~~The~~ unit of local government may
21 ~~shall~~ enter into such contracts with the association and with
22 any other entity created pursuant to this subsection as are
23 necessary to carry out this paragraph. Any bonds issued under
24 this subparagraph ~~sub-subparagraph~~ shall be payable from and
25 secured by moneys received by the association from emergency
26 assessments under sub-subparagraph (b)3.d., and assigned and
27 pledged to or on behalf of the unit of local government for
28 the benefit of the holders of such bonds. The funds, credit,
29 property, and taxing power of the state or of the unit of
30 local government shall not be pledged for the payment of such
31 bonds. If any of the bonds remain unsold 60 days after

1 issuance, the department shall require all insurers subject to
2 assessment to purchase the bonds, which shall be treated as
3 admitted assets; each insurer shall be required to purchase
4 that percentage of the unsold portion of the bond issue that
5 equals the insurer's relative share of assessment liability
6 under this subsection. An insurer shall not be required to
7 purchase the bonds to the extent that the department
8 determines that the purchase would endanger or impair the
9 solvency of the insurer.

10 3.a. In addition to any credits, bonuses, or
11 exemptions provided under s. 627.3511, the board shall adopt a
12 program for the reduction of both new and renewal writings in
13 the association. The board may consider any prudent and not
14 unfairly discriminatory approach to reducing association
15 writings, but must adopt at least a credit against assessment
16 liability or other liability that provides an incentive for
17 insurers to take risks out of the association and to keep
18 risks out of the association by maintaining or increasing
19 voluntary writings in counties in which association risks are
20 highly concentrated and a program to provide a formula under
21 which an insurer voluntarily taking risks out of the
22 association by maintaining or increasing voluntary writings
23 will be relieved wholly or partially from assessments under
24 sub-subparagraphs (b)3.a. and b.~~subparagraph (b)3.~~

25 b. Any credit or exemption from regular assessments
26 adopted under this subparagraph shall last no longer than the
27 3 years following the cancellation or expiration of the policy
28 by the association. With the approval of the department, the
29 board may extend such credits for an additional year if the
30 insurer guarantees an additional year of renewability for all
31 policies removed from the association, or for two additional

1 years if the insurer guarantees two additional years of
2 renewability for all policies so removed.

3 c. There shall be no credit, limitation, exemption, or
4 deferment from emergency assessments to be collected from
5 policyholders pursuant to sub-subparagraph (b)3.d.

6 d. In order for a plan to qualify for any bonus,
7 exemption, or other incentive under this subparagraph, at
8 least 40 percent of the policies removed from the association
9 under the plan must cover risks located in Dade, Broward, and
10 Palm Beach Counties, or at least 30 percent of the policies
11 removed from the association under the plan must cover risks
12 located in Dade, Broward, and Palm Beach Counties and an
13 additional 50 percent of the policies removed from the
14 association under the plan must cover risks located in other
15 coastal counties.

16 4. The plan shall provide for the deferment, in whole
17 or in part, of the assessment of a member ~~an~~ insurer, other
18 than an emergency assessment collected from policyholders
19 pursuant to sub-subparagraph (b)3.d., if the department finds
20 that payment of the assessment would endanger or impair the
21 solvency of the insurer. In the event an assessment against a
22 member ~~an~~ insurer is deferred in whole or in part, the amount
23 by which such assessment is deferred may be assessed against
24 the other member insurers in a manner consistent with the
25 basis for assessments set forth in paragraph (b).

26 (h) Nothing in this subsection shall be construed to
27 preclude the issuance of residential property insurance
28 coverage pursuant to part VIII of chapter 626.

29 (i) There shall be no liability on the part of, and no
30 cause of action of any nature shall arise against, any member
31 insurer or its agents or employees, agents or employees of the

1 association ~~the Residential Property and Casualty Joint~~
2 ~~Underwriting Association or its agents or employees~~, members
3 of the board of governors, or the department or its
4 representatives for any action taken by them in the
5 performance of their duties or responsibilities under this
6 subsection. Such immunity does not apply to actions for breach
7 of any contract or agreement pertaining to insurance ~~or to~~
8 ~~issuance or payment of debt~~, or any other willful tort.

9 (j) The Residential Property and Casualty Joint
10 Underwriting Association is not a state agency, board, or
11 commission. However, for the purposes of s. 199.183(1), the
12 Residential Property and Casualty Joint Underwriting
13 Association shall be considered a political subdivision of the
14 state and shall be exempt from the corporate income tax.

15 (k) Upon a determination by the board of governors
16 that the conditions giving rise to the establishment and
17 activation of the association no longer exist, and upon the
18 consent thereto by order of the department, the association is
19 dissolved. Upon dissolution, the assets of the association
20 shall be applied first to pay all debts, liabilities, and
21 obligations of the association, including the establishment of
22 reasonable reserves for any contingent liabilities or
23 obligations, and all remaining assets of the association shall
24 become property of the state and deposited in the Florida
25 Hurricane Catastrophe Fund.

26 (l) All obligations, rights, assets, and liabilities
27 of the Florida Property and Casualty Joint Underwriting
28 Association created by subsection (5), which obligations,
29 rights, assets, or liabilities relate to the provision of
30 commercial lines residential property insurance coverage as
31 described in this section are hereby transferred to the

1 Residential Property and Casualty Joint Underwriting
2 Association. The Residential Property and Casualty Joint
3 Underwriting Association is not required to issue endorsements
4 or certificates of assumption to insureds during the remaining
5 term of in-force transferred policies.

