

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          providing for calculation of catastrophe loads;  
29          amending s. 627.351, F.S.; providing standards  
30          for membership in the Florida Windstorm  
31          Underwriting Association; providing exclusions

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

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

1           creating s. 627.3513, F.S.; providing standards  
2           and procedures for underwriting associations to  
3           issue bonds; creating s. 627.3516, F.S.;  
4           providing for a residual property insurance  
5           market coordinating council; providing for  
6           duties and membership; amending s. 627.4025,  
7           F.S.; revising a definition of residential  
8           coverage; amending s. 627.701, F.S.; providing  
9           for certain offers up to a specified  
10          deductible; authorizing alternative deductibles  
11          for certain property; conforming cross  
12          references; providing an effective date.

13

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

15

16           Section 1. Paragraph (c) of subsection (7) of section  
17 215.555, Florida Statutes, 1996 Supplement, is amended to  
18 read:

19

215.555 Florida Hurricane Catastrophe Fund.--

20

(7) ADDITIONAL POWERS AND DUTIES.--

21

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

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

14 2. Moneys made available under this paragraph shall be  
15 appropriated as follows:

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

25 (II) Eligibility for loan subsidies and other forms of  
26 direct assistance to property owners is limited to  
27 policyholders of the Florida Windstorm Underwriting  
28 Association. Actions taken by a property owner pursuant to  
29 such loan subsidies and direct assistance qualify the property  
30 owner for premium discounts as filed by the association  
31 approved by the Department of Insurance and do not constitute

1 changes, additions, or improvements to homestead property  
2 within the meaning of chapter 193. No more than 25 percent of  
3 the total value of such loan subsidies and direct assistance  
4 shall be awarded on the basis of the income of the recipient.  
5 At least 10 percent of the total value of such loan subsidies  
6 and direct assistance shall be used for mobile homes,  
7 including programs to inspect and improve tie-downs.

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

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

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

1 by in-kind services. Moneys appropriated under this  
2 sub-subparagraph are intended to supplement other funding  
3 sources of the Insurance Consumer Advocate and may not  
4 supplant other funding for the Office of the Insurance  
5 Consumer Advocate. The Insurance Consumer Advocate shall  
6 consult with the Department of Community Affairs prior to  
7 expending funds under this sub-subparagraph.

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

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

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

30 624.4071 Special purpose homeowner insurance  
31 company.--

1           (2) A special purpose homeowner insurance company must  
2 have a parent company, and both companies must meet the  
3 requirements of this subsection in order for the subsidiary to  
4 qualify for and maintain a certificate of authority under this  
5 section.

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

9           (b) The parent company must have and maintain at least  
10 51 percent of the equity and at least 51 percent of the  
11 control of the special purpose homeowner insurance company.

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

16           (d) The special purpose homeowner insurance company  
17 must:

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

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



1 determining the statewide written premium for property  
2 insurance, special purpose homeowner insurance companies shall  
3 be considered member insurers of the Florida Windstorm  
4 Underwriting Association and the Florida Residential Property  
5 and Casualty Joint Underwriting Association.

6 3. Offer coverage for all perils, including windstorm,  
7 in providing residential coverage as defined in s. 627.4025. A  
8 special purpose homeowner insurance company's rates must be  
9 filed with the department. After a period of 1 year from the  
10 date a company receives a certificate of authority, the  
11 company's rates are subject to department approval under s.  
12 627.062.

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

15 626.752 Exchange of business.--

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

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), and (10) are added to  
16 section 627.0629, Florida Statutes, 1996 Supplement, to read:

17           627.0629 Residential property insurance; rate  
18 filings.--

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

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

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

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

3 (b) To the extent that funds are provided for this  
4 purpose in the General Appropriations Act, the Legislature  
5 hereby authorizes the establishment of a program to be  
6 administered by the Florida Windstorm Underwriting  
7 Association.

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

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

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

31

1           (10) A property insurance rate filing that includes  
2 any adjustments related to premiums paid to the Florida  
3 Hurricane Catastrophe Fund must include a complete calculation  
4 of the insurer's catastrophe load, and the information in the  
5 filing may not be limited solely to recovery of moneys paid to  
6 the fund.

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

9           627.351 Insurance risk apportionment plans.--

10          (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

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

21 (II) The plan of operation shall provide for a board  
22 of directors consisting of the Insurance Consumer Advocate  
23 appointed under s. 627.0613, one consumer representative  
24 appointed by the Insurance Commissioner, one consumer  
25 representative appointed by the Governor, 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. In order to qualify for the  
22 exemption under this sub-sub-subparagraph, the take-out plan  
23 must provide that at least 40 percent of the policies removed  
24 from the Residential Property and Casualty Joint Underwriting  
25 Association cover risks located in Dade, Broward, and Palm  
26 Beach Counties or at least 30 percent of the policies so  
27 removed cover risks located in Dade, Broward, and Palm Beach  
28 Counties and an additional 50 percent of the policies so  
29 removed cover risks located in other coastal counties, and  
30 must also provide that no more than 15 percent of the policies  
31 so removed may exclude windstorm coverage. With the approval

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

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

22           c. The Legislature finds that the potential for  
 23 unlimited deficit assessments under this subparagraph may  
 24 induce insurers to attempt to reduce their writings in the  
 25 voluntary market, and that such actions would worsen the  
 26 availability problems that the association plan was created to  
 27 remedy. It is the intent of the Legislature that insurers  
 28 remain fully responsible for paying regular assessments and  
 29 collecting emergency assessments for ~~covering~~ any deficits of  
 30 the association plan; however, it is also the intent of the  
 31



1 Legislature to provide a means by which assessment liabilities  
 2 may be amortized over a period of years.

3       d.(I) When the deficit incurred in a particular  
 4 calendar year is 10 percent or less of the aggregate statewide  
 5 direct written premium for property insurance for the prior  
 6 calendar year for all member insurers, the association shall  
 7 levy an assessment on member insurers in an amount equal to  
 8 the deficit.

9       (II)~~(I)~~ When the deficit incurred in a particular  
 10 calendar year exceeds 10 percent of the aggregate statewide  
 11 direct written premium for property insurance for the prior  
 12 calendar year ~~as defined in s. 624.404~~ for all member insurers  
 13 ~~licensed to transact property insurance on a direct basis in~~  
 14 ~~this state~~, the association shall levy an assessment on member  
 15 ~~such~~ insurers in an amount equal to the greater of 10 percent  
 16 of the deficit or 10 percent of the aggregate statewide direct  
 17 written premium for property insurance for the prior calendar  
 18 year for member insurers. Any remaining deficit shall be  
 19 recovered through emergency assessments under  
 20 sub-sub-subparagraph(III)~~(II)~~.

