

By the Committee on Insurance and Representatives Bainter,
Patterson, Dockery, Bitner, Waters, Byrd, Goode and Lawson

1 A bill to be entitled
2 An act relating to property insurance; amending
3 ss. 624.4071 and 624.4072, F.S.; revising
4 cross-references; amending s. 626.752, F.S.;
5 excluding risks removed from the Florida
6 Windstorm Underwriting Association from certain
7 insurer information notice requirements;
8 amending s. 626.916, F.S.; increasing the fee
9 limit for insurance policies certified for
10 export; amending s. 627.0629, F.S.; requiring a
11 rating manual for residential property
12 insurance; requiring the manual to contain
13 certain criteria; providing for residential
14 property insurance policies that provide only
15 windstorm coverage; amending s. 627.351, F.S.;
16 revising provisions relating to the Florida
17 Windstorm Underwriting Association; defining
18 "qualified offer of coverage"; providing for
19 imposing a deficit surcharge under certain
20 circumstances; providing criteria; specifying
21 that a market equalization surcharge is in
22 addition to the deficit surcharge; providing
23 restrictions to coverage by the association;
24 providing for inclusion of windstorm coverage
25 in certain insurance policies under certain
26 circumstances; providing insurer requirements
27 for risks removed from the association;
28 authorizing the association to enter into
29 certain agreements to remove policies from the
30 association; clarifying certain immunity from
31 liability for certain persons and entities;

1 revising provisions relating to the Residential
2 Property and Casualty Joint Underwriting
3 Association; defining "qualified offer of
4 coverage"; providing restrictions to coverage
5 by the association; deleting a requirement that
6 the association board adopt a writings
7 reduction program; amending s. 627.3511, F.S.;
8 revising provisions relating to exposure
9 reduction through depopulation of the
10 Residential Property and Casualty Joint
11 Underwriting Association; clarifying
12 legislative intent; requiring the association
13 board to adopt a program to reduce exposure and
14 policy issuance and renewal; providing for a
15 personal residential take-out bonus; providing
16 criteria; providing for exemptions from certain
17 deficit assessments; deleting an agent bonus or
18 exemption eligibility limitation; amending s.
19 627.3515, F.S.; amending the market assistance
20 plan to only apply to casualty risks;
21 specifying governance of the market assistance
22 plan by a board of governors; amending s.
23 627.4025, F.S.; revising a definition; amending
24 s. 627.701, F.S.; revising provisions relating
25 to deductibles; providing limitations; creating
26 s. 627.70115, F.S.; providing for supplemental
27 residential property insurance; repealing s.
28 627.701(8), F.S., relating to certain
29 deductibles for hurricane coverage for
30 commercial lines residential insurance;
31 providing effective dates.

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

2

3 Section 1. Effective April 1, 2000, paragraph (d) of
4 subsection (2) of section 624.4071, Florida Statutes, is
5 amended to read:

6 624.4071 Special purpose homeowner insurance
7 company.--

8 (2) A special purpose homeowner insurance company must
9 have a parent company, and both companies must meet the
10 requirements of this subsection in order for the subsidiary to
11 qualify for and maintain a certificate of authority under this
12 section.

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

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

17 2. Be a member of the Florida Insurance Guaranty
18 Association and the Florida Hurricane Catastrophe Fund, and be
19 subject to any of their required assessments and premium
20 charges. However, a special purpose homeowner insurance
21 company may not be a member of the Florida Windstorm
22 Underwriting Association or the Florida Residential Property
23 and Casualty Joint Underwriting Association, and neither the
24 company nor its policyholders are subject to any assessments
25 by these associations except for emergency assessments
26 collected from policyholders pursuant to s.

27 627.351(2)(b)2.d. IV~~(III)~~ and (6)(b)3.d. For the sole purpose
28 of levying and collecting emergency assessments and
29 determining the statewide written premium for property
30 insurance, special purpose homeowner insurance companies shall
31 be considered member insurers of the Florida Windstorm

1 Underwriting Association and the Florida Residential Property
2 and Casualty Joint Underwriting Association.

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

10 Section 2. Effective April 1, 2000, paragraph (b) of
11 subsection (1) of section 624.4072, Florida Statutes, 1998
12 Supplement, is amended to read:

13 624.4072 Minority-owned property and casualty
14 insurers; limited exemption for taxation and assessments.--

15 (1) A minority business that is at least 51 percent
16 owned by minority persons, as defined in s. 288.703(3),
17 initially issued a certificate of authority in this state as
18 an authorized insurer after May 1, 1998, to write property and
19 casualty insurance shall be exempt, for a period not to exceed
20 5 years from the date of receiving its certificate of
21 authority, from the following taxes and assessments:

22 (b) Assessments by the Florida Residential Property
23 and Casualty Joint Underwriting Association or by the Florida
24 Windstorm Underwriting Association, as provided under s.
25 627.351, except for emergency assessments collected from
26 policyholders pursuant to s. 627.351(2)(b)2.d.IV~~(III)~~and
27 (6)(b)3.d. Any such insurer shall be a member insurer of the
28 Florida Windstorm Underwriting Association and the Florida
29 Residential Property and Casualty Joint Underwriting
30 Association. The premiums of such insurer shall be included in
31 determining, for the Florida Windstorm Underwriting

1 Association, the aggregate statewide direct written premium
2 for property insurance and in determining, for the Florida
3 Residential Property and Casualty Joint Underwriting
4 Association, the aggregate statewide direct written premium
5 for the subject lines of business for all member insurers.

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

8 626.752 Exchange of business.--

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

26 Section 4. Subsection (4) of section 626.916, Florida
27 Statutes, is amended to read:

28 626.916 Eligibility for export.--

29 (4) A reasonable per-policy fee, not to exceed \$50
30 ~~\$25~~, may be charged by the filing surplus lines agent for each
31 policy certified for export.

1 Section 5. Subsection (1) of section 627.0629, Florida
2 Statutes, is amended, and subsection (11) is added to said
3 section, to read:

4 627.0629 Residential property insurance; rate
5 filings.--

6 (1) Effective July 1, 2000 ~~1994~~, a rating manual rate
7 ~~filing~~ for residential property insurance must include
8 appropriate discounts, credits, or other rate differentials,
9 or appropriate reductions in deductibles, for properties on
10 which fixtures or construction techniques actuarially
11 demonstrated to reduce the amount of loss in a windstorm have
12 been installed or implemented. The fixtures or construction
13 techniques shall include, but shall not limited to, fixtures
14 or techniques which enhance roof strength, roof to wall
15 strength, wall to floor to foundation strength, and window,
16 door, and skylight strength.

17 (11) An insurer may write a residential property
18 insurance policy that provides only windstorm coverage.

19 Section 6. Effective April 1, 2000, subsections (2)
20 and (6) of section 627.351, Florida Statutes, 1998 Supplement,
21 are amended to read:

22 627.351 Insurance risk apportionment plans.--

23 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

24 (a) Agreements may be made among property insurers
25 with respect to the equitable apportionment among them of
26 insurance which may be afforded applicants who are in good
27 faith entitled to, but are unable to procure, such insurance
28 through ordinary methods; and such insurers may agree among
29 themselves on the use of reasonable rate modifications for
30 such insurance. Such agreements and rate modifications shall
31 be subject to the applicable provisions of this chapter.

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

23 1.a. For the purpose of this section, properties
24 eligible for such windstorm coverage are defined as dwellings,
25 buildings, and other structures, including mobile homes which
26 are used as dwellings and which are tied down in compliance
27 with mobile home tie-down requirements prescribed by the
28 Department of Highway Safety and Motor Vehicles pursuant to s.
29 320.8325, and the contents of all such properties.