6 (m) Notwithstanding any other provision of law:

7 1. The pledge or sale of, the lien upon, and the
8 security interest in any rights, revenues, or other assets of
9 the association created or purported to be created pursuant to
10 any financing documents to secure any bonds or other
11 indebtedness of the association shall be and remain valid and
12 enforceable, notwithstanding the commencement of and during
13 the continuation of, and after, any rehabilitation,
14 insolvency, liquidation, bankruptcy, receivership,
15 conservatorship, reorganization, or similar proceeding against
16 the association under the laws of this state.

17 2. No such proceeding shall relieve the association of
18 its obligation, or otherwise affect its ability to perform its
19 obligation, to continue to collect, or levy and collect,
20 assessments ~~under sub-subparagraph (b)3.a., sub-subparagraph~~
21 ~~(b)3.b., or subparagraph (g)1., emergency assessments under~~
22 ~~sub-subparagraph (b)3.d., market equalization or other renewal~~
23 ~~surcharges under subparagraph(c)10.(g)10., or any other~~
24 rights, revenues, or other assets of the association pledged
25 pursuant to any financing documents.

26 3. Each such pledge or sale of, lien upon, and
27 security interest in, including the priority of such pledge,
28 lien, or security interest, any such assessments, ~~emergency~~
29 ~~assessments~~, market equalization or other renewal surcharges,
30 or other rights, revenues, or other assets which are
31 collected, or levied and collected, after the commencement of

1 and during the pendency of, or after, any such proceeding
2 shall continue unaffected by such proceeding. As used in this
3 ~~subsection paragraph~~, the term "financing documents" means any
4 agreement or agreements, instrument or instruments, or other
5 document or documents now existing or hereafter created
6 evidencing any bonds or other indebtedness of the association
7 or pursuant to which any such bonds or other indebtedness has
8 been or may be issued and pursuant to which any rights,
9 revenues, or other assets of the association are pledged or
10 sold to secure the repayment of such bonds or indebtedness,
11 together with the payment of interest on such bonds or such
12 indebtedness, or the payment of any other obligation of the
13 association related to such bonds or indebtedness.

14 4. Any such pledge or sale of assessments, revenues,
15 contract rights, or other rights or assets of the association
16 shall constitute a lien and security interest, or sale, as the
17 case may be, that is immediately effective and attaches to
18 such assessments, revenues, or contract rights or other rights
19 or assets, whether or not imposed or collected at the time the
20 pledge or sale is made. Any such pledge or sale is effective,
21 valid, binding, and enforceable against the association or
22 other entity making such pledge or sale, and valid and binding
23 against and superior to any competing claims or obligations
24 owed to any other person or entity, including policyholders in
25 this state, asserting rights in any such assessments,
26 revenues, or contract rights or other rights or assets to the
27 extent set forth in and in accordance with the terms of the
28 pledge or sale contained in the applicable financing
29 documents, whether or not any such person or entity has notice
30 of such pledge or sale and without the need for any physical
31 delivery, recordation, filing, or other action.

1 (n)1. The following records of the Residential
2 Property and Casualty Joint Underwriting Association are
3 confidential and exempt from the provisions of s. 119.07(1)
4 and s. 24(a), Art. I of the State Constitution:

5 a. Underwriting files, except that a policyholder or
6 an applicant shall have access to his or her own underwriting
7 files.

8 b. Claims files, until termination of all litigation
9 and settlement of all claims arising out of the same incident,
10 although portions of the claims files may remain exempt, as
11 otherwise provided by law. Confidential and exempt claims file
12 records may be released to other governmental agencies upon
13 written request and demonstration of need; such records held
14 by the receiving agency remain confidential and exempt as
15 provided for herein.

16 c. Records obtained or generated by an internal
17 auditor pursuant to a routine audit, until the audit is
18 completed, or if the audit is conducted as part of an
19 investigation, until the investigation is closed or ceases to
20 be active. An investigation is considered "active" while the
21 investigation is being conducted with a reasonable, good faith
22 belief that it could lead to the filing of administrative,
23 civil, or criminal proceedings.

24 d. Matters reasonably encompassed in privileged
25 attorney-client communications.

26 e. Proprietary information licensed to the association
27 under contract and the contract provides for the
28 confidentiality of such proprietary information.

29 f. All information relating to the medical condition
30 or medical status of an association employee which is not
31 relevant to the employee's capacity to perform his or her

1 duties, except as otherwise provided in this paragraph.
2 Information which is exempt shall include, but is not limited
3 to, information relating to workers' compensation, insurance
4 benefits, and retirement or disability benefits.

5 g. Upon an employee's entrance into the employee
6 assistance program, a program to assist any employee who has a
7 behavioral or medical disorder, substance abuse problem, or
8 emotional difficulty which affects the employee's job
9 performance, all records relative to that participation shall
10 be confidential and exempt from the provisions of s. 119.07(1)
11 and s. 24(a), Art. I of the State Constitution, except as
12 otherwise provided in s. 112.0455(11).

13 h. Information relating to negotiations for financing,
14 reinsurance, depopulation, or contractual services, until the
15 conclusion of the negotiations.

16 i. Minutes of closed meetings regarding underwriting
17 files, and minutes of closed meetings regarding an open claims
18 file until termination of all litigation and settlement of all
19 claims with regard to that claim, except that information
20 otherwise confidential or exempt by law will be redacted.