21       (III)~~(II)~~ Upon a determination by the board of  
 22 directors ~~governors~~ that a deficit exceeds the amount that  
 23 will be recovered through regular assessments on member ~~of~~  
 24 insurers, pursuant to sub-sub-subparagraph (I) or  
 25 sub-sub-subparagraph (II), the board shall levy, after  
 26 verification by the department, emergency assessments to be  
 27 collected by member insurers and by, ~~including joint~~  
 28 underwriting associations created pursuant to this section  
 29 which write property insurance, upon issuance or renewal of  
 30 property insurance policies other than National Flood  
 31 Insurance policies in the year or years following levy of the

1 regular assessments. The amount of the emergency assessment  
 2 collected in a particular year shall be a uniform percentage  
 3 of that year's direct written premium for property insurance  
 4 for all member insurers and underwriting associations,  
 5 excluding National Flood Insurance policy premiums ~~as defined~~  
 6 ~~in s. 624.404~~, as annually determined by the board and  
 7 verified by the department. The department shall verify the  
 8 arithmetic calculations involved in the board's determination  
 9 within 30 days after receipt of the information on which the  
 10 determination was based. Notwithstanding any other provision  
 11 of law, each member insurer and each underwriting association  
 12 created pursuant to this section shall collect emergency  
 13 assessments from its policyholders without such obligation  
 14 being affected by any credit, limitation, exemption, or  
 15 deferment. The emergency assessments so collected shall be  
 16 transferred directly to the association on a periodic basis as  
 17 determined by the association. The aggregate amount of  
 18 emergency assessments levied under this sub-sub-subparagraph  
 19 ~~sub-subparagraph~~ in any calendar year may not exceed the  
 20 greater of 10 percent of the amount needed to cover the  
 21 original deficit, plus interest, fees, commissions, required  
 22 reserves, and other costs associated with financing of the  
 23 original deficit, or 10 percent of the aggregate statewide  
 24 direct written premium for property insurance written by  
 25 member insurers and underwriting associations ~~subject lines of~~  
 26 ~~business~~ for the prior year, plus interest, fees, commissions,  
 27 required reserves, and other costs associated with financing  
 28 the original deficit. The board may pledge the proceeds of the  
 29 emergency assessments under this sub-sub-subparagraph  
 30 ~~sub-subparagraph~~ as the source of revenue for bonds, to retire  
 31 any other debt incurred as a result of the deficit or events

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

14 (IV)~~(III)~~ Each member insurer's share of the total  
 15 regular assessments ~~assessment~~ under sub-sub-subparagraph (I)  
 16 or sub-sub-subparagraph (II)~~this sub-sub-subparagraph~~ shall be in  
 17 the proportion that the insurer's net direct ~~written~~ premium  
 18 for property insurance in this state,~~as defined in s. 624.404~~  
 19 for the year preceding the assessment bears to the aggregate  
 20 statewide net direct ~~written~~ premium for property insurance of  
 21 all member insurers, as reduced by any credits for voluntary  
 22 writings ~~as defined in s. 624.404~~ for that year.

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

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

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

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

23         3. The plan shall also provide that any member with a  
24 surplus as to policyholders of \$20 million or less writing 25  
25 percent or more of its total countrywide property insurance  
26 premiums in this state may petition the department, ~~within 90~~  
27 ~~days of the effective date of chapter 76-96, Laws of Florida,~~  
28 ~~and thereafter~~ within the first 90 days of each calendar year,  
29 to qualify as a limited apportionment company. The  
30 apportionment of such a member company in any calendar year  
31 for which it is qualified shall not exceed its gross

1 participation, which shall not be affected by the formula for  
 2 voluntary writings. In no event shall a limited apportionment  
 3 company be required to participate in any apportionment of  
 4 losses pursuant to sub-sub-subparagraph 2.d.(I) or  
 5 sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds  
 6 \$50 million after payment of available plan funds in any  
 7 calendar year. However, a limited apportionment company shall  
 8 collect from its policyholders any emergency assessment  
 9 imposed under sub-sub-subparagraph 2.d.(III). The plan shall  
 10 provide that, if the department determines that any regular  
 11 assessment will result in an impairment of the surplus of a  
 12 limited apportionment company, the department may direct that  
 13 all or part of such assessment be deferred. However, there  
 14 shall be no limitation or deferment of an emergency assessment  
 15 to be collected from policyholders under sub-sub-subparagraph  
 16 2.d.(III).

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

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

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

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

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

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

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

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

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

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

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



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

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

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

21 b. Any ~~The~~ entity created under this subsection  
22 ~~subparagraph~~, or any entity formed for the purposes of this  
23 subsection, may sue and be sued ~~subparagraph 2.~~, may borrow  
24 money; issue bonds, notes, or debt instruments; pledge or sell  
25 assessments, market equalization surcharges and other  
26 surcharges, rights, premiums, contractual rights, projected  
27 recoveries from the Florida Hurricane Catastrophe Fund, other  
28 reinsurance recoverables, and other assets as security for  
29 such bonds, notes, or debt instruments; enter into any  
30 contracts or agreements necessary or proper to accomplish such  
31 borrowings; and take other actions necessary to carry out the

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

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

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

23           9. Notwithstanding any other provision of law:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b)1. All insurers authorized to write subject lines  
31 of business ~~such insurance~~ in this state, other than

1 underwriting associations or other entities created under this  
2 section,must participate in and be members of the Residential  
3 Property and Casualty Joint Underwriting Association. A  
4 member's participation shall begin on the first day of the  
5 calendar year following the year in which the member was  
6 issued a certificate of authority to transact insurance for  
7 subject lines of business in this state and shall terminate 1  
8 year after the end of the first calendar year during which the  
9 member no longer holds a certificate of authority to transact  
10 insurance for subject lines of business in this state.

11           2. All revenues, assets, liabilities, losses, and  
12 expenses of the association shall be divided into two separate  
13 accounts, one of which is for personal lines residential  
14 coverages and the other of which is for commercial lines  
15 residential coverages. Revenues, assets, liabilities, losses,  
16 and expenses not attributable to particular coverages shall be  
17 prorated between the accounts.

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

19           a. When the deficit incurred in a particular calendar  
20 year is not greater than 10 percent of the aggregate statewide  
21 direct written premium for the subject lines of business for  
22 the prior calendar year for all member insurers, the entire  
23 deficit shall be recovered through assessments of member  
24 insurers under paragraph (g).

25           b. When the deficit incurred in a particular calendar  
26 year exceeds 10 percent of the aggregate statewide direct  
27 written premium for the subject lines of business for the  
28 prior calendar year for all member insurers, the association  
29 shall levy an assessment on member insurers in an amount equal  
30 to the greater of 10 percent of the deficit or 10 percent of  
31 the aggregate statewide direct written premium for the subject



1 lines of business for the prior calendar year for all member  
 2 insurers. Any remaining deficit shall be recovered through  
 3 emergency assessments under sub-subparagraph d.

4 c. Each member insurer's share of the total assessment  
 5 under sub-subparagraph a. or sub-subparagraph b. shall be in  
 6 the proportion that the member insurer's direct written  
 7 premium for the subject lines of business for the year  
 8 preceding the assessment bears to the aggregate statewide  
 9 direct written premium for the subject lines of business for  
 10 that year for all member insurers.