30 b. An applicant or policyholder is eligible for
31 coverage only if a qualified offer of coverage cannot be

1 obtained by or for the applicant or existing policyholder.
2 For purposes of this subsection, a "qualified offer of
3 coverage" is an offer of coverage ~~cannot be~~ obtained by or for
4 the applicant or policyholder from an authorized ~~admitted~~
5 insurer at approved rates or from a surplus lines insurer
6 rated at least B++ by A. M. Best, except, for a personal lines
7 residential risk with policy dwelling limits of less than
8 \$500,000, a "qualified offer of coverage" shall be an offer of
9 coverage obtained by or for the applicant or policyholder from
10 an authorized insurer at approved rates.

11 2.a.(I) All insurers required to be members of such
12 association shall participate in its writings, expenses, and
13 losses. Surplus of the association shall be retained for the
14 payment of claims and shall not be distributed to the member
15 insurers. Such participation by member insurers shall be in
16 the proportion that the net direct premiums of each member
17 insurer written for property insurance in this state during
18 the preceding calendar year bear to the aggregate net direct
19 premiums for property insurance of all member insurers, as
20 reduced by any credits for voluntary writings, in this state
21 during the preceding calendar year. For the purposes of this
22 subsection, the term "net direct premiums" means direct
23 written premiums for property insurance, reduced by premium
24 for liability coverage and for the following if included in
25 allied lines: rain and hail on growing crops; livestock;
26 association direct premiums booked; National Flood Insurance
27 Program direct premiums; and similar deductions specifically
28 authorized by the plan of operation and approved by the
29 department. A member's participation shall begin on the first
30 day of the calendar year following the year in which it is
31 issued a certificate of authority to transact property

1 insurance in the state and shall terminate 1 year after the
2 end of the calendar year during which it no longer holds a
3 certificate of authority to transact property insurance in the
4 state. The commissioner, after review of annual statements,
5 other reports, and any other statistics that the commissioner
6 deems necessary, shall certify to the association the
7 aggregate direct premiums written for property insurance in
8 this state by all member insurers.

9 (II) The plan of operation shall provide for a board
10 of directors consisting of the Insurance Consumer Advocate
11 appointed under s. 627.0613, 1 consumer representative and 1
12 agent representative appointed by the Insurance Commissioner,
13 1 consumer representative appointed by the Governor, and 12
14 additional members appointed as specified in the plan of
15 operation. ~~One~~ Of the 12 additional members, one shall be
16 elected by the domestic companies of this state on the basis
17 of cumulative weighted voting based on the net direct premiums
18 of domestic companies in this state, and one shall be a
19 surplus lines insurer designated by the Florida Surplus Lines
20 Association. Nothing in the 1997 amendments to this paragraph
21 terminates the existing board or the terms of any members of
22 the board.

23 (III) The plan of operation shall provide a formula
24 whereby a company voluntarily providing windstorm coverage in
25 affected areas will be relieved wholly or partially from
26 apportionment of a regular assessment pursuant to
27 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

28 (IV) A company which is a member of a group of
29 companies under common management may elect to have its
30 credits applied on a group basis, and any company or group may
31

1 elect to have its credits applied to any other company or
2 group.

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

6 ~~(VI) The plan of operation may also provide for the~~
7 ~~award of credits, for a period not to exceed 3 years, from a~~
8 ~~regular assessment pursuant to sub-sub-subparagraph d.(I) or~~
9 ~~sub-sub-subparagraph d.(II) as an incentive for taking~~
10 ~~policies out of the Residential Property and Casualty Joint~~
11 ~~Underwriting Association. In order to qualify for the~~
12 ~~exemption under this sub-sub-subparagraph, the take-out plan~~
13 ~~must provide that at least 40 percent of the policies removed~~
14 ~~from the Residential Property and Casualty Joint Underwriting~~
15 ~~Association cover risks located in Dade, Broward, and Palm~~
16 ~~Beach Counties or at least 30 percent of the policies so~~
17 ~~removed cover risks located in Dade, Broward, and Palm Beach~~
18 ~~Counties and an additional 50 percent of the policies so~~
19 ~~removed cover risks located in other coastal counties, and~~
20 ~~must also provide that no more than 15 percent of the policies~~
21 ~~so removed may exclude windstorm coverage. With the approval~~
22 ~~of the department, the association may waive these geographic~~
23 ~~criteria for a take-out plan that removes at least the lesser~~
24 ~~of 100,000 Residential Property and Casualty Joint~~
25 ~~Underwriting Association policies or 15 percent of the total~~
26 ~~number of Residential Property and Casualty Joint Underwriting~~
27 ~~Association policies, provided the governing board of the~~
28 ~~Residential Property and Casualty Joint Underwriting~~
29 ~~Association certifies that the take-out plan will materially~~
30 ~~reduce the Residential Property and Casualty Joint~~
31 ~~Underwriting Association's 100-year probable maximum loss from~~

1 ~~hurricanes. With the approval of the department, the board~~
2 ~~may extend such credits for an additional year if the insurer~~
3 ~~guarantees an additional year of renewability for all policies~~
4 ~~removed from the Residential Property and Casualty Joint~~
5 ~~Underwriting Association, or for 2 additional years if the~~
6 ~~insurer guarantees 2 additional years of renewability for all~~
7 ~~policies removed from the Residential Property and Casualty~~
8 ~~Joint Underwriting Association.~~

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

12 c. The Legislature finds that the potential for
13 unlimited deficit assessments under this subparagraph may
14 induce insurers to attempt to reduce their writings in the
15 voluntary market, and that such actions would worsen the
16 availability problems that the association was created to
17 remedy. It is the intent of the Legislature that insurers
18 remain fully responsible for paying regular assessments and
19 collecting emergency assessments for any deficits of the
20 association from their policyholders, and that association
21 policyholders assume a greater share of the responsibility for
22 association deficits; however, it is also the intent of the
23 Legislature to provide a means by which assessment liabilities
24 may be amortized over a period of years.

25 d.(I) When the deficit incurred in a particular
26 calendar year does not exceed the maximum amount of deficit
27 surcharge for which association policyholders are liable under
28 this sub-sub-subparagraph, the association shall impose a
29 uniform percentage deficit assessment upon association
30 policyholders in an amount sufficient to recover any deficit.
31 The association shall bill policyholders for the deficit

1 surcharge upon policy renewal following board approval.
2 Policyholders subject to payment of the deficit surcharge
3 shall be those policyholders of record as of the date the
4 board finds a deficit exists and approves the imposition of a
5 deficit surcharge. The association may deduct the amount of
6 any deficit surcharge from any payment the association may owe
7 to a policyholder. For calendar year 2000, the maximum
8 deficit surcharge amount the association may impose on
9 association policyholders is \$100 million. In each subsequent
10 calendar year beginning in 2001, the maximum amount of deficit
11 surcharge for which association policyholders shall be liable
12 shall be \$100 million less a percentage amount equal to the
13 cumulative statewide average percentage rate increases
14 approved for the association for the period January 1, 2000,
15 through the date in which the surcharge is approved. If any
16 portion of the deficit surcharge remains uncollected after one
17 year, the association shall assess member insurers for the
18 regular assessments. Deficit surcharges under this
19 sub-sub-subparagraph are not considered premium and are not
20 subject to commissions, fees, or premium taxes; however,
21 failure to pay a deficit surcharge shall be treated as failure
22 to pay premium.