21
22 When an authorized insurer is considering underwriting a risk
23 insured by the association, relevant underwriting files and
24 confidential claims files may be released to the insurer
25 provided the insurer agrees in writing, notarized and under
26 oath, to maintain the confidentiality of such files. When a
27 file is transferred to an insurer that file is no longer a
28 public record because it is not held by an agency subject to
29 the provisions of the public records law. Underwriting files
30 and confidential claims files may also be released to staff of
31 and the board of governors of the market assistance plan

1 established pursuant to s. 627.3515, who must retain the
2 confidentiality of such files, except such files may be
3 released to authorized insurers that are considering assuming
4 the risks to which the files apply, provided the insurer
5 agrees in writing, notarized and under oath, to maintain the
6 confidentiality of such files. Finally, the association or
7 the board or staff of the market assistance plan may make the
8 following information obtained from underwriting files and
9 confidential claims files available to licensed general lines
10 insurance agents: name, address, and telephone number of the
11 residential property owner or insured; location of the risk;
12 rating information; loss history; and policy type. The
13 receiving licensed general lines insurance agent must retain
14 the confidentiality of the information received.

15 2. Portions of meetings of the Residential Property
16 and Casualty Joint Underwriting Association are exempt from
17 the provisions of s. 286.011 and s. 24(b), Art. I of the State
18 Constitution wherein confidential underwriting files or
19 confidential open claims files are discussed. All portions of
20 association meetings which are closed to the public shall be
21 recorded by a court reporter. The court reporter shall record
22 the times of commencement and termination of the meeting, all
23 discussion and proceedings, the names of all persons present
24 at any time, and the names of all persons speaking. No
25 portion of any closed meeting shall be off the record.
26 Subject to the provisions hereof and s. 119.07(2)(a), the
27 court reporter's notes of any closed meeting shall be retained
28 by the association for a minimum of 5 years. A copy of the
29 transcript, less any exempt matters, of any closed meeting
30 wherein claims are discussed shall become public as to
31 individual claims after settlement of the ~~said~~ claim.

1 Section 7. Section 627.3511, Florida Statutes, 1996
2 Supplement, is amended to read:

3 627.3511 Depopulation of Residential Property and
4 Casualty Joint Underwriting Association.--

5 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
6 finds and declares that the Residential Property and Casualty
7 Joint Underwriting Association has written an amount of
8 policies beyond legislative expectations and has become, by
9 virtue of its size, a significant impediment to the
10 restoration of a stable and competitive residential property
11 insurance market in this state; that the public policy of this
12 state requires the maintenance of a residual market for
13 residential property insurance; and that extraordinary
14 measures, beyond implementation of eligibility criteria and
15 noncompetitive rates, are required to reduce the number of
16 policies written by the Residential Property and Casualty
17 Joint Underwriting Association to a reasonable level. It is
18 the intent of the Legislature to provide a variety of
19 financial incentives to encourage the replacement of the
20 highest possible number of Residential Property and Casualty
21 Joint Underwriting Association policies with policies written
22 by admitted insurers at approved rates.

23 (2) TAKE-OUT BONUS.--The Residential Property and
24 Casualty Joint Underwriting Association shall pay the sum of
25 up to \$100 to an insurer for each risk that the insurer
26 removes from the association, either by issuance of a policy
27 upon expiration or cancellation of the association policy or
28 by assumption of the association's obligations with respect to
29 an in-force policy. Such payment is subject to approval of
30 the association board. In order to qualify for the bonus
31 under this subsection, the take-out plan must include a

1 minimum of 25,000 policies. Within 30 days after approval by
2 the board, the department may reject the insurer's take-out
3 plan and disqualify the insurer from the bonus, based on the
4 following criteria:

5 (a) The capacity of the insurer to absorb the policies
6 proposed to be taken out of the association and the
7 concentration of risks of those policies.

8 (b) Whether the geographic and risk characteristics of
9 policies in the proposed take-out plan serve to reduce the
10 exposure of the association sufficient to justify the bonus.

11 (c) Whether coverage for risks to be taken out
12 otherwise exists in the admitted voluntary market.

13 (d) The degree to which the take-out bonus is
14 promoting new capital being allocated by the insurer to
15 Florida residential property coverage.

16 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

17 (a) The calculation of an insurer's assessment
18 liability under s. 627.351(6)(b)3.a. or b. shall, for an
19 insurer that in any calendar year removes 50,000 or more risks
20 from the Residential Property and Casualty Joint Underwriting
21 Association, either by issuance of a policy upon expiration or
22 cancellation of the association policy or by assumption of the
23 association's obligations with respect to in-force policies,
24 exclude such removed policies for the succeeding 3 years, as
25 follows:

26 1. In the first year following removal of the risks,
27 the risks are excluded from the calculation to the extent of
28 100 percent.

29 2. In the second year following removal of the risks,
30 the risks are excluded from the calculation to the extent of
31 75 percent.

1 3. In the third year following removal of the risks,
2 the risks are excluded from the calculation to the extent of
3 50 percent.