11 d. Upon a determination by the board of governors that  
 12 a deficit in an account exceeds the amount that will be  
 13 recovered through regular assessments on member of insurers  
 14 under sub-subparagraph a. or sub-subparagraph b., the board  
 15 shall levy, after verification by the department, emergency  
 16 assessments to be collected by member insurers and by  
 17 ~~including joint~~ underwriting associations created under this  
 18 section which write subject lines of business, upon issuance  
 19 or renewal of policies for subject lines of business,  
 20 excluding National Flood Insurance policies, in the year or  
 21 years following levy of the regular assessments. The amount  
 22 of the emergency assessment collected in a particular year  
 23 shall be a uniform percentage of that year's direct written  
 24 premium for subject lines of business for all member insurers  
 25 and underwriting associations, excluding National Flood  
 26 Insurance Program policy premiums, as annually determined by  
 27 the board and verified by the department. The department shall  
 28 verify the arithmetic calculations involved in the board's  
 29 determination within 30 days after receipt of the information  
 30 on which the determination was based. Notwithstanding any  
 31 other provision of law, each member insurer and each

1 underwriting association created under this section which  
 2 writes subject lines of business shall collect emergency  
 3 assessments from its policyholders without such obligation  
 4 being affected by any credit, limitation, exemption, or  
 5 deferment.The emergency assessments so collected shall be  
 6 transferred directly to the association on a periodic basis as  
 7 determined by the association. The aggregate amount of  
 8 emergency assessments levied under this sub-subparagraph in  
 9 any calendar year may not exceed the greater of 10 percent of  
 10 the amount needed to cover the original deficit, plus  
 11 interest, fees, commissions, required reserves, and other  
 12 costs associated with financing of the original deficit, or 10  
 13 percent of the aggregate statewide direct written premium for  
 14 subject lines of business written by member insurers and  
 15 underwriting associations for the prior year, plus interest,  
 16 fees, commissions, required reserves, and other costs  
 17 associated with financing the original deficit.

18 e. The board may pledge the proceeds of assessments,  
 19 projected recoveries ~~revenues~~ from the Florida Hurricane  
 20 Catastrophe Fund, other insurance and reinsurance  
 21 recoverables, market equalization surcharges and other  
 22 surcharges, and other funds available to the association as  
 23 the source of revenue for and to secure bonds issued under  
 24 paragraph (g), bonds or other indebtedness issued under  
 25 subparagraph (c)3., or lines of credit or ~~of~~ other financing  
 26 mechanisms issued or created under this subsection  
 27 ~~subparagraph (c)10., or~~ to retire any other debt incurred as a  
 28 result of deficits ~~the deficit~~ or events giving rise to  
 29 deficits ~~the deficit~~, or in any other way that the board  
 30 determines will efficiently recover such deficits ~~the deficit~~.  
 31 The purpose of the lines of credit or other financing

1 mechanisms is to provide additional resources to assist the  
 2 association in covering claims and expenses attributable to a  
 3 catastrophe.As used in this subsection, the term  
 4 "assessments" includes regular assessments under  
 5 sub-subparagraph a., sub-subparagraph b., or subparagraph  
 6 (g)1. and emergency assessments under ~~this~~ sub-subparagraph d.  
 7 Emergency assessments collected under sub-subparagraph d. ~~this~~  
 8 ~~subparagraph~~ are not part of an insurer's rates, are not  
 9 premium, and are not subject to premium tax, fees, or  
 10 commissions; however, failure to pay the emergency assessment  
 11 shall be treated as failure to pay premium. The emergency  
 12 assessments under sub-subparagraph d. shall continue as long  
 13 as any bonds issued or other indebtedness incurred with  
 14 respect to a deficit for which the assessment was imposed  
 15 remain outstanding, unless adequate provision has been made  
 16 for the payment of such bonds or other indebtedness pursuant  
 17 to the documents governing such bonds or other indebtedness.

18 ~~f.e.~~ As used in this subsection ~~subparagraph~~, the term  
 19 "subject lines of business" means, with respect to the  
 20 personal lines account, any personal lines policy defined in  
 21 s. 627.4025, and means, with respect to the commercial lines  
 22 account, all commercial property and commercial fire  
 23 insurance.

24 (c) The plan of operation of the association:  
 25 1. May provide for one or more designated insurers,  
 26 able and willing to provide policy and claims service, to act  
 27 on behalf of the association to provide such service. Each  
 28 licensed agent shall be entitled to indicate the order of  
 29 preference regarding who will service the business placed by  
 30 the agent. The association shall adhere to each agent's  
 31 preferences unless after consideration of other factors in

1 assigning agents, including, but not limited to, servicing  
2 capacity and fee arrangements, the association has reason to  
3 believe it is in the best interest of the association to make  
4 a different assignment.

5         2. Must provide for adoption of residential property  
6 and casualty insurance policy forms, which forms must be  
7 approved by the department prior to use. The association  
8 shall adopt the following policy forms:

9             a. Standard personal lines policy forms including wind  
10 coverage, which are multiperil policies providing what is  
11 generally considered to be full coverage of a residential  
12 property similar to the coverage provided under an HO-2, HO-3,  
13 HO-4, or HO-6 policy.

14             b. Standard personal lines policy forms without wind  
15 coverage, which are the same as the policies described in  
16 sub-subparagraph a. except that they do not include wind  
17 coverage.

18             c. Basic personal lines policy forms including wind  
19 coverage, which are policies similar to an HO-8 policy or a  
20 dwelling fire policy that provide coverage meeting the  
21 requirements of the secondary mortgage market, but which  
22 coverage is more limited than the coverage under a standard  
23 policy.

24             d. Basic personal lines policy forms without wind  
25 coverage, which are the same as the policies described in  
26 sub-subparagraph c. except that they do not include wind  
27 coverage.

28             e. Commercial lines residential policy forms including  
29 wind coverage that are generally similar to the basic perils  
30 of full coverage obtainable for commercial residential  
31 structures in the admitted voluntary market.

1 f. Commercial lines residential policy forms without  
 2 wind coverage, which are the same as the policies described in  
 3 sub-subparagraph e. except that they do not include wind  
 4 coverage.

5 3. May provide that the association may employ or  
 6 otherwise contract with individuals or other entities to  
 7 provide administrative or professional services that may be  
 8 appropriate to effectuate the plan. The association shall  
 9 have the power to borrow funds, by issuing bonds or by  
 10 incurring other indebtedness, and shall have other powers  
 11 reasonably necessary to effectuate the requirements of this  
 12 subsection. The association may issue bonds or incur other  
 13 indebtedness, or have bonds issued on its behalf by a unit of  
 14 local government pursuant to subparagraph (g)2., in the  
 15 absence of a hurricane or other weather-related event, upon a  
 16 determination by the association, subject to approval by the  
 17 department, that such action would enable it to efficiently  
 18 meet the financial obligations of the association and that  
 19 such financings are reasonably necessary to effectuate the  
 20 requirements of this subsection. The association is  
 21 authorized to take all actions needed to facilitate tax-free  
 22 status for any such bonds or indebtedness, including formation  
 23 of trusts or other affiliated entities. The association shall  
 24 have the authority to pledge assessments, projected recoveries  
 25 from the Florida Hurricane Catastrophe Fund, other reinsurance  
 26 recoverables, market equalization and other surcharges, and  
 27 other funds available to the association as security for bonds  
 28 or other indebtedness. In recognition of s. 10, Art. I of the  
 29 State Constitution, prohibiting the impairment of obligations  
 30 of contracts, it is the intent of the Legislature that no  
 31 action be taken whose purpose is to impair any bond indenture

1 or financing agreement or any revenue source committed by  
2 contract to such bond or other indebtedness.

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

7 a. The insurance consumer advocate appointed under s.  
8 627.0613.

9 b. Five members designated by the insurance industry.