23 (II)(I) When the deficit incurred in a particular
24 calendar year exceeds the amount in sub-sub-subparagraph (I)
25 and is also 10 percent or less of the aggregate statewide
26 direct written premium for property insurance for the prior
27 calendar year for all member insurers, the association shall
28 impose the maximum deficit surcharge amount on association
29 policyholders and a regular assessment against ~~levy an~~
30 ~~assessment on~~ member insurers for that portion of ~~in an amount~~
31

1 ~~equal to~~ the deficit which exceeds the maximum amount of the
2 deficit surcharge.

3 (III)~~(II)~~ When the deficit incurred in a particular
4 calendar year exceeds the amount in sub-sub-subparagraph (I)
5 and 10 percent of the aggregate statewide direct written
6 premium for property insurance for the prior calendar year for
7 all member insurers, the association shall impose the maximum
8 amount of deficit surcharge on association policyholders and a
9 regular assessment against ~~levy an assessment on~~ member
10 insurers in an amount equal to the greater of 10 percent of
11 the deficit or 10 percent of the aggregate statewide direct
12 written premium for property insurance for the prior calendar
13 year for member insurers for that portion of the deficit which
14 exceeds the maximum amount of deficit surcharge. Any ~~remaining~~
15 deficit remaining after the board levies a regular deficit and
16 imposes a deficit surcharge on association policyholders shall
17 be recovered through emergency assessments under
18 sub-sub-subparagraph(IV)~~(III)~~.

19 (IV)~~(III)~~ Upon a determination by the board of
20 directors that a deficit exceeds the amount that will be
21 recovered through deficit surcharges against policyholders and
22 regular assessments on member insurers, pursuant to
23 sub-sub-subparagraphs ~~sub-sub-subparagraph~~ (I), or
24 ~~sub-sub-subparagraph~~ (II), and (III), the board shall levy, in
25 addition to such surcharges and assessments, after
26 verification by the department, emergency assessments to be
27 collected by member insurers, by surplus lines insurers, and
28 by 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, surplus lines insurers, and
5 underwriting associations, excluding National Flood Insurance
6 policy premiums, 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, each surplus lines insurer, and
12 each underwriting association created pursuant to this section
13 shall collect emergency assessments from its policyholders
14 without such obligation being affected by any credit,
15 limitation, exemption, or deferment. The emergency
16 assessments so collected shall be transferred directly to the
17 association on a periodic basis as determined by the
18 association. The aggregate amount of emergency assessments
19 levied under this sub-sub-subparagraph in any calendar year
20 may not exceed the greater of 10 percent of the amount needed
21 to cover the original deficit, plus interest, fees,
22 commissions, required reserves, and other costs associated
23 with financing of the original deficit, or 10 percent of the
24 aggregate statewide direct written premium for property
25 insurance written by member insurers and underwriting
26 associations for the prior year, plus interest, fees,
27 commissions, required reserves, and other costs associated
28 with financing the original deficit. The board may pledge the
29 proceeds of the emergency assessments under this
30 sub-sub-subparagraph as the source of revenue for bonds, to
31 retire any other debt incurred as a result of the deficit or

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

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

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

1 insurance for member insurers for the prior calendar year.
2 Market equalization surcharges under this sub-sub-subparagraph
3 are not considered premium and are not subject to commissions,
4 fees, or premium taxes; however, failure to pay a market
5 equalization surcharge shall be treated as failure to pay
6 premium. The market equalization surcharge shall be in
7 addition to any deficit surcharge imposed on association
8 policyholders pursuant to this sub-subparagraph.

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

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

23 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 the
27 first 90 days of each calendar year, to qualify as a limited
28 apportionment company. The apportionment of such a member
29 company in any calendar year for which it is qualified shall
30 not exceed its gross participation, which shall not be
31 affected by the formula for voluntary writings. In no event

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

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

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

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

3 b. The association shall ~~may~~ require arbitration of a
4 rate 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. Coverage by the association shall be restricted as
18 follows:

19 (I) For china and glassware, jewelry and gems,
20 artwork, and furs, the limit of liability shall be \$250,
21 individually or in total, by category.

22 (II) Tiki huts, gazebos, chickees, tennis courts,
23 detached living quarters for domestic employees, hot tubs,
24 spas, pool houses, statuaries, satellite dishes, swimming
25 pools, or other similar structures shall not be covered by the
26 association.

27 (III) Contents coverage offered by the association
28 shall be limited to a maximum of 50 percent of the dwelling
29 limits for residential property and 50 percent of the covered
30 building limits for nonresidential commercial property.

31

1 (IV) Additional living expenses coverage offered by
2 the association shall be limited to a maximum of 10 percent of
3 the dwelling limits for residential property.

4 (V) The association shall provide windstorm coverage
5 for dwellings under personal lines residential policies up to
6 the first \$500,000 of windstorm losses. The association may
7 provide windstorm coverage for dwellings in excess of the
8 first \$500,000 in windstorm losses only if a new applicant or
9 existing policyholder is unable to secure separate coverage
10 for that portion of losses in excess of \$500,000 from a surplus
11 lines insurer rated at least B++ by A. M. Best and from an
12 authorized insurer.

13 (VI) The association shall provide for windstorm
14 coverage on commercial lines residential properties in limits
15 up to the first \$5~~\$10 million for commercial lines~~
16 ~~residential risks and up to \$1 million for personal lines~~
17 ~~residential risks. If coverage with the association is sought~~
18 ~~for a commercial lines residential risk valued in excess of~~
19 ~~these limits, coverage shall be available to the risk up to~~
20 ~~the replacement cost or actual cash value of the property, at~~
21 ~~the option of the insured, if coverage for the risk cannot be~~
22 ~~secured for that portion of losses in excess of \$5 million~~
23 ~~from a surplus lines insurer rated at least B++ by A. M. Best~~
24 ~~and from an authorized insurer located in the authorized~~
25 ~~market. The association must accept a commercial lines~~
26 ~~residential risk with limits above \$10 million or a personal~~
27 ~~lines residential risk with limits above \$1 million if~~
28 ~~coverage is not available in the authorized market. The~~
29 ~~association may write coverage above the limits specified in~~
30 ~~this subparagraph with or without facultative or other~~
31

1 ~~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.(I) The policies issued by the association must
21 provide that if the association obtains a qualified ~~an~~ offer
22 of coverage from an authorized insurer to cover the risk at
23 ~~its approved rates~~ under either a standard policy including
24 wind coverage or, if consistent with the insurer's
25 underwriting rules as filed with the department, a basic
26 policy including wind coverage, the risk shall be ineligible
27 ~~is no longer eligible~~ for continued coverage through the
28 association. At least 90 days before terminating ~~Upon~~
29 ~~termination of~~ eligibility, the association shall provide
30 written notice to the policyholder, the insurer providing the
31 coverage for perils other than windstorm, and the agent of

1 record stating that the association policy must be nonrenewed
2 ~~canceled as of 60 days after the date of the notice~~ because of
3 the qualified offer of coverage ~~from an authorized insurer~~.
4 The association shall give the insurer providing coverage to
5 the policyholder for perils other than windstorm at least 30
6 days from the date the association provides the notice of
7 nonrenewal to provide windstorm coverage to the policyholder.
8 If the insurer providing the coverage for perils other than
9 windstorm refuses to provide windstorm coverage, the
10 association shall approve the offer of coverage from another
11 insurer and shall nonrenew the association policy. The
12 association shall not accept an application for new or renewal
13 coverage unless the application contains the policy number and
14 the name and address of the insurer providing coverage for
15 perils other than windstorm. This sub-sub-subparagraph shall
16 not apply to policies for which an offer of coverage is made
17 to a new policyholder within the first 90 days of the policy
18 term pursuant to sub-sub-subparagraph (II). Other provisions
19 of the insurance code relating to cancellation and notice of
20 cancellation do not apply to actions under this
21 sub-subparagraph.