4
5 If the removal of risks is accomplished through assumption of
6 obligations with respect to in-force policies, the association
7 shall pay to the assuming insurer all unearned premium with
8 respect to such policies less any policy acquisition costs
9 agreed to by the association and assuming insurer. The term
10 "policy acquisition costs" is defined as costs of issuance of
11 the policy by the association which includes agent
12 commissions, servicing company fees, and premium tax.This
13 paragraph does not apply to an insurer that, at any time
14 within 5 years before removing the risks, had a market share
15 in excess of 0.1 percent of the statewide aggregate gross
16 direct written premium for any line of property insurance, or
17 to an affiliate of such an insurer. This paragraph does not
18 apply unless either at least 40 percent of the risks removed
19 from the association are located in Dade, Broward, and Palm
20 Beach Counties, or at least 30 percent of the risks removed
21 from the association are located in such counties and an
22 additional 50 percent of the risks removed from the
23 association are located in other coastal counties.

24 (b) An insurer that first wrote personal lines
25 residential property coverage in this state on or after July
26 1, 1994, is exempt from regular deficit assessments imposed
27 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency
28 assessments collected from policyholders pursuant to s.
29 627.351(6)(b)3.d., of the Residential Property and Casualty
30 Joint Underwriting Association until the earlier of the
31 following:

1 1. The end of the calendar year in which it first
2 wrote 0.5 percent or more of the statewide aggregate direct
3 written premium for any line of residential property coverage;
4 or

5 2. December 31, 1997, or December 31 of the third year
6 in which it wrote such coverage in this state, whichever is
7 later.

8 (c) Other than an insurer that is exempt under
9 paragraph (b), an insurer that in any calendar year increases
10 its total structure exposure subject to wind coverage by 25
11 percent or more over its exposure for the preceding calendar
12 year is, with respect to that year, exempt from deficit
13 assessments imposed pursuant to s. 627.351(6)(b)3.a. and b.,
14 but not emergency assessments collected from policyholders
15 pursuant to s. 627.351(6)(b)3.d., of the Residential Property
16 and Casualty Joint Underwriting Association attributable to
17 such increase in exposure.

18 (d) Any exemption or credit from regular assessments
19 authorized by this section shall last no longer than 3 years
20 following the cancellation or expiration of the policy by the
21 association. With the approval of the department, the board
22 may extend such credits for an additional year if the insurer
23 guarantees an additional year of renewability for all policies
24 removed from the association, or for 2 additional years if the
25 insurer guarantees 2 additional years of renewability for all
26 policies so removed.

27 (4) AGENT BONUS.--When the Residential Property and
28 Casualty Joint Underwriting Association enters into a
29 contractual agreement for a take-out plan that provides a
30 bonus to the insurer, the producing agent of record of the
31

1 association policy is entitled to retain any unearned
2 commission on such policy, and the insurer shall either:
3 (a) Pay to the producing agent of record of the
4 association policy an amount equal to the insurer's usual and
5 customary commission for the type of policy written if the
6 term of the association policy was in excess of 6 months, or
7 one-half of such usual and customary commission if the term of
8 the association policy was 6 months or less; or
9 (b) Offer to allow the producing agent of record of
10 the association policy to continue servicing the policy for a
11 period of not less than 1 year and offer to pay the agent the
12 insurer's usual and customary commission for the type of
13 policy written.

14
15 The insurer need not take any further action if the offer is
16 rejected. This subsection does not apply to any reciprocal
17 interinsurance exchange, nonprofit federation, or any
18 subsidiary or affiliate of such organization. This subsection
19 does not apply if the agent is also the agent of record on the
20 new coverage. The requirement of this subsection that the
21 producing agent of record is entitled to retain the unearned
22 commission on an association policy does not apply to a policy
23 for which coverage has been provided in the association for 30
24 days or less or for which a cancellation notice has been
25 issued pursuant to s. 627.351(6)(c)11. during the first 30
26 days of coverage.

27 (5) APPLICABILITY.--
28 (a) The take-out bonus provided by subsection (2) and
29 the exemption from assessment provided by paragraph (3)(a)
30 apply only if the ~~Residential Property and Casualty Joint~~
31 ~~Underwriting~~ association policy is replaced by either a

1 standard policy including wind coverage or, if consistent with
2 the insurer's underwriting rules as filed with the department,
3 a basic policy including wind coverage; however, with respect
4 to risks located in areas where coverage through the Florida
5 Windstorm Underwriting Association is available, the
6 replacement policy need not provide wind coverage. The insurer
7 must renew the replacement policy at approved rates on
8 substantially similar terms for two additional 1-year terms,
9 unless canceled by the insurer for a lawful reason other than
10 reduction of hurricane exposure. If an insurer assumes the
11 association's obligations for a policy, it must issue a
12 replacement policy for a 1-year term upon expiration of the
13 association policy and must renew the replacement policy at
14 approved rates on substantially similar terms for two
15 additional 1-year terms, unless canceled by the insurer for a
16 lawful reason other than reduction of hurricane exposure.For
17 each replacement policy canceled or nonrenewed by the insurer
18 for any reason during the 3-year coverage period required by
19 this paragraph, the insurer must remove from the association
20 one additional policy covering a risk similar to the risk
21 covered by the canceled or nonrenewed policy. In addition to
22 these requirements, the association must place the bonus
23 moneys in escrow for a period of 3 years; such moneys may be
24 released from escrow only to pay claims. A take-out bonus
25 provided by subsection (2) or subsection (6) shall not be
26 considered premium income for purposes of taxes and
27 assessments under the Florida Insurance Code and shall remain
28 the property of the Residential Property and Casualty Joint
29 Underwriting Association, subject to the prior security
30 interest of the insurer under the escrow agreement until it is
31 released from escrow, and after it is released from escrow it

1 shall be considered an asset of the insurer and credited to
2 the insurer's capital and surplus.