10 c. Five consumer representatives appointed by the  
11 Insurance Commissioner. Two of the consumer representatives  
12 must, at the time of appointment, be holders of policies  
13 issued by the association, who are selected with consideration  
14 given to reflecting the geographic balance of association  
15 policyholders. Two of the consumer members must be individuals  
16 who are minority persons as defined in s. 288.703(3). One of  
17 the consumer members shall have expertise in the field of  
18 mortgage lending.

19 d. Two representatives of the insurance industry  
20 appointed by the Insurance Commissioner. Of the two insurance  
21 industry representatives appointed by the Insurance  
22 Commissioner, at least one must be an individual who is a  
23 minority person as defined in s. 288.703(3).

24  
25 Any board member may be disapproved or removed and replaced by  
26 the commissioner at any time for cause. All board members,  
27 including the chairman, must be appointed to serve for 3-year  
28 terms beginning annually on a date designated by the plan.

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

31

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

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

19       b. With respect to commercial lines residential risks,  
20 ~~the procedures shall require that the authorized insurer that~~  
21 ~~last provided coverage of the risk shall first be given an~~  
22 ~~opportunity to insure the risk at its approved rate. Upon~~  
23 ~~rejection by such insurer, the risk shall be submitted to the~~  
24 ~~market assistance plan.~~ if the risk market assistance plan is  
25 offered coverage able to obtain an offer to insure the risk  
26 under a policy including wind coverage from an authorized  
27 insurer at its approved rate ~~or from a surplus lines insurer~~  
28 ~~at no more than 25 percent above the association rate,~~ the  
29 risk is not eligible for any policy issued by the association.  
30 If the risk accepts an offer of coverage through the market  
31 assistance plan or an offer of coverage through a mechanism



1 established by the association before a policy is issued to  
 2 the risk by the association, and the producing agent who  
 3 submitted the application to the plan or the association is  
 4 not currently appointed by the insurer, the insurer shall  
 5 either appoint the agent to service the risk or, if the  
 6 insurer places the coverage through a new agent, require the  
 7 new agent who then writes the policy to pay not less than 50  
 8 percent of the first year's commission to the producing agent  
 9 who submitted the application to the plan, except that if the  
 10 new agent is an employee or exclusive agent of the insurer,  
 11 the new agent shall pay a policy fee of \$50 to the producing  
 12 agent in lieu of splitting the commission. ~~however, an offer~~  
 13 ~~from a surplus lines insurer does not disqualify a condominium~~  
 14 ~~association, cooperative, or homeowners' association from~~  
 15 ~~eligibility for coverage by the association in the event that~~  
 16 ~~the risk accepts the offer of coverage, if the producing agent~~  
 17 ~~who submitted the application to the plan is not currently~~  
 18 ~~appointed by the insurer, the insurer shall either appoint the~~  
 19 ~~agent to service the risk or, if the insurer places the~~  
 20 ~~coverage through a new agent, require the new agent who then~~  
 21 ~~writes the policy to pay not less than 50 percent of his first~~  
 22 ~~year's commission to the producing agent who submitted the~~  
 23 ~~application to the plan, except that if the new agent is an~~  
 24 ~~employee or exclusive agent of the insurer, the new agent~~  
 25 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~  
 26 ~~of splitting the commission.~~ If the risk market assistance  
 27 ~~plan~~ is not able to obtain any such offer, the risk is  
 28 eligible for a policy including wind coverage issued by the  
 29 association. ~~After December 31, 1996, an offer from a surplus~~  
 30 ~~lines insurer does not disqualify an applicant from obtaining~~  
 31 ~~coverage from the association.~~

1           c. This subparagraph does not require the association  
2 to provide wind coverage or hurricane coverage in any area in  
3 which such coverage is available through the Florida Windstorm  
4 Underwriting Association.

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

7           7. Must provide that if premium and investment income  
8 attributable to a particular plan year are in excess of  
9 projected losses and expenses of the plan attributable to that  
10 year, such excess shall be held in surplus. Such surplus shall  
11 be available to defray deficits as to future years and shall  
12 be used for that purpose prior to assessing member insurers as  
13 to any plan year.

14           8. Must provide objective criteria and procedures to  
15 be uniformly applied for all applicants in determining whether  
16 an individual risk is so hazardous as to be uninsurable. In  
17 making this determination and in establishing the criteria and  
18 procedures, the following shall be considered:

19           a. Whether the likelihood of a loss for the individual  
20 risk is substantially higher than for other risks of the same  
21 class; and

22           b. Whether the uncertainty associated with the  
23 individual risk is such that an appropriate premium cannot be  
24 determined.

25  
26 The acceptance or rejection of a risk by the association shall  
27 be construed as the private placement of insurance, and the  
28 provisions of chapter 120 shall not apply.

29           9. Must provide that the association shall make its  
30 best efforts to procure catastrophe reinsurance at reasonable  
31 rates, as determined by the board of governors.

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

26           11. The policies issued by the association must  
27 provide that ~~for personal lines residential risks,~~ if the  
28 association or the market assistance plan obtains an offer  
29 from an authorized insurer to cover the risk at its approved  
30 rates under either a standard policy including wind coverage  
31 or a basic policy including wind coverage, the risk is no

1 longer eligible for coverage through the association. However,  
 2 if the risk is located in an area in which Florida Windstorm  
 3 Underwriting Association coverage is available, such an offer  
 4 of a standard or basic policy terminates eligibility  
 5 regardless of whether or not the offer includes wind coverage.  
 6 Upon termination of eligibility, the association shall provide  
 7 written notice to the policyholder and agent of record stating  
 8 that the association policy shall be canceled as of 60 ~~30~~ days  
 9 after the date of the notice because of the offer of coverage  
 10 from an authorized insurer. Other provisions of the insurance  
 11 code relating to cancellation and notice of cancellation do  
 12 not apply to actions under this subparagraph.

13         12. Association policies and applications must include  
 14 a notice that the association policy could, under this section  
 15 or s. 627.3511, be replaced with a policy issued by an  
 16 admitted insurer that does not provide coverage identical to  
 17 the coverage provided by the association. The notice shall  
 18 also specify that acceptance of association coverage creates a  
 19 conclusive presumption that the applicant or policyholder is  
 20 aware of this potential.

21         13. May establish, subject to approval by the  
 22 department, different eligibility requirements and operational  
 23 procedures for any line or type of coverage for any specified  
 24 county or area if the board determines that such changes to  
 25 the eligibility requirements and operational procedures are  
 26 justified due to the voluntary market being sufficiently  
 27 stable and competitive in such area or for such line or type  
 28 of coverage and that consumers who, in good faith, are unable  
 29 to obtain insurance through the voluntary market through  
 30 ordinary methods would continue to have access to coverage  
 31 from the association. When coverage is sought in connection

1 with a real property transfer, such requirements and  
 2 procedures shall not provide for an effective date of coverage  
 3 later than the date of the closing of the transfer as  
 4 established by the transferor, the transferee, and, if  
 5 applicable, the lender.