22 (II) The association may authorize an insurer making a
23 coverage offer to a new policyholder within the first 90 days
24 of the policy term to assume both the windstorm portion of the
25 risk and any underlying coverage for perils other than
26 windstorm. If the association approves the coverage offer,
27 the insurer providing the underlying coverage shall be
28 required to cancel the coverage, effective on the date the
29 windstorm coverage is to be assumed by the insurer removing
30 the windstorm risk from the association. The association
31 shall actively solicit offers of coverage for new

1 policyholders from authorized insurers during the first 90
2 days of coverage.

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 pursuant to a qualified
6 offer of coverage ~~issued by an authorized insurer~~ that does
7 not provide coverage identical to the coverage provided by the
8 association or at the same rate. The notice shall also specify
9 that acceptance of association coverage creates a conclusive
10 presumption that the applicant or policyholder is aware of
11 this potential.

12 g. When the association enters into a contractual
13 agreement for the removal of risks by an insurer, the insurer
14 shall:

15 (I) Pay to the producing agent of record of the
16 association policy an amount equal to the insurer's usual and
17 customary commission for the type of policy written; or

18 (II) Offer to allow the producing agent of record of
19 the association policy to continue servicing the policy for a
20 period of not less than one year and offer to pay the agent
21 the insurer's usual and customary commission for the type of
22 policy written. This sub-sub-subparagraph does not apply if
23 the agent is also the agent of record on the new coverage.

24 (h) The association may enter into actuarially sound
25 quota share agreements with authorized insurers offering to
26 remove policies from the association. The association must
27 demonstrate that the amount of premium transferred per unit of
28 liability retained would reduce both the likelihood of a
29 deficit surcharge or assessment levy and the amount of any
30 such surcharge or levy. Any quota share agreement must
31 provide for a pro rata distribution of any payments received

1 from the Florida Hurricane Catastrophe Fund and must be for a
2 term not exceeding 3 years.

3 6.a. The plan of operation may authorize the formation
4 of a private nonprofit corporation, a private nonprofit
5 unincorporated association, a partnership, a trust, a limited
6 liability company, or a nonprofit mutual company which may be
7 empowered, among other things, to borrow money by issuing
8 bonds or by incurring other indebtedness and to accumulate
9 reserves or funds to be used for the payment of insured
10 catastrophe losses. The plan may authorize all actions
11 necessary to facilitate the issuance of bonds, including the
12 pledging of assessments or other revenues.

13 b. Any entity created under this subsection, or any
14 entity formed for the purposes of this subsection, may sue and
15 be sued, may borrow money; issue bonds, notes, or debt
16 instruments; pledge or sell assessments, market equalization
17 surcharges and other surcharges, rights, premiums, contractual
18 rights, projected recoveries from the Florida Hurricane
19 Catastrophe Fund, other reinsurance recoverables, and other
20 assets as security for such bonds, notes, or debt instruments;
21 enter into any contracts or agreements necessary or proper to
22 accomplish such borrowings; and take other actions necessary
23 to carry out the purposes of this subsection. The association
24 may issue bonds or incur other indebtedness, or have bonds
25 issued on its behalf by a unit of local government pursuant to
26 subparagraph (g)2., in the absence of a hurricane or other
27 weather-related event, upon a determination by the association
28 subject to approval by the department that such action would
29 enable it to efficiently meet the financial obligations of the
30 association and that such financings are reasonably necessary
31 to effectuate the requirements of this subsection. Any such

1 entity may accumulate reserves and retain surpluses as of the
2 end of any association year to provide for the payment of
3 losses incurred by the association during that year or any
4 future year. The association shall incorporate and continue
5 the plan of operation and articles of agreement in effect on
6 the effective date of chapter 76-96, Laws of Florida, to the
7 extent that it is not inconsistent with chapter 76-96, and as
8 subsequently modified consistent with chapter 76-96. The board
9 of directors and officers currently serving shall continue to
10 serve until their successors are duly qualified as provided
11 under the plan. The assets and obligations of the plan in
12 effect immediately prior to the effective date of chapter
13 76-96 shall be construed to be the assets and obligations of
14 the successor plan created herein.

15 c. In recognition of s. 10, Art. I of the State
16 Constitution, prohibiting the impairment of obligations of
17 contracts, it is the intent of the Legislature that no action
18 be taken whose purpose is to impair any bond indenture or
19 financing agreement or any revenue source committed by
20 contract to such bond or other indebtedness issued or incurred
21 by the association or any other entity created under this
22 subsection.

23 7. On such coverage, an agent's remuneration shall be
24 that amount of money payable to the agent by the terms of his
25 or her contract with the company with which the business is
26 placed. However, no commission will be paid on that portion of
27 the premium which is in excess of the standard premium of that
28 company.

29 8. Subject to approval by the department, the
30 association may establish different eligibility requirements
31 and operational procedures for any line or type of coverage

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

14 9. Notwithstanding any other provision of law:

15 a. The pledge or sale of, the lien upon, and the
16 security interest in any rights, revenues, or other assets of
17 the association created or purported to be created pursuant to
18 any financing documents to secure any bonds or other
19 indebtedness of the association shall be and remain valid and
20 enforceable, notwithstanding the commencement of and during
21 the continuation of, and after, any rehabilitation,
22 insolvency, liquidation, bankruptcy, receivership,
23 conservatorship, reorganization, or similar proceeding against
24 the association under the laws of this state or any other
25 applicable laws.

26 b. No such proceeding shall relieve the association of
27 its obligation, or otherwise affect its ability to perform its
28 obligation, to continue to collect, or levy and collect,
29 assessments, market equalization or other surcharges,
30 projected recoveries from the Florida Hurricane Catastrophe
31

1 Fund, reinsurance recoverables, or any other rights, revenues,
2 or other assets of the association pledged.

3 c. Each such pledge or sale of, lien upon, and
4 security interest in, including the priority of such pledge,
5 lien, or security interest, any such assessments, emergency
6 assessments, market equalization or renewal surcharges,
7 projected recoveries from the Florida Hurricane Catastrophe
8 Fund, reinsurance recoverables, or other rights, revenues, or
9 other assets which are collected, or levied and collected,
10 after the commencement of and during the pendency of or after
11 any such proceeding shall continue unaffected by such
12 proceeding.

13 d. As used in this subsection, the term "financing
14 documents" means any agreement, instrument, or other document
15 now existing or hereafter created evidencing any bonds or
16 other indebtedness of the association or pursuant to which any
17 such bonds or other indebtedness has been or may be issued and
18 pursuant to which any rights, revenues, or other assets of the
19 association are pledged or sold to secure the repayment of
20 such bonds or indebtedness, together with the payment of
21 interest on such bonds or such indebtedness, or the payment of
22 any other obligation of the association related to such bonds
23 or indebtedness.

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

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

11 f. There shall be no liability on the part of, and no
12 cause of action of any nature shall arise against, any member
13 insurer or its agents or employees, the association or its
14 agents or employees of the association, members of the board
15 of governors or their respective designees at a board meeting,
16 directors of the association committee members, or the
17 department or its representatives, for any action taken by
18 them in the performance of their duties or responsibilities
19 under this subsection. Such immunity does not apply to:

20 1. Any such persons or entities for actions for breach
21 of any contract or agreement pertaining to insurance, or any
22 willful tort;

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

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

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

31

1 g. The association is not a state agency, board, or
2 commission. However, for the purposes of s. 199.183(1), the
3 association shall be considered a political subdivision of the
4 state and shall be exempt from the corporate income tax.