3 (b) An insurer or agent may not qualify for a bonus or
4 exemption from assessment under this section after the number
5 of risks covered by the Residential Property and Casualty
6 Joint Underwriting Association is less than 250,000.

7 (c) It is the intent of the Legislature that an
8 insurer eligible for the exemption under paragraph (3)(a)
9 establish a preference in appointment of agents for those
10 agents who lose a substantial amount of business as a result
11 of risks being removed from the association.

12 (6) COMMERCIAL RESIDENTIAL ~~CONDOMINIUM ASSOCIATION~~
13 TAKE-OUT PLANS.--

14 (a) The Residential Property and Casualty Joint
15 Underwriting Association shall pay a bonus to an insurer for
16 each commercial residential ~~condominium association~~ policy
17 that the insurer removes from the association pursuant to an
18 approved take-out plan, either by issuance of a new policy
19 upon expiration of the association policy or by assumption of
20 the association's obligations with respect to an in-force
21 policy. The association board shall determine the amount of
22 the bonus based on such factors as the coverage provided,
23 relative hurricane risk, the length of time that the property
24 has been covered by the association, and the criteria
25 specified in paragraphs (b) and (c). The amount of the bonus
26 with respect to a particular policy may not exceed 25 percent
27 of the association's 1-year premium for the policy. Such
28 payment is subject to approval of the association board. In
29 order to qualify for the bonus under this subsection, the
30 take-out plan must include policies reflecting at least \$100
31 million in structure exposure.

1 (b) In order for a plan to qualify for approval:
2 1. At least 40 percent of the policies removed from
3 the association under the plan must be located in Dade,
4 Broward, and Palm Beach Counties, or at least 30 percent of
5 the policies removed from the association under the plan must
6 be located in such counties and an additional 50 percent of
7 the policies removed from the association must be located in
8 other coastal counties.
9 2. The insurer must renew the replacement policy at
10 approved rates on substantially similar terms for two
11 additional 1-year terms, unless canceled or nonrenewed by the
12 insurer for a lawful reason other than reduction of hurricane
13 exposure. If an insurer assumes the association's obligations
14 for a policy, it must issue a replacement policy for a 1-year
15 term upon expiration of the association policy and must renew
16 the replacement policy at approved rates on substantially
17 similar terms for two additional 1-year terms, unless canceled
18 by the insurer for a lawful reason other than reduction of
19 hurricane exposure.For each replacement policy canceled or
20 nonrenewed by the insurer for any reason during the 3-year
21 coverage period required by this subparagraph, the insurer
22 must remove from the association one additional policy
23 covering a risk similar to the risk covered by the canceled or
24 nonrenewed policy.
25 (c) A take-out plan is deemed approved unless the
26 department, within 120 days after the board votes to recommend
27 the plan, disapproves the plan based on:
28 1. The capacity of the insurer to absorb the policies
29 proposed to be taken out of the association and the
30 concentration of risks of those policies.
31

1 2. Whether the geographic and risk characteristics of
2 policies in the proposed take-out plan serve to reduce the
3 exposure of the association sufficiently to justify the bonus.

4 3. Whether coverage for risks to be taken out
5 otherwise exists in the admitted voluntary market.

6 4. The degree to which the take-out bonus is promoting
7 new capital being allocated by the insurer to residential
8 property coverage in this state.

9 (d) The calculation of an insurer's regular assessment
10 liability under s. 627.351(b)3.a. and b., but not emergency
11 assessments collected from policyholders pursuant to s.
12 627.351(6)(b)3.d., s. 627.351 shall, with respect to
13 commercial residential condominium association policies
14 removed from the association under an approved take-out plan,
15 exclude such removed policies for the succeeding 3 years, as
16 follows:

17 1. In the first year following removal of the
18 policies, the policies are excluded from the calculation to
19 the extent of 100 percent.

20 2. In the second year following removal of the
21 policies, the policies are excluded from the calculation to
22 the extent of 75 percent.

23 3. In the third year following removal of the
24 policies, the policies are excluded from the calculation to
25 the extent of 50 percent.

26 (e) An insurer that first wrote commercial residential
27 ~~condominium association~~ property coverage in this state on or
28 after June 1, 1996, is exempt from regular assessments under
29 s. 627.351(6)(b)3.a. and b., but not emergency assessments
30 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
31

1 ~~s. 627.351~~ with respect to commercial residential condominium
2 ~~association~~ policies until the earlier of:

3 1. The end of the calendar year in which such insurer
4 first wrote 0.5 percent or more of the statewide aggregate
5 direct written premium for commercial residential condominium
6 ~~association~~ property coverage; or

7 2. December 31 of the third year in which such insurer
8 wrote commercial residential condominium ~~association~~ property
9 coverage in this state.

10 (f) An insurer that is not otherwise exempt from
11 regular assessments under s. 627.351(6)(b)3.a. and b. ~~s.~~
12 ~~627.351~~ with respect to commercial residential condominium
13 ~~association~~ policies is, for any calendar year in which such
14 insurer increased its total commercial residential condominium
15 ~~association~~ hurricane exposure by 25 percent or more over its
16 exposure for the preceding calendar year, exempt from regular
17 assessments under s. 627.351(6)(b)3.a. and b., but not
18 emergency assessments collected from policyholders pursuant to
19 s. 627.351(6)(b)3.d., ~~s. 627.351~~ attributable to such
20 increased exposure.