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

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

1 rates charged by the insurer that had the highest average rate  
 2 in that county among the 5 ~~8~~ insurers with the greatest total  
 3 written premium for mobile home owner's policies in the state  
 4 in the preceding year. ~~It is the intent of the Legislature~~  
 5 ~~that such interim rating plans be phased in, with average~~  
 6 ~~rates reflecting at least half of the difference between the~~  
 7 ~~then-current association rate and the full interim rate taking~~  
 8 ~~effect with policies issued or renewed on or after January 1,~~  
 9 ~~1996, and with the full interim rates taking effect with~~  
 10 ~~policies issued or renewed on or after January 1, 1997.~~

11 3. Rates for commercial residential coverage shall not  
 12 be subject to the requirements of subparagraph 2., but shall  
 13 be subject to all other requirements of this paragraph and s.  
 14 627.062.~~Nothing in this subparagraph requires the association~~  
 15 ~~to reduce rates approved under s. 627.062 and in effect on~~  
 16 ~~December 31, 1995.~~

17 4. Nothing in this paragraph ~~subparagraph~~ shall  
 18 require or allow the association to adopt a rate that is  
 19 inadequate under s. 627.062 or to reduce rates approved under  
 20 s. 627.062.

21 ~~5.2.~~ The association may require arbitration of a  
 22 filing pursuant to s. 627.062(6).Rate filings of the  
 23 association under this paragraph shall be made on a use and  
 24 file basis under s. 627.062(2)(a)2. The association shall make  
 25 a rate filing ~~under s. 627.062~~ at least once a year, but no  
 26 more often than quarterly.

27 (e) Coverage through the association is hereby  
 28 activated effective upon approval of the plan, and shall  
 29 remain activated until coverage is deactivated pursuant to  
 30 paragraph (f). Thereafter, coverage through the association  
 31

1 shall be reactivated by order of the department only under one  
2 of the following circumstances:

3           1. If the market assistance plan receives a minimum of  
4 100 applications for coverage within a 3-month period, or 200  
5 applications for coverage within a 1-year period or less for  
6 residential coverage, unless the market assistance plan  
7 provides a quotation from admitted carriers at their filed  
8 rates for at least 90 percent of such applicants. Any market  
9 assistance plan application that is rejected because an  
10 individual risk is so hazardous as to be uninsurable using the  
11 criteria specified in subparagraph (c)8. shall not be included  
12 in the minimum percentage calculation provided herein. In the  
13 event that there is a legal or administrative challenge to a  
14 determination by the department that the conditions of this  
15 subparagraph have been met for eligibility for coverage in the  
16 association, any eligible risk may obtain coverage during the  
17 pendency of such challenge.

18           2. In response to a state of emergency declared by the  
19 Governor under s. 252.36, the department may activate coverage  
20 by order for the period of the emergency upon a finding by the  
21 department that the emergency significantly affects the  
22 availability of residential property insurance.

23           (f) The activities of the association shall be  
24 reviewed at least annually by the board and, upon  
25 recommendation by the board or petition of any interested  
26 party, coverage shall be deactivated if the department finds  
27 that the conditions giving rise to its activation no longer  
28 exist.

29           (g)1. The board shall certify to the department its  
30 needs for annual assessments as to a particular calendar year,  
31 and any startup or interim assessments that it deems to be

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

18           2. The governing body of any unit of local government,  
 19 any residents of which are insured by the association, may  
 20 issue bonds as defined in s. 125.013 or s. 166.101 from time  
 21 to time to fund an assistance program, in conjunction with the  
 22 association, for the purpose of defraying deficits of the  
 23 association. In order to avoid needless and indiscriminate  
 24 proliferation, duplication, and fragmentation of such  
 25 assistance programs, any unit of local government, any  
 26 residents of which are insured by the association, may provide  
 27 for the payment of losses, regardless of whether or not the  
 28 losses occurred within or outside of the territorial  
 29 jurisdiction of the local government. Revenue bonds may not be  
 30 issued until validated pursuant to chapter 75, unless a state  
 31 of emergency is declared by executive order or proclamation of



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

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

16           b. Any credit or exemption from regular assessments  
17 adopted under this subparagraph shall last no longer than the  
18 3 years following the cancellation or expiration of the policy  
19 by the association. With the approval of the department, the  
20 board may extend such credits for an additional year if the  
21 insurer guarantees an additional year of renewability for all  
22 policies removed from the association, or for two additional  
23 years if the insurer guarantees two additional years of  
24 renewability for all policies so removed.

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

28           4. The plan shall provide for the deferment, in whole  
29 or in part, of the assessment of a member ~~an~~ insurer, other  
30 than an emergency assessment collected from policyholders  
31 pursuant to sub-subparagraph (b)3.d., if the department finds

1 that payment of the assessment would endanger or impair the  
2 solvency of the insurer. In the event an assessment against a  
3 member ~~an~~ insurer is deferred in whole or in part, the amount  
4 by which such assessment is deferred may be assessed against  
5 the other member insurers in a manner consistent with the  
6 basis for assessments set forth in paragraph (b).

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

10 (i) There shall be no liability on the part of, and no  
11 cause of action of any nature shall arise against, any member  
12 insurer or its agents or employees, the ~~Residential Property~~  
13 ~~and Casualty Joint Underwriting~~ association or its agents or  
14 employees, members of the board of governors or their  
15 respective designees at a board meeting, association committee  
16 members, or the department or its representatives, for any  
17 action taken by them in the performance of their duties or  
18 responsibilities under this subsection. Such immunity does  
19 not apply to ~~actions for breach of any contract or agreement~~  
20 ~~pertaining to insurance or to issuance of payment of debt, or~~  
21 ~~any other willful tort:~~

22 1. Any of the foregoing persons or entities for any  
23 willful tort;

24 2. The association or its servicing or producing  
25 agents for breach of any contract or agreement pertaining to  
26 insurance coverage;

27 3. The association with respect to issuance or payment  
28 of debt; or

29 4. Any member insurer with respect to any action to  
30 enforce a member insurer's obligations to the association  
31 under this subsection.

1           (j) The Residential Property and Casualty Joint  
2 Underwriting Association is not a state agency, board, or  
3 commission. However, for the purposes of s. 199.183(1), the  
4 Residential Property and Casualty Joint Underwriting  
5 Association shall be considered a political subdivision of the  
6 state and shall be exempt from the corporate income tax.

7           (k) Upon a determination by the board of governors  
8 that the conditions giving rise to the establishment and  
9 activation of the association no longer exist, and upon the  
10 consent thereto by order of the department, the association is  
11 dissolved. Upon dissolution, the assets of the association  
12 shall be applied first to pay all debts, liabilities, and  
13 obligations of the association, including the establishment of  
14 reasonable reserves for any contingent liabilities or  
15 obligations, and all remaining assets of the association shall  
16 become property of the state and deposited in the Florida  
17 Hurricane Catastrophe Fund.

18           (l) All obligations, rights, assets, and liabilities  
19 of the Florida Property and Casualty Joint Underwriting  
20 Association created by subsection (5), which obligations,  
21 rights, assets, or liabilities relate to the provision of  
22 commercial lines residential property insurance coverage as  
23 described in this section are hereby transferred to the  
24 Residential Property and Casualty Joint Underwriting  
25 Association. The Residential Property and Casualty Joint  
26 Underwriting Association is not required to issue endorsements  
27 or certificates of assumption to insureds during the remaining  
28 term of in-force transferred policies.