5 (c) The provisions of paragraph (b) are applicable
6 only with respect to:

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

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

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

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

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

29
30 Any time after the department has determined that the criteria
31 referred to in this subparagraph do not exist with respect to

1 any county or area of the state, it may, after a subsequent
2 public hearing, declare that such county or area is no longer
3 eligible for windstorm coverage through the plan.

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

24 f. As used in this subsection, the term "subject lines
25 of business" means, with respect to the personal lines
26 account, any personal lines policy defined in s. 627.4025, and
27 means, with respect to the commercial lines account, all
28 commercial property and commercial fire insurance.

29 (c) The plan of operation of the association:

30 1. May provide for one or more designated insurers,
31 able and willing to provide policy and claims service, to act

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

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

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

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

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

29 d. Basic personal lines policy forms without wind
30 coverage, which are the same as the policies described in
31

1 sub-subparagraph c. except that they do not include wind
2 coverage.

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

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

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

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

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

13 a. The insurance consumer advocate appointed under s.
14 627.0613.

15 b. Six ~~Five~~ members designated by the insurance
16 industry, one of which must be a representative of a surplus
17 lines insurer designated by the Florida Surplus Lines
18 Association.

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

28 d. Three ~~Two~~ representatives of the insurance industry
29 appointed by the Insurance Commissioner. Of the two insurance
30 industry representatives appointed by the Insurance
31 Commissioner, at least one must be an individual who is a

1 minority person as defined in s. 288.703(3) and one must be an
2 agent representative.

3

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

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

10 a. With respect to personal lines residential risks,
11 if the risk is offered coverage pursuant to a qualified offer
12 of coverage as defined in this sub-subparagraph ~~from an~~
13 ~~authorized insurer at the insurer's approved rate~~ under either
14 a standard policy including wind coverage or, if consistent
15 with the insurer's underwriting rules as filed with the
16 department, a basic policy including wind coverage, the risk
17 is not eligible for any policy issued by the association. For
18 purposes of this subsection, a "qualified offer of coverage"
19 is an offer of coverage obtained by or for the applicant or
20 policyholder from an authorized insurer at approved rates or
21 from a surplus lines insurer rated at least B++ by A. M. Best,
22 except, for a personal lines residential risk with policy
23 dwelling limits of less than \$500,000, a "qualified offer of
24 coverage" shall be an offer of coverage obtained by or for the
25 applicant or policyholder from an authorized insurer at
26 approved rates. If the risk accepts an offer of coverage
27 through the market assistance plan or an offer of coverage
28 through a mechanism established by the association before a
29 policy is issued to the risk by the association or during the
30 first 30 days of coverage by the association, and the
31 producing agent who submitted the application to the plan or

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

21 b. With respect to commercial lines residential risks,
22 if the risk is offered coverage under a policy including wind
23 coverage pursuant to a qualified offer of coverage ~~from an~~
24 ~~authorized insurer at its approved rate~~, the risk is not
25 eligible for any policy issued by the association. If the risk
26 accepts an offer of coverage through the market assistance
27 plan or an offer of coverage through a mechanism established
28 by the association before a policy is issued to the risk by
29 the association, and the producing agent who submitted the
30 application to the plan or the association is not currently
31 appointed by the insurer, the insurer shall either appoint the

1 agent to service the risk or, if the insurer places the
2 coverage through a new agent, require the new agent who then
3 writes the policy to pay not less than 50 percent of the first
4 year's commission to the producing agent who submitted the
5 application to the plan, except that if the new agent is an
6 employee or exclusive agent of the insurer, the new agent
7 shall pay a policy fee of \$50 to the producing agent in lieu
8 of splitting the commission. If the risk is not able to obtain
9 any such offer, the risk is eligible for a policy including
10 wind coverage issued by the association.

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

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

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

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

29 a. Whether the likelihood of a loss for the individual
30 risk is substantially higher than for other risks of the same
31 class; and

1 b. Whether the uncertainty associated with the
2 individual risk is such that an appropriate premium cannot be
3 determined.

4
5 The acceptance or rejection of a risk by the association shall
6 be construed as the private placement of insurance, and the
7 provisions of chapter 120 shall not apply.

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

11 10. Must provide that in the event of regular deficit
12 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
13 (b)3.b., or by the Florida Windstorm Underwriting Association
14 under sub-sub-subparagraph (2)(b)2.d.(II)~~(I)~~or
15 sub-sub-subparagraph (2)(b)2.d.(III)~~(II)~~, the association
16 shall levy upon association policyholders in its next rate
17 filing, or by a separate rate filing solely for this purpose,
18 a market equalization surcharge in a percentage equal to the
19 total amount of such regular assessments divided by the
20 aggregate statewide direct written premium for subject lines
21 of business for member insurers for the prior calendar year.
22 Market equalization surcharges under this subparagraph are not
23 considered premium and are not subject to commissions, fees,
24 or premium taxes; however, failure to pay a market
25 equalization surcharge shall be treated as failure to pay
26 premium.

27 11. The policies issued by the association must
28 provide that, if the association or the market assistance plan
29 obtains a qualified an offer of coverage from an authorized
30 ~~insurer to cover the risk at its approved rates~~ under either a
31 standard policy including wind coverage or a basic policy

1 including wind coverage, the risk is no longer eligible for
2 coverage through the association. However, if the risk is
3 located in an area in which Florida Windstorm Underwriting
4 Association coverage is available, such an offer of a standard
5 or basic policy terminates eligibility regardless of whether
6 or not the offer includes wind coverage. Upon termination of
7 eligibility, the association shall provide written notice to
8 the policyholder and agent of record stating that the
9 association policy shall be nonrenewed ~~canceled as of 60 days~~
10 ~~after the date of the notice~~ because of the qualified offer of
11 coverage ~~from an authorized insurer~~. In the case of a policy
12 issued to a new policyholder within 90 days after a qualified
13 offer of coverage, the association may authorize the insurer
14 making the coverage offer to assume the policy. Other
15 provisions of the insurance code relating to nonrenewal
16 ~~cancellation~~ and notice of nonrenewal ~~cancellation~~ do not
17 apply to actions under this subparagraph.

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

27 13. May establish, subject to approval by the
28 department, different eligibility requirements and operational
29 procedures for any line or type of coverage for any specified
30 county or area if the board determines that such changes to
31 the eligibility requirements and operational procedures are

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

12 14. Shall restrict coverage by the association as
13 follows:

14 a. For china and glassware, jewelry and gems, artwork,
15 and furs, the limit of liability shall be \$250, individually
16 or in total, by category.

17 b. Tiki huts, gazebos, chickees, tennis courts,
18 detached living quarters for domestic employees, hot tubs,
19 spas, pool houses, statuaries, satellite dishes, swimming
20 pools, or other similar structures shall not be covered by the
21 association.

22 c. Contents coverage offered by the association shall
23 be limited to a maximum of 50 percent of the dwelling limits
24 for residential property and 50 percent of the covered
25 building limits for nonresidential commercial property.

26 d. Additional living expenses coverage offered by the
27 association shall be limited to a maximum of 10 percent of the
28 dwelling limits for residential property.

29 15. Must provide a market assistance plan to assist in
30 the placement of risks of applicants who are unable to procure
31 residential property insurance from authorized insurers. The

1 market assistance plan shall take affirmative steps to assist
2 in the removal from the residual market any risk that can be
3 placed in the voluntary market.

4 (d)1. It is the intent of the Legislature that the
5 rates for coverage provided by the association be actuarially
6 sound and not competitive with approved rates charged in the
7 admitted voluntary market, so that the association functions
8 as a residual market mechanism to provide insurance only when
9 the insurance cannot be procured in the voluntary market.