21 (7) A minority business, which is at least 51 percent
22 owned by minority persons as described in s. 288.703(3),
23 desiring to operate or become licensed as a property and
24 casualty insurer may exempt ~~apply~~ up to \$50 of the escrow
25 requirements of the take-out bonus, as described in this
26 section, ~~toward the minimum capital requirements as set forth~~
27 ~~in s. 624.407(1)(a).~~ Such minority business, which has
28 applied for a certificate of authority to engage in business
29 as a property and casualty insurer, may simultaneously file
30 the business' proposed take-out plan, as described in this
31 section, to the Residential Property and Casualty Joint

1 Underwriting Association. ~~The Insurance Commissioner may~~
2 ~~request that the association approve such take-out plan~~
3 ~~subject to the granting of a certificate of authority by the~~
4 ~~department.~~

5 Section 8. Section 627.3512, Florida Statutes, is
6 amended to read:

7 627.3512 Recoupment of residual market deficit
8 assessments.--

9 (1) An insurer or insurer group ~~A rate filing under s.~~
10 ~~627.062, s. 627.0651, or s. 627.072 may include amounts~~
11 ~~sufficient to~~ recoup any assessments that have been paid
12 during or after 1995 by the insurer or insurer group to defray
13 deficits of an insurance risk apportionment plan a joint
14 ~~underwriting association~~ or assigned risk plan under ss.
15 627.311 and 627.351, net of any earnings returned to the
16 insurer or insurer group by the association or plan for any
17 year after 1993. The recoupment shall be made by applying a
18 separate assessment factor on policies of the same line or
19 type as were considered by the residual markets in determining
20 the assessment liability of the insurer or insurer group. An
21 insurer or insurer group may shall calculate a separate
22 assessment factor for personal lines and commercial lines. The
23 ~~rate filing shall include a separate assessment factor shall~~
24 provide which provides for full recoupment of the assessments
25 over a period of 1 year, unless the insurer or insurer group,
26 at its option, elects to recoup the assessments over a longer
27 period. The assessment factor ~~in the filing~~ expires upon
28 collection of the full amount allowed to be recouped. Amounts
29 recouped under this section are not subject to premium taxes,
30 fees, or commissions.

31

1 (2) The assessment factor must not be more than 3
2 percentage points above the ratio of the deficit assessment to
3 the Florida direct written premium for policies for the lines
4 or types of business as to which the assessment was
5 calculated, as written in the year the deficit assessment was
6 paid. If an insurer or insurer group fails to collect the
7 full amount of the deficit assessment, the insurer or insurer
8 group must carry forward the amount of the deficit and adjust
9 the deficit assessment to be recouped in a subsequent year by
10 that amount.

11 (3) The insurer or insurer group shall file with the
12 department a statement setting forth the amount of the
13 assessment factor and an explanation of how the factor will be
14 applied, at least 15 days prior to the factor being applied to
15 any policies. The statement shall include documentation of
16 the assessment paid by the insurer or insurer group and the
17 arithmetic calculations supporting the assessment factor. The
18 department shall complete its review within 15 days after
19 receipt of the filing and shall limit its review to
20 verification of the arithmetic calculations. The insurer or
21 insurer group may use the assessment factor at any time after
22 the expiration of the 15-day period unless the department has
23 notified the insurer or insurer group in writing that the
24 arithmetic calculations are incorrect.

25 (4) The department may adopt rules to implement this
26 section.

27 Section 9. Section 627.3513, Florida Statutes, is
28 created to read:

29 627.3513 Standards for sale of bonds by underwriting
30 associations.--

31

1 (1)(a) The purpose of this section is to provide
2 standards for the sale of bonds pursuant to s. 627.351(2) and
3 (6).

4 (b) "Association" or "associations," for purposes of
5 this section, means the Florida Windstorm Underwriting
6 Association and the Residential Property and Casualty Joint
7 Underwriting Association as established pursuant to s.
8 627.351(2) and (6), and any corporation or other entity
9 established pursuant to those subsections.

10 (2) The plan of operation of each association shall
11 provide for the selection of financial services providers and
12 underwriters. Such provisions shall include the method for
13 publicizing or otherwise providing reasonable notice to
14 potential financial services providers, underwriters, and
15 other interested parties, which may include expedited
16 procedures and methods for emergency situations. The
17 associations shall not engage the services of any person or
18 firm as a securities broker or bond underwriter that is not
19 eligible to be engaged by the state under the provisions of s.
20 215.684. The associations shall make all selections of
21 financial service providers and managing underwriters at a
22 noticed public meeting.

23 (3) The plan of operation of each association shall
24 provide for any managing underwriter or financial advisor to
25 provide to the association a disclosure statement containing
26 at least the following information:

27 (a) An itemized list setting forth the nature and
28 estimated amounts of expenses to be incurred by the managing
29 underwriter in connection with the issuance of such bonds.
30 Notwithstanding the foregoing, any such list may include an
31 item for miscellaneous expenses, provided such item includes

1 only minor items of expense which cannot be easily categorized
2 elsewhere in the statement.

3 (b) The names, addresses, and estimated amounts of
4 compensation of any finders connected with the issuance of the
5 bonds.