29           (m) Notwithstanding any other provision of law:

30           1. The pledge or sale of, the lien upon, and the  
31 security interest in any rights, revenues, or other assets of

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

9         2. 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 ~~under sub-subparagraph (b)3.a., sub-subparagraph~~  
 13 ~~(b)3.b., or subparagraph (g)1., emergency assessments under~~  
 14 ~~sub-subparagraph (b)3.d., market equalization or other renewal~~  
 15 ~~surcharges under subparagraph(c)10.(g)10., or any other~~  
 16 rights, revenues, or other assets of the association pledged  
 17 pursuant to any financing documents.

18         3. Each such pledge or sale of, lien upon, and  
 19 security interest in, including the priority of such pledge,  
 20 lien, or security interest, any such assessments, ~~emergency~~  
 21 ~~assessments,~~market equalization or other renewal surcharges,  
 22 or other rights, revenues, or other assets which are  
 23 collected, or levied and collected, after the commencement of  
 24 and during the pendency of, or after, any such proceeding  
 25 shall continue unaffected by such proceeding. As used in this  
 26 ~~subsection~~ paragraph, the term "financing documents" means any  
 27 agreement or agreements, instrument or instruments, or other  
 28 document or documents now existing or hereafter created  
 29 evidencing any bonds or other indebtedness of the association  
 30 or pursuant to which any such bonds or other indebtedness has  
 31 been or may be issued and pursuant to which any rights,

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

6 4. 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, or contract rights or other rights  
11 or 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, or contract rights or other rights or assets to the  
19 extent set forth in and in accordance with the terms of the  
20 pledge or sale contained in the applicable financing  
21 documents, whether or not any such person or entity has notice  
22 of such pledge or sale and without the need for any physical  
23 delivery, recordation, filing, or other action.

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

28 a. Underwriting files, except that a policyholder or  
29 an applicant shall have access to his or her own underwriting  
30 files.

31

1           b. Claims files, until termination of all litigation  
2 and settlement of all claims arising out of the same incident,  
3 although portions of the claims files may remain exempt, as  
4 otherwise provided by law. Confidential and exempt claims file  
5 records may be released to other governmental agencies upon  
6 written request and demonstration of need; such records held  
7 by the receiving agency remain confidential and exempt as  
8 provided for herein.

9           c. Records obtained or generated by an internal  
10 auditor pursuant to a routine audit, until the audit is  
11 completed, or if the audit is conducted as part of an  
12 investigation, until the investigation is closed or ceases to  
13 be active. An investigation is considered "active" while the  
14 investigation is being conducted with a reasonable, good faith  
15 belief that it could lead to the filing of administrative,  
16 civil, or criminal proceedings.

17           d. Matters reasonably encompassed in privileged  
18 attorney-client communications.

19           e. Proprietary information licensed to the association  
20 under contract and the contract provides for the  
21 confidentiality of such proprietary information.

22           f. All information relating to the medical condition  
23 or medical status of an association employee which is not  
24 relevant to the employee's capacity to perform his or her  
25 duties, except as otherwise provided in this paragraph.  
26 Information which is exempt shall include, but is not limited  
27 to, information relating to workers' compensation, insurance  
28 benefits, and retirement or disability benefits.

29           g. Upon an employee's entrance into the employee  
30 assistance program, a program to assist any employee who has a  
31 behavioral or medical disorder, substance abuse problem, or

1 emotional difficulty which affects the employee's job  
2 performance, all records relative to that participation shall  
3 be confidential and exempt from the provisions of s. 119.07(1)  
4 and s. 24(a), Art. I of the State Constitution, except as  
5 otherwise provided in s. 112.0455(11).

6 h. Information relating to negotiations for financing,  
7 reinsurance, depopulation, or contractual services, until the  
8 conclusion of the negotiations.

9 i. Minutes of closed meetings regarding underwriting  
10 files, and minutes of closed meetings regarding an open claims  
11 file until termination of all litigation and settlement of all  
12 claims with regard to that claim, except that information  
13 otherwise confidential or exempt by law will be redacted.

14

15 When an authorized insurer is considering underwriting a risk  
16 insured by the association, relevant underwriting files and  
17 confidential claims files may be released to the insurer  
18 provided the insurer agrees in writing, notarized and under  
19 oath, to maintain the confidentiality of such files. When a  
20 file is transferred to an insurer that file is no longer a  
21 public record because it is not held by an agency subject to  
22 the provisions of the public records law. Underwriting files  
23 and confidential claims files may also be released to staff of  
24 and the board of governors of the market assistance plan  
25 established pursuant to s. 627.3515, who must retain the  
26 confidentiality of such files, except such files may be  
27 released to authorized insurers that are considering assuming  
28 the risks to which the files apply, provided the insurer  
29 agrees in writing, notarized and under oath, to maintain the  
30 confidentiality of such files. Finally, the association or  
31 the board or staff of the market assistance plan may make the



1 following information obtained from underwriting files and  
 2 confidential claims files available to licensed general lines  
 3 insurance agents: name, address, and telephone number of the  
 4 residential property owner or insured; location of the risk;  
 5 rating information; loss history; and policy type. The  
 6 receiving licensed general lines insurance agent must retain  
 7 the confidentiality of the information received.

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

25           Section 7. Section 627.3511, Florida Statutes, 1996  
 26 Supplement, is amended to read:

27           627.3511 Depopulation of Residential Property and  
 28 Casualty Joint Underwriting Association.--

29           (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature  
 30 finds and declares that the Residential Property and Casualty  
 31 Joint Underwriting Association has written an amount of

1 policies beyond legislative expectations and has become, by  
2 virtue of its size, a significant impediment to the  
3 restoration of a stable and competitive residential property  
4 insurance market in this state; that the public policy of this  
5 state requires the maintenance of a residual market for  
6 residential property insurance; and that extraordinary  
7 measures, beyond implementation of eligibility criteria and  
8 noncompetitive rates, are required to reduce the number of  
9 policies written by the Residential Property and Casualty  
10 Joint Underwriting Association to a reasonable level. It is  
11 the intent of the Legislature to provide a variety of  
12 financial incentives to encourage the replacement of the  
13 highest possible number of Residential Property and Casualty  
14 Joint Underwriting Association policies with policies written  
15 by admitted insurers at approved rates.

16 (2) TAKE-OUT BONUS.--The Residential Property and  
17 Casualty Joint Underwriting Association shall pay the sum of  
18 up to \$100 to an insurer for each risk that the insurer  
19 removes from the association, either by issuance of a policy  
20 upon expiration or cancellation of the association policy or  
21 by assumption of the association's obligations with respect to  
22 an in-force policy. Such payment is subject to approval of  
23 the association board. In order to qualify for the bonus  
24 under this subsection, the take-out plan must include a  
25 minimum of 25,000 policies. Within 30 days after approval by  
26 the board, the department may reject the insurer's take-out  
27 plan and disqualify the insurer from the bonus, based on the  
28 following criteria:

29 (a) The capacity of the insurer to absorb the policies  
30 proposed to be taken out of the association and the  
31 concentration of risks of those policies.

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

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

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

9 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

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

19 1. In the first year following removal of the risks,  
20 the risks are excluded from the calculation to the extent of  
21 100 percent.

22 2. In the second year following removal of the risks,  
23 the risks are excluded from the calculation to the extent of  
24 75 percent.