10 Rates shall include an appropriate catastrophe loading factor
11 that reflects the actual catastrophic exposure of the
12 association and recognizes that the association has little or
13 no capital or surplus; and the association shall carefully
14 review each rate filing to assure that provider compensation
15 is not excessive.

16 2. For each county, the average rates of the
17 association for each line of business for personal lines
18 residential policies shall be no lower than the average rates
19 charged by the insurer that had the highest average rate in
20 that county among the 20 insurers with the greatest total
21 direct written premium in the state for that line of business
22 in the preceding year, except that with respect to mobile home
23 coverages, the average rates of the association shall be no
24 lower than the average rates charged by the insurer that had
25 the highest average rate in that county among the 5 insurers
26 with the greatest total written premium for mobile home
27 owner's policies in the state in the preceding year.

28 3. Rates for commercial residential coverage shall not
29 be subject to the requirements of subparagraph 2., but shall
30 be subject to all other requirements of this paragraph and s.
31 627.062.

1 4. Nothing in this paragraph shall require or allow
2 the association to adopt a rate that is inadequate under s.
3 627.062 or to reduce rates approved under s. 627.062.

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

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

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

30 2. In response to a state of emergency declared by the
31 Governor under s. 252.36, the department may activate coverage

1 by order for the period of the emergency upon a finding by the
2 department that the emergency significantly affects the
3 availability of residential property insurance.

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

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

30 2. The governing body of any unit of local government,
31 any residents of which are insured by the association, may

1 issue bonds as defined in s. 125.013 or s. 166.101 from time
2 to time to fund an assistance program, in conjunction with the
3 association, for the purpose of defraying deficits of the
4 association. In order to avoid needless and indiscriminate
5 proliferation, duplication, and fragmentation of such
6 assistance programs, any unit of local government, any
7 residents of which are insured by the association, may provide
8 for the payment of losses, regardless of whether or not the
9 losses occurred within or outside of the territorial
10 jurisdiction of the local government. Revenue bonds may not be
11 issued until validated pursuant to chapter 75, unless a state
12 of emergency is declared by executive order or proclamation of
13 the Governor pursuant to s. 252.36 making such findings as are
14 necessary to determine that it is in the best interests of,
15 and necessary for, the protection of the public health,
16 safety, and general welfare of residents of this state and the
17 protection and preservation of the economic stability of
18 insurers operating in this state, and declaring it an
19 essential public purpose to permit certain municipalities or
20 counties to issue such bonds as will permit relief to
21 claimants and policyholders of the joint underwriting
22 association and insurers responsible for apportionment of
23 association losses. Any such unit of local government may
24 enter into such contracts with the association and with any
25 other entity created pursuant to this subsection as are
26 necessary to carry out this paragraph. Any bonds issued under
27 this subparagraph shall be payable from and secured by moneys
28 received by the association from emergency assessments under
29 sub-subparagraph (b)3.d., and assigned and pledged to or on
30 behalf of the unit of local government for the benefit of the
31 holders of such bonds. The funds, credit, property, and

1 taxing power of the state or of the unit of local government
2 shall not be pledged for the payment of such bonds. If any of
3 the bonds remain unsold 60 days after issuance, the department
4 shall require all insurers subject to assessment to purchase
5 the bonds, which shall be treated as admitted assets; each
6 insurer shall be required to purchase that percentage of the
7 unsold portion of the bond issue that equals the insurer's
8 relative share of assessment liability under this subsection.
9 An insurer shall not be required to purchase the bonds to the
10 extent that the department determines that the purchase would
11 endanger or impair the solvency of the insurer.

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

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

1 ~~insurer guarantees an additional year of renewability for all~~
2 ~~policies removed from the association, or for 2 additional~~
3 ~~years if the insurer guarantees 2 additional years of~~
4 ~~renewability for all policies so removed.~~

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

8 3.4. The plan shall provide for the deferment, in
9 whole or in part, of the assessment of a member insurer, other
10 than an emergency assessment collected from policyholders
11 pursuant to sub-subparagraph (b)3.d., if the department finds
12 that payment of the assessment would endanger or impair the
13 solvency of the insurer. In the event an assessment against a
14 member insurer is deferred in whole or in part, the amount by
15 which such assessment is deferred may be assessed against the
16 other member insurers in a manner consistent with the basis
17 for assessments set forth in paragraph (b).

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

21 (i) There shall be no liability on the part of, and no
22 cause of action of any nature shall arise against, any member
23 insurer or its agents or employees, the association or its
24 agents or employees, members of the board of governors or
25 their respective designees at a board meeting, association
26 committee members, or the department or its representatives,
27 for any action taken by them in the performance of their
28 duties or responsibilities under this subsection. Such
29 immunity does not apply to:

30 1. Any of the foregoing persons or entities for any
31 willful tort;

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

4 3. The association with respect to issuance or payment
5 of debt; or

6 4. Any member insurer with respect to any action to
7 enforce a member insurer's obligations to the association
8 under this subsection.

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

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

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

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

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

17 2. No such proceeding shall relieve the association of
18 its obligation, or otherwise affect its ability to perform its
19 obligation, to continue to collect, or levy and collect,
20 assessments, market equalization or other surcharges under
21 subparagraph (c)10., or any other rights, revenues, or other
22 assets of the association pledged pursuant to any financing
23 documents.

24 3. Each such pledge or sale of, lien upon, and
25 security interest in, including the priority of such pledge,
26 lien, or security interest, any such assessments, market
27 equalization or other surcharges, or other rights, revenues,
28 or other assets which are collected, or levied and collected,
29 after the commencement of and during the pendency of, or
30 after, any such proceeding shall continue unaffected by such
31 proceeding. As used in this subsection, the term "financing

1 documents" means any agreement or agreements, instrument or
2 instruments, or other document or documents now existing or
3 hereafter created evidencing any bonds or other indebtedness
4 of the association or pursuant to which any such bonds or
5 other indebtedness has been or may be issued and pursuant to
6 which any rights, revenues, or other assets of the association
7 are pledged or sold to secure the repayment of such bonds or
8 indebtedness, together with the payment of interest on such
9 bonds or such indebtedness, or the payment of any other
10 obligation of the association related to such bonds or
11 indebtedness.

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

30 (n)1. The following records of the Residential
31 Property and Casualty Joint Underwriting Association are

1 confidential and exempt from the provisions of s. 119.07(1)
2 and s. 24(a), Art. I of the State Constitution:
3 a. Underwriting files, except that a policyholder or
4 an applicant shall have access to his or her own underwriting
5 files.
6 b. Claims files, until termination of all litigation
7 and settlement of all claims arising out of the same incident,
8 although portions of the claims files may remain exempt, as
9 otherwise provided by law. Confidential and exempt claims file
10 records may be released to other governmental agencies upon
11 written request and demonstration of need; such records held
12 by the receiving agency remain confidential and exempt as
13 provided for herein.
14 c. Records obtained or generated by an internal
15 auditor pursuant to a routine audit, until the audit is
16 completed, or if the audit is conducted as part of an
17 investigation, until the investigation is closed or ceases to
18 be active. An investigation is considered "active" while the
19 investigation is being conducted with a reasonable, good faith
20 belief that it could lead to the filing of administrative,
21 civil, or criminal proceedings.
22 d. Matters reasonably encompassed in privileged
23 attorney-client communications.
24 e. Proprietary information licensed to the association
25 under contract and the contract provides for the
26 confidentiality of such proprietary information.
27 f. All information relating to the medical condition
28 or medical status of an association employee which is not
29 relevant to the employee's capacity to perform his or her
30 duties, except as otherwise provided in this paragraph.
31 Information which is exempt shall include, but is not limited

1 to, information relating to workers' compensation, insurance
2 benefits, and retirement or disability benefits.