6 (c) The amount of underwriting spread expected to be
7 realized and the amount of fees and expenses expected to be
8 paid to the financial adviser.

9 (d) Any management fee charged by the managing
10 underwriter.

11 (e) Any other fee, bonus, or compensation estimated to
12 be paid by the managing underwriter in connection with the
13 bond issue to any person not regularly employed or retained by
14 it.

15 (f) The name and address of each financial advisor or
16 managing underwriter, if any, connected with the bond issue.

17 (g) Any other disclosure which the association may
18 require.

19 (4)(a) No underwriter, commercial bank, investment
20 banker, or financial consultant or adviser shall pay any
21 finder any bonus, fee, or gratuity in connection with the sale
22 of bonds issued by the association unless full disclosure is
23 made in writing to the association prior to or concurrently
24 with the submission of a purchase proposal for bonds by the
25 underwriter, commercial bank, investment banker, or financial
26 consultant or adviser, providing the name and address of any
27 finder and the amount of bonus, fee, or gratuity paid to such
28 finder. A violation of this subsection shall not affect the
29 validity of the bond issue.

30 (b) As used in this subsection, the term "finder"
31 means a person who is neither regularly employed by, nor a

1 partner or officer of, an underwriter, bank, banker, or
2 financial consultant or adviser and who enters into an
3 understanding with either the issuer or the managing
4 underwriter, or both, for any paid or promised compensation or
5 valuable consideration, directly or indirectly, expressed or
6 implied, to act solely as an intermediary between such issuer
7 and managing underwriter for the purpose of influencing any
8 transaction in the purpose of such bonds.

9 (5) This section is not intended to restrict or
10 prohibit the employment of professional services relating to
11 bonds issued under s. 627.351(2) or (6) or the issuance of
12 bonds by the associations.

13 (6) The failure of the association to comply with one
14 or more provisions of this section shall not affect the
15 validity of the bond issue, however, the failure of either
16 association to comply in good faith both with this section and
17 with the plan as amended shall be a violation of its plan of
18 operation and a violation of the Insurance Code.

19 Section 10. Section 627.3516, Florida Statutes, is
20 created to read:

21 627.3516 Residual property insurance market
22 coordinating council.--The property insurance residual market
23 entities under s. 627.351(2) and (6) shall create a 5-member
24 coordinating council to assure that each entity is informed of
25 the activities and plans of the other entity. The insurance
26 consumer advocate shall chair the coordinating council, and
27 shall appoint to the council one representative of insurance
28 interests and one representative of non-insurance interests
29 from the board under s. 627.351(2), and one representative of
30 insurance interests and one representative of non-insurance
31 interests from the board under s. 627.351(6). The

1 coordinating council shall also submit to the presiding
2 officers of the Legislature no later than January 1, 1998, its
3 recommendations for the merger of the two entities.

4 Section 11. Subsection (1) of section 627.4025,
5 Florida Statutes, 1996 Supplement, is amended to read:

6 627.4025 Residential coverage and hurricane coverage
7 defined.--

8 (1) Residential coverage includes both personal lines
9 residential coverage, which consists of the type of coverage
10 provided by homeowner's, mobile home owner's, dwelling,
11 tenant's, condominium unit owner's, cooperative unit owner's,
12 and similar policies, and commercial lines residential
13 coverage, which consists of the type of coverage provided by
14 condominium association, cooperative association, apartment
15 building, and similar policies, including policies covering
16 the common elements of a homeowners' association. Residential
17 coverage for personal lines and commercial lines as set forth
18 in this section includes policies that provide coverage for
19 particular perils such as windstorm and hurricane or coverage
20 for insurer insolvency or deductibles.

21 Section 12. Subsection (7) of section 627.701, Florida
22 Statutes, 1996 Supplement, is amended, and subsection (8) is
23 added to said section, to read:

24 627.701 Liability of insureds; coinsurance;
25 deductibles.--

26 (3)(a) A policy of residential property insurance
27 shall include a deductible amount applicable to hurricane or
28 wind losses no lower than \$500 and no higher than 2 percent of
29 the policy dwelling limits with respect to personal lines
30 residential risks, and no higher than 3 percent of the policy
31 limits with respect to commercial lines residential risks;

1 however, if a risk was covered on August 24, 1992, under a
2 policy having a higher deductible than the deductibles allowed
3 by this paragraph, a policy covering such risk may include a
4 deductible no higher than the deductible in effect on August
5 24, 1992. Notwithstanding the other provisions of this
6 paragraph, a personal lines residential policy covering a risk
7 valued at \$50,000 or less may include a deductible amount
8 attributable to hurricane or wind losses no lower than \$250,
9 and a personal lines residential policy covering a risk valued
10 at \$100,000 or more may include a deductible amount
11 attributable to hurricane or wind losses no higher than 5
12 percent of the policy limits unless subject to a higher
13 deductible on August 24, 1992; however, no maximum deductible
14 is required with respect to a personal lines residential
15 policy covering a risk valued at more than \$500,000. An
16 insurer may require a higher deductible, provided such
17 deductible is the same as or similar to a deductible program
18 lawfully in effect on June 14, 1995. In addition to the
19 deductible amounts authorized by this paragraph, an insurer
20 may also offer policies with a copayment provision under
21 which, after exhaustion of the deductible, the policyholder is
22 responsible for 10 percent of the next \$10,000 of insured
23 hurricane or wind losses.