25 3. In the third year following removal of the risks,  
26 the risks are excluded from the calculation to the extent of  
27 50 percent.

28  
29 If the removal of risks is accomplished through assumption of  
30 obligations with respect to in-force policies, the association  
31 shall pay to the assuming insurer all unearned premium with

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

17 (b) An insurer that first wrote personal lines  
 18 residential property coverage in this state on or after July  
 19 1, 1994, is exempt from regular deficit assessments imposed  
 20 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency  
 21 assessments collected from policyholders pursuant to s.  
 22 627.351(6)(b)3.d., of the Residential Property and Casualty  
 23 Joint Underwriting Association until the earlier of the  
 24 following:

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

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

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

11 (d) Any exemption or credit from regular assessments  
12 authorized by this section shall last no longer than 3 years  
13 following the cancellation or expiration of the policy by the  
14 association. With the approval of the department, the board  
15 may extend such credits for an additional year if the insurer  
16 guarantees an additional year of renewability for all policies  
17 removed from the association, or for 2 additional years if the  
18 insurer guarantees 2 additional years of renewability for all  
19 policies so removed.

20 (4) AGENT BONUS.--When the Residential Property and  
21 Casualty Joint Underwriting Association enters into a  
22 contractual agreement for a take-out plan that provides a  
23 bonus to the insurer, the producing agent of record of the  
24 association policy is entitled to retain any unearned  
25 commission on such policy, and the insurer shall either:

26 (a) Pay to the producing agent of record of the  
27 association policy an amount equal to the insurer's usual and  
28 customary commission for the type of policy written if the  
29 term of the association policy was in excess of 6 months, or  
30 one-half of such usual and customary commission if the term of  
31 the association policy was 6 months or less; or

1 (b) Offer to allow the producing agent of record of  
2 the association policy to continue servicing the policy for a  
3 period of not less than 1 year and offer to pay the agent the  
4 insurer's usual and customary commission for the type of  
5 policy written.

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

19 (5) APPLICABILITY.--

20 (a) The take-out bonus provided by subsection (2) and  
21 the exemption from assessment provided by paragraph (3)(a)  
22 apply only if the ~~Residential Property and Casualty Joint~~  
23 ~~Underwriting~~ association policy is replaced by either a  
24 standard policy including wind coverage or, if consistent with  
25 the insurer's underwriting rules as filed with the department,  
26 a basic policy including wind coverage; however, with respect  
27 to risks located in areas where coverage through the Florida  
28 Windstorm Underwriting Association is available, the  
29 replacement policy need not provide wind coverage. The insurer  
30 must renew the replacement policy at approved rates on  
31 substantially similar terms for two additional 1-year terms,

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

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

30 (c) It is the intent of the Legislature that an  
31 insurer eligible for the exemption under paragraph (3)(a)

1 establish a preference in appointment of agents for those  
2 agents who lose a substantial amount of business as a result  
3 of risks being removed from the association.

4 (6) COMMERCIAL RESIDENTIAL ~~CONDOMINIUM ASSOCIATION~~  
5 TAKE-OUT PLANS.--

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

24 (b) In order for a plan to qualify for approval:

25 1. At least 40 percent of the policies removed from  
26 the association under the plan must be located in Dade,  
27 Broward, and Palm Beach Counties, or at least 30 percent of  
28 the policies removed from the association under the plan must  
29 be located in such counties and an additional 50 percent of  
30 the policies removed from the association must be located in  
31 other coastal counties.



1           2. The insurer must renew the replacement policy at  
2 approved rates on substantially similar terms for two  
3 additional 1-year terms, unless canceled or nonrenewed by the  
4 insurer for a lawful reason other than reduction of hurricane  
5 exposure. If an insurer assumes the association's obligations  
6 for a policy, it must issue a replacement policy for a 1-year  
7 term upon expiration of the association policy and must renew  
8 the replacement policy at approved rates on substantially  
9 similar terms for two additional 1-year terms, unless canceled  
10 by the insurer for a lawful reason other than reduction of  
11 hurricane exposure.For each replacement policy canceled or  
12 nonrenewed by the insurer for any reason during the 3-year  
13 coverage period required by this subparagraph, the insurer  
14 must remove from the association one additional policy  
15 covering a risk similar to the risk covered by the canceled or  
16 nonrenewed policy.

17           (c) A take-out plan is deemed approved unless the  
18 department, within 120 days after the board votes to recommend  
19 the plan, disapproves the plan based on:

20           1. The capacity of the insurer to absorb the policies  
21 proposed to be taken out of the association and the  
22 concentration of risks of those policies.

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

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

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

31

1 (d) The calculation of an insurer's regular assessment  
2 liability under s. 627.351(b)3.a. and b., but not emergency  
3 assessments collected from policyholders pursuant to s.  
4 627.351(6)(b)3.d., s. 627.351 shall, with respect to  
5 commercial residential condominium ~~association~~ policies  
6 removed from the association under an approved take-out plan,  
7 exclude such removed policies for the succeeding 3 years, as  
8 follows:

9 1. In the first year following removal of the  
10 policies, the policies are excluded from the calculation to  
11 the extent of 100 percent.

12 2. In the second year following removal of the  
13 policies, the policies are excluded from the calculation to  
14 the extent of 75 percent.

15 3. In the third year following removal of the  
16 policies, the policies are excluded from the calculation to  
17 the extent of 50 percent.

18 (e) An insurer that first wrote commercial residential  
19 ~~condominium association~~ property coverage in this state on or  
20 after June 1, 1996, is exempt from regular assessments under  
21 s. 627.351(6)(b)3.a. and b., but not emergency assessments  
22 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,  
23 s. 627.351 with respect to commercial residential ~~condominium~~  
24 ~~association~~ policies until the earlier of:

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

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

1 (f) An insurer that is not otherwise exempt from  
 2 regular assessments under s. 627.351(6)(b)3.a. and b. ~~s.~~  
 3 ~~627.351~~ with respect to commercial residential condominium  
 4 ~~association~~ policies is, for any calendar year in which such  
 5 insurer increased its total commercial residential condominium  
 6 ~~association~~ hurricane exposure by 25 percent or more over its  
 7 exposure for the preceding calendar year, exempt from regular  
 8 assessments under s. 627.351(6)(b)3.a. and b., but not  
 9 emergency assessments collected from policyholders pursuant to  
 10 s. 627.351(6)(b)3.d., s. 627.351 attributable to such  
 11 increased exposure.