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

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

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

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

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

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

30 Section 7. Effective upon this act becoming a law,
31 section 627.3511, Florida Statutes, is amended to read:

1 627.3511 Exposure reduction through depopulation of
2 the Residential Property and Casualty Joint Underwriting
3 Association.--

4 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
5 finds and declares that the Residential Property and Casualty
6 Joint Underwriting Association ~~has written an amount of~~
7 ~~policies beyond legislative expectations and has become,~~ by
8 virtue of its size and exposure, remains a significant
9 impediment to the restoration of a stable and competitive
10 residential property insurance market in this state and poses
11 a significant risk of large assessments being imposed on
12 policyholders throughout the state; that the condition of the
13 residential property insurance market ~~public policy~~ of this
14 state requires the continuation ~~maintenance~~ of a residual
15 market for residential property insurance; and that
16 extraordinary measures, beyond implementation of different
17 eligibility requirements and operational procedures ~~criteria~~
18 and noncompetitive rates, are required to reduce the exposure
19 of, and number of policies written by the Residential
20 Property and Casualty Joint Underwriting Association to a
21 reasonable level. Therefore, it is the intent of the
22 Legislature to authorize the Residential Property and Casualty
23 Joint Underwriting Association to employ ~~provide~~ a variety of
24 financial incentives to reduce association exposure by keeping
25 out new risks and encouraging ~~encourage~~ the replacement of the
26 greatest ~~highest possible~~ number of existing Residential
27 Property and Casualty Joint Underwriting Association policies
28 with policies written by authorized ~~admitted~~ insurers at
29 approved rates.

30 (2) BOARD PROGRAM.--The board of the Residential
31 Property and Casualty Joint Underwriting Association shall

1 adopt a program to reduce association exposure and the number
2 of new policies issued and the number of existing policies
3 renewed.

4 (3)(2) PERSONAL RESIDENTIAL TAKE-OUT BONUS.--The
5 Residential Property and Casualty Joint Underwriting
6 Association is authorized to ~~shall~~ pay no more than \$200 the
7 ~~sum of up to \$100~~ to an insurer for each personal residential
8 risk ~~that~~ the insurer removes from the association, either by
9 issuance of a policy upon expiration ~~or cancellation of the~~
10 ~~association policy~~ or by assumption of ~~the association's~~
11 ~~obligations with respect to~~ an in-force policy. Such payment
12 is subject to approval of the association board. In order for
13 an insurer to qualify for a take-out ~~the~~ bonus under this
14 subsection, the take-out plan must include a minimum of 5,000
15 ~~25,000~~ policies. A take-out plan is deemed approved within
16 120 ~~30~~ days after approval by the board, unless the department
17 disapproves the plan in writing ~~may reject the insurer's~~
18 ~~take-out plan and disqualify the insurer from the bonus,~~ based
19 on the following criteria:

20 (a) ~~The capacity of the insurer~~ lacks the capacity to
21 absorb the policies proposed to be taken out of the
22 association and the risk concentration ~~of risks~~ of those
23 policies.

24 (b) ~~Whether~~ The geographic and risk characteristics of
25 policies in the proposed take-out plan do not ~~serve to~~ reduce
26 the exposure of the association and the average annual
27 expected hurricane losses sufficiently to justify the bonus.

28 (c) ~~Whether~~ Coverage for risks to be taken out
29 ~~otherwise~~ exists in the admitted voluntary market.

30
31

1 (d) Payment of ~~The degree to which~~ the take-out bonus
2 promotes ~~is promoting~~ new capital being allocated by the
3 insurer to Florida residential property coverage.

4 (4)~~(3)~~ EXEMPTIONS ~~EXEMPTION~~ FROM DEFICIT
5 ASSESSMENTS.--

6 (a) If, in any calendar year, an insurer ~~The~~
7 ~~calculation of an insurer's assessment liability under s.~~
8 ~~627.351(6)(b)3.a. or b. shall, for an insurer that in any~~
9 ~~calendar year removes~~ 5,000 ~~50,000~~ or more personal
10 residential risks from the Residential Property and Casualty
11 Joint Underwriting Association, either by issuance of a policy
12 upon expiration or cancellation of the association policy or
13 by assumption of ~~the association's obligations with respect to~~
14 in-force policies, the Residential Property and Casualty Joint
15 Underwriting Association may exclude the removed policies from
16 the calculation of assessment liability under s.
17 627.351(6)(b)3.a. or b. exclude such removed policies for the
18 succeeding 3 years, as 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 personal lines residential structure exposure
4 subject to wind coverage by 25 percent or more over its
5 exposure for the preceding calendar year is, with respect to
6 that year, exempt from deficit assessments imposed pursuant to
7 s. 627.351(6)(b)3.a. and b., but not emergency assessments
8 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
9 of the Residential Property and Casualty Joint Underwriting
10 Association attributable to 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 ~~(5)~~(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 ~~(6)~~(5) APPLICABILITY.--

20 (a) The take-out bonus provided by subsection~~(3)~~(2)
21 and the exemption from assessment provided by paragraph
22 ~~(4)~~(3)(a) apply only if the association policy is replaced by
23 either a standard policy including wind coverage or, if
24 consistent with the insurer's underwriting rules as filed with
25 the department, a basic policy including wind coverage;
26 however, with respect to risks located in areas where coverage
27 through the Florida Windstorm Underwriting Association is
28 available, the replacement policy need not provide wind
29 coverage. The insurer must renew the replacement policy at
30 approved rates on substantially similar terms for two
31 additional 1-year terms, unless canceled by the insurer for a

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

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

29 ~~(b)(c)~~ It is the intent of the Legislature that an
30 insurer eligible for the exemption under paragraph (4)~~(3)~~(a)
31 establish a preference in appointment of agents for those

1 agents who lose a substantial amount of business as a result
2 of risks being removed from the association.

3 (7)~~(6)~~ COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

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

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

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

30 2. The insurer must renew the replacement policy at
31 approved rates on substantially similar terms for two

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

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

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

23 2. ~~Whether~~ The geographic and risk characteristics of
24 policies in the proposed take-out plan do not serve to reduce
25 the exposure and the average annual expected hurricane losses
26 of the association sufficiently to justify the bonus.

27 3. ~~Whether~~ Coverage for risks to be taken out
28 otherwise exists in the admitted voluntary market.

29 4. Payment of ~~The degree to which~~ the take-out bonus
30 promotes insurer allocation of ~~is promoting~~ new capital ~~being~~
31

1 ~~allocated by the insurer~~ to residential property coverage in
2 this state.

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

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

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

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

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

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

31

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

11 ~~(8)(7)~~ A minority business, which is at least 51
12 percent owned by minority persons as described in s.
13 288.703(3), desiring to operate or become licensed as a
14 property and casualty insurer may exempt up to \$50 of the
15 escrow requirements of the take-out bonus, as described in
16 this section. Such minority business, which has applied for a
17 certificate of authority to engage in business as a property
18 and casualty insurer, may simultaneously file the business'
19 proposed take-out plan, as described in this section, to the
20 Residential Property and Casualty Joint Underwriting
21 Association.

22 Section 8. Section 627.3515, Florida Statutes, is
23 amended to read:

24 627.3515 Market assistance plan; property and casualty
25 risks.--

26 (1) The department may ~~shall~~ adopt a market assistance
27 plan to assist in the placement of risks of applicants who are
28 unable to procure nonresidential property insurance ~~as defined~~
29 ~~in s. 624.604~~ or casualty insurance as defined in s.
30 624.605(1)(b), (e), (f), (g), or (h) from authorized insurers
31 when such insurance is otherwise generally available from

1 insurers authorized to transact and actually writing that kind
2 and class of insurance in this state. ~~Through such measures as~~
3 ~~are found appropriate by the board of governors, the market~~
4 ~~assistance plan shall take affirmative steps to assist in the~~
5 ~~removal from the Residential Property and Casualty Joint~~
6 ~~Underwriting Association any risk that can be placed in the~~
7 ~~voluntary market.~~ All property insurers or and casualty
8 insurers licensed in this state shall participate in the plan,
9 as applicable, pursuant to the plan.