24 (b)1. Except as otherwise provided in this paragraph,
25 prior to issuing a personal lines residential property
26 insurance policy on or after April 1, 1996, or prior to the
27 first renewal of a residential property insurance policy on or
28 after April 1, 1996, the insurer must offer alternative
29 deductible amounts applicable to hurricane or wind losses
30 equal to \$500 and 2 percent of the policy dwelling limits,
31 unless the 2 percent deductible is less than \$500. The written

1 notice of the offer shall specify the hurricane or wind
2 deductible to be applied in the event that the applicant or
3 policyholder fails to affirmatively choose a hurricane
4 deductible. The insurer must provide such policyholder with
5 notice of the availability of the deductible amounts specified
6 in this paragraph in a form specified by the department in
7 conjunction with each renewal of the policy. The failure to
8 provide such notice constitutes a violation of this code but
9 does not affect the coverage provided under the policy.

10 2. This paragraph does not apply with respect to a
11 deductible program lawfully in effect on June 14, 1995, or to
12 any similar deductible program, if the deductible program
13 requires a minimum deductible amount of no less than 2 percent
14 of the policy limits.

15 3. With respect to a policy covering a risk with
16 dwelling limits of at least \$100,000, but less than \$250,000,
17 the insurer may, in lieu of offering a policy with a \$500
18 hurricane or wind deductible as required by subparagraph 1.,
19 offer a policy that the insurer guarantees it will not
20 nonrenew for reasons of reducing hurricane loss for one
21 renewal period and that contains up to a ~~the~~ 2 percent
22 hurricane or wind deductible as required by subparagraph 1.

23 4. With respect to a policy covering a risk with
24 dwelling limits of \$250,000 or more, the insurer need not
25 offer the \$500 hurricane or wind deductible as required by
26 subparagraph 1., but must, except as otherwise provided in
27 this subsection, offer the 2 percent hurricane or wind
28 deductible as required by subparagraph 1.

29 (c) In order to provide for the transition from wind
30 deductibles to hurricane deductibles as required by this
31 subsection, an insurer is required to provide wind deductibles

1 meeting the requirements of this subsection until the
2 effective date of the insurer's first rate filing made after
3 January 1, 1997, and is thereafter required to provide
4 hurricane deductibles meeting the requirements of this
5 subsection.

6 (7)(a) The Legislature finds that property insurance
7 coverage has become unaffordable for a significant number of
8 mobile home owners, as evidenced by reports that up to 100,000
9 mobile home owners have terminated their insurance coverage
10 because they cannot afford to pay approved rates charged in
11 the voluntary or residual markets. The Legislature further
12 finds that additional flexibility in available coverages will
13 enable mobile home owners to obtain affordable insurance and
14 increase capacity.

15 (b) Notwithstanding the provisions of subsection (3),
16 with respect to mobile home policies:

17 1. The deductible for hurricane coverage may not
18 exceed 10 percent of the property value if the property is not
19 subject to any liens and may not exceed 5 percent of the
20 property value if the property is subject to any liens.

21 2. The insurer need not make the offers required by
22 paragraph(3)(b)~~(3)(a)~~.

23 (8) Notwithstanding the other provisions of this
24 section or of other law, but only as to hurricane coverage as
25 defined in s. 627.4025:

26 (a) No insurer shall be required to offer deductible
27 amounts of less than 2 percent of the policy dwelling limits
28 as to personal lines residential property insurance coverage,
29 however, upon written request of the insured or applicant, the
30 insurer shall make available a \$500 deductible as to hurricane
31 coverage on the insured's primary residence if the insured

1 produces documentation from the insured's home mortgage lender
2 that demonstrates that he or she is qualified as a low-income
3 applicant pursuant to the Federal Home Mortgage Disclosure Act
4 and Federal Community Reinvestment Act as to financing then
5 applicable to the insured's primary residence. All forms by
6 which the offers authorized in this paragraph are made or
7 required to be made shall be on forms that are adopted or
8 approved by the department.

9 (b) As to commercial lines residential property,
10 insurers may offer deductibles in amounts not exceeding 5
11 percent if, at the time of such offer and at each renewal, the
12 insurer also offers to the policyholder deductible amounts of
13 3 percent and 4 percent. All forms by which the offers
14 authorized in this paragraph are made or required to be made
15 shall be on forms that are adopted or approved by the
16 department.

17 Section 13. This act shall take effect upon becoming a
18 law.

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LEGISLATIVE SUMMARY

Substantially revises provisions of the Insurance Code relating to windstorm insurance coverage and the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association. Specifies appropriations from the Florida Hurricane Catastrophe Fund. Revises provisions relating to membership in the associations, emergency assessments, financing of indebtedness, rates, and retention of profits. Provides underwriting criteria and standards for eligibility of new and covered risks. Provides for the protection of creditors and immunity from liability. Provides for a market equalization surcharge. Authorizes local governments to issue bonds. Provides for the cancellation and replacement of policies. Provides exemptions and credits from regular assessments, but not emergency assessments. Deletes the condominium association take-out plan and provides take-out plans for commercial residential policies. Makes policyholders of special purpose homeowner insurance companies subject to emergency assessments. Deletes the role of the market assistance plan in the removal of policies from the Residential Property and Casualty Joint Underwriting Association. Provides limited immunity to certain persons in the automobile joint underwriting association. See bill for details.