12 (7) A minority business, which is at least 51 percent  
 13 owned by minority persons as described in s. 288.703(3),  
 14 desiring to operate or become licensed as a property and  
 15 casualty insurer may exempt apply up to \$50 of the escrow  
 16 requirements of the take-out bonus, as described in this  
 17 section, ~~toward the minimum capital requirements as set forth~~  
 18 ~~in s. 624.407(1)(a).~~ Such minority business, which has  
 19 applied for a certificate of authority to engage in business  
 20 as a property and casualty insurer, may simultaneously file  
 21 the business' proposed take-out plan, as described in this  
 22 section, to the Residential Property and Casualty Joint  
 23 Underwriting Association. ~~The Insurance Commissioner may~~  
 24 ~~request that the association approve such take-out plan~~  
 25 ~~subject to the granting of a certificate of authority by the~~  
 26 ~~department.~~

27 Section 8. Section 627.3512, Florida Statutes, is  
 28 amended to read:

29 627.3512 Recoupment of residual market deficit  
 30 assessments.--

31

1           (1) An insurer or insurer group ~~A rate filing under s.~~  
 2 ~~627.062, s. 627.0651, or s. 627.072~~ may include amounts  
 3 ~~sufficient to~~ recoup any assessments that have been paid  
 4 during or after 1995 by the insurer or insurer group to defray  
 5 deficits of an insurance risk apportionment plan ~~a joint~~  
 6 ~~underwriting association~~ or assigned risk plan under ss.  
 7 627.311 and 627.351, net of any earnings returned to the  
 8 insurer or insurer group by the association or plan for any  
 9 year after 1993. The recoupment shall be made by applying a  
 10 separate assessment factor on policies of the same line or  
 11 type as were considered by the residual markets in determining  
 12 the assessment liability of the insurer or insurer group. An  
 13 insurer or insurer group shall calculate a separate assessment  
 14 factor for personal lines and commercial lines. ~~The rate~~  
 15 ~~filing shall include a~~ separate assessment factor shall  
 16 provide which provides for full recoupment of the assessments  
 17 over a period of 1 year, unless the insurer or insurer group,  
 18 at its option, elects to recoup the assessments over a longer  
 19 period. The assessment factor ~~in the filing~~ expires upon  
 20 collection of the full amount allowed to be recouped. Amounts  
 21 recouped under this section are not subject to premium taxes,  
 22 fees, or commissions.

23           (2) The assessment factor must not be more than 3  
 24 percentage points above the ratio of the deficit assessment to  
 25 the Florida direct written premium for policies for the lines  
 26 or types of business as to which the assessment was  
 27 calculated, as written in the year the deficit assessment was  
 28 paid. If an insurer or insurer group fails to collect the  
 29 full amount of the deficit assessment, the insurer or insurer  
 30 group must carry forward the amount of the deficit and adjust  
 31

1 the deficit assessment to be recouped in a subsequent year by  
2 that amount.

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

17 (4) The department may adopt rules to implement this  
18 section.

19 Section 9. Section 627.3513, Florida Statutes, is  
20 created to read:

21 627.3513 Standards for sale of bonds by underwriting  
22 associations.--

23 (1)(a) The purpose of this section is to provide  
24 standards for the sale of bonds pursuant to s. 627.351(2) and  
25 (6).

26 (b) "Association" or "associations," for purposes of  
27 this section, means the Florida Windstorm Underwriting  
28 Association and the Residential Property and Casualty Joint  
29 Underwriting Association as established pursuant to s.  
30 627.351(2) and (6), and any corporation or other entity  
31 established pursuant to those subsections.

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

14           (3) The plan of operation of each association shall  
15 provide for any managing underwriter or financial advisor to  
16 provide to the association a disclosure statement containing  
17 at least the following information:

18           (a) An itemized list setting forth the nature and  
19 estimated amounts of expenses to be incurred by the managing  
20 underwriter in connection with the issuance of such bonds.  
21 Notwithstanding the foregoing, any such list may include an  
22 item for miscellaneous expenses, provided such item includes  
23 only minor items of expense which cannot be easily categorized  
24 elsewhere in the statement.

25           (b) The names, addresses, and estimated amounts of  
26 compensation of any finders connected with the issuance of the  
27 bonds.

28           (c) The amount of underwriting spread expected to be  
29 realized and the amount of fees and expenses expected to be  
30 paid to the financial adviser.

31

1       (d) Any management fee charged by the managing  
2 underwriter.

3       (e) Any other fee, bonus, or compensation estimated to  
4 be paid by the managing underwriter in connection with the  
5 bond issue to any person not regularly employed or retained by  
6 it.

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

9       (g) Any other disclosure which the association may  
10 require.

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

22       (b) As used in this subsection, the term "finder"  
23 means a person who is neither regularly employed by, nor a  
24 partner or officer of, an underwriter, bank, banker, or  
25 financial consultant or adviser and who enters into an  
26 understanding with either the issuer or the managing  
27 underwriter, or both, for any paid or promised compensation or  
28 valuable consideration, directly or indirectly, expressed or  
29 implied, to act solely as an intermediary between such issuer  
30 and managing underwriter for the purpose of influencing any  
31 transaction in the purpose of such bonds.

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

5           (6) The failure of the association to comply with one  
6 or more provisions of this section shall not affect the  
7 validity of the bond issue, however, the failure of either  
8 association to comply in good faith both with this section and  
9 with the plan as amended shall be a violation of its plan of  
10 operation and a violation of the Insurance Code.

11           Section 10. Section 627.3516, Florida Statutes, is  
12 created to read:

13           627.3516 Residential property insurance market  
14 coordinating council--The Florida Windstorm Underwriting  
15 Association and the Residential Property and Casualty Joint  
16 Underwriting Association shall create a residual property  
17 insurance market coordinating council to assure that each  
18 association is informed of the activities and plans of the  
19 other. The coordinating council shall consist of the  
20 Insurance Consumer Advocate, who shall chair the council, the  
21 executive director of each of the associations, and the chair  
22 of the governing board of each of the associations. The  
23 coordinating council may, from time to time, recommend to the  
24 presiding officers of the Legislature proposals to improve  
25 coordination between the associations or eliminate unnecessary  
26 duplication of efforts; however, any such recommendation must  
27 also include an analysis of the impact of the recommendation  
28 on the financial arrangements of each association and on the  
29 state's efforts to restore the voluntary property insurance  
30 market. The coordinating council shall, on March 1 of each  
31



1 year, provide a report of its activities during the preceding  
2 year to the presiding officers of the Legislature.

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

5 627.4025 Residential coverage and hurricane coverage  
6 defined.--

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

20 Section 12. Subsections (3) and (7) of section  
21 627.701, Florida Statutes, 1996 Supplement, are amended, and  
22 subsection (8) is added to said section, to read:

23 627.701 Liability of insureds; coinsurance;  
24 deductibles.--

25 (3)(a) A policy of residential property insurance  
26 shall include a deductible amount applicable to hurricane or  
27 wind losses no lower than \$500 and no higher than 2 percent of  
28 the policy dwelling limits with respect to personal lines  
29 residential risks, and no higher than 3 percent of the policy  
30 limits with respect to commercial lines residential risks;  
31 however, if a risk was covered on August 24, 1992, under a

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

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

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

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

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

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

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

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

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

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

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

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

22 (8) Notwithstanding the other provisions of this  
23 section or of other law, but only as to hurricane coverage as  
24 defined in s. 627.4025 for commercial lines residential  
25 coverages, an insurer may offer a deductible in an amount not  
26 exceeding 5 percent of the insured value with respect to a  
27 condominium association or cooperative association policy, or  
28 in an amount not exceeding 10 percent of the insured value  
29 with respect to any other commercial lines residential policy,  
30 if, at the time of such offer and at each renewal, the insurer  
31 also offers to the policyholder a deductible in the amount of

1 3 percent of the insured value. Nothing in this subsection  
2 prohibits any deductible otherwise authorized by this  
3 section. All forms by which the offers authorized in this  
4 subsection are made or required to be made shall be on forms  
5 that are adopted or approved by the department.

6 Section 13. This act shall take effect upon becoming a  
7 law.

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