10 (2)~~(a)~~ The market assistance plan shall be governed by
11 a 7 member board of governors appointed by the Insurance
12 Commissioner. The plan shall be funded by the participating
13 insurers. ~~Each person serving as a member of the board of~~
14 ~~governors of the Residential Property and Casualty Joint~~
15 ~~Underwriting Association shall also serve as a member of the~~
16 ~~board of governors of the market assistance plan.~~

17 (b) ~~The plan shall be funded through payments from the~~
18 ~~Residential Property and Casualty Joint Underwriting~~
19 ~~Association and annual assessments of residential property~~
20 ~~insurers in the amount of \$450.~~

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

24 Section 9. Paragraph (a) of subsection (2) of section
25 627.4025, Florida Statutes, is amended to read:

26 627.4025 Residential coverage and hurricane coverage
27 defined.--

28 (2) As used in policies providing residential
29 coverage:

30 (a) "Hurricane coverage" is coverage for loss or
31 damage caused by the peril of windstorm during a hurricane if

1 such loss or damage occurs in a county in which the National
2 Hurricane Center of the National Weather Service issued a
3 hurricane warning or in which the National Hurricane Center
4 determines that an area of the county sustained hurricane
5 force winds. The term includes ensuing damage to the interior
6 of a building, or to property inside a building, caused by
7 rain, snow, sleet, hail, sand, or dust if the direct force of
8 the windstorm first damages the building, causing an opening
9 through which rain, snow, sleet, hail, sand, or dust enters
10 and causes damage.

11 Section 10. Subsection (3) of section 627.701, Florida
12 Statutes, is amended, and subsections (9) and (10) are added
13 to said section, to read:

14 627.701 Liability of insureds; coinsurance;
15 deductibles.--

16 (3)(a) A policy of residential property insurance
17 shall include a deductible amount applicable to hurricane or
18 wind losses no lower than \$500 and no higher than 2 percent of
19 the policy dwelling limits with respect to personal lines
20 residential risks, and no higher than 3 percent of the policy
21 limits with respect to commercial lines residential risks;
22 however, if a risk was covered on August 24, 1992, under a
23 policy having a higher deductible than the deductibles allowed
24 by this paragraph, a policy covering such risk may include a
25 deductible no higher than the deductible in effect on August
26 24, 1992. Notwithstanding the other provisions of this
27 paragraph, a personal lines residential policy covering a risk
28 valued at \$50,000 or less may include a deductible amount
29 attributable to hurricane or wind losses no lower than \$250,
30 and a personal lines residential policy covering a risk valued
31 at \$100,000 or more may include a deductible amount

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

14 (b)1. Except as otherwise provided in this paragraph,
15 prior to issuing a personal lines residential property
16 insurance policy on or after April 1, 1996, or prior to the
17 first renewal of a residential property insurance policy on or
18 after April 1, 1996, the insurer must offer alternative
19 deductible amounts applicable to hurricane or wind losses
20 equal to \$500 and 2 percent of the policy dwelling limits,
21 unless the 2 percent deductible is less than \$500. The written
22 notice of the offer shall specify the hurricane or wind
23 deductible to be applied in the event that the applicant or
24 policyholder fails to affirmatively choose a hurricane
25 deductible. The insurer must provide such policyholder with
26 notice of the availability of the deductible amounts specified
27 in this paragraph in a form specified by the department in
28 conjunction with each renewal of the policy. The failure to
29 provide such notice constitutes a violation of this code but
30 does not affect the coverage provided under the policy.

31

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

6 3. With respect to a policy covering a risk with
7 dwelling limits of at least \$100,000, but less than \$250,000,
8 the insurer may, in lieu of offering a policy with a \$500
9 hurricane or wind deductible as required by subparagraph 1.,
10 offer a policy that the insurer guarantees it will not
11 nonrenew for reasons of reducing hurricane loss for one
12 renewal period and that contains up to a 2 percent hurricane
13 or wind deductible as required by subparagraph 1.

14 4. With respect to a policy covering a risk with
15 dwelling limits of \$250,000 or more or, in the case of the
16 Residential Property and Casualty Joint Underwriting
17 Association or the Florida Windstorm Underwriting Association,
18 a policy covering a risk with dwelling limits of \$250,000 but
19 less than \$500,000, the insurer need not offer the \$500
20 hurricane or wind deductible as required by subparagraph 1.,
21 but must, except as otherwise provided in this subsection,
22 offer the 2 percent hurricane or wind deductible as required
23 by subparagraph 1.

24 5. Neither the Residential Property and Casualty Joint
25 Underwriting Association nor the Florida Windstorm
26 Underwriting Association shall be required to offer the
27 alternative deductibles specified in subparagraph 1. for a
28 personal residential property insurance policy covering a risk
29 with dwelling limits of \$500,000 or more, but shall be
30 required to offer a minimum hurricane or wind deductible equal
31 to 5 percent of the policy dwelling limits.

1 (c) In order to provide for the transition from wind
2 deductibles to hurricane deductibles as required by this
3 subsection, an insurer is required to provide wind deductibles
4 meeting the requirements of this subsection until the
5 effective date of the insurer's first rate filing made after
6 January 1, 1997, and is thereafter required to provide
7 hurricane deductibles meeting the requirements of this
8 subsection.

9 (9) Neither the Florida Windstorm Underwriting
10 Association nor the Residential Property and Casualty Joint
11 Underwriting Association shall offer a hurricane deductible of
12 less than 5 percent of policy dwelling limits for a commercial
13 lines residential property risk.

14 (10) The Florida Windstorm Underwriting Association
15 shall not offer a hurricane deductible of less than 5 percent
16 of insured value for a commercial property risk.

17 Section 11. Section 627.70115, Florida Statutes, is
18 created to read:

19 627.70115 Supplemental residential property
20 insurance.--A supplemental residential property insurance
21 policy is a residential property insurance policy offered by
22 an authorized insurer which provides reimbursement for
23 expenses incurred for services and items for which payment may
24 be made by an insurer but which is not reimbursable by reason
25 of the applicability of deductibles or other limitations
26 imposed by the policy issued. A supplemental residential
27 property insurance policy may not contain benefits which
28 duplicate benefits provided by another insurer or insurance
29 policy. A supplemental residential property insurance policy
30 must comply with ss. 627.0629 and 627.0645.

31

1 Section 12. Subsection (8) of section 627.701, Florida
2 Statutes, is repealed.

3 Section 13. Except as otherwise provided herein, this
4 act shall take effect October 1, 1999.

5
6 *****

7 HOUSE SUMMARY

8
9 Revises provisions relating to property insurance to
10 increase the fee limit for insurance policies certified
11 for export, authorize residential property insurance
12 policies that provide only windstorm coverage, revise
13 provisions relating to the Florida Windstorm Underwriting
14 Association and the Residential Property and Casualty
15 Joint Underwriting Association, revise provisions
16 relating to exposure reduction through depopulation of
17 the Residential Property and Casualty Joint Underwriting
18 Association, provide for application of the market
19 assistance plan only to casualty risks; revise provisions
20 relating to deductibles, and provide for supplemental
21 residential property insurance. See bill for details.
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