

By the Committee on Banking and Insurance; and Senator Campbell

311-2173-00

1                                   A bill to be entitled  
2           An act relating to insurance; amending s.  
3           627.351, F.S.; deleting provisions authorizing  
4           certain associations to require rate  
5           arbitration of rate filings; amending s.  
6           631.54, F.S.; revising the definition of the  
7           term "covered claim" for purposes of the  
8           Florida Insurance Guaranty Association;  
9           amending s. 631.57, F.S.; providing that the  
10          Florida Residential Property and Casualty Joint  
11          Underwriting Association is exempt from  
12          assessments by the Florida Insurance Guaranty  
13          Association, except for assessments to pay or  
14          defease costs of bond issues; requiring the  
15          Department of Revenue to conduct a study and  
16          submit a report to the Legislature related to  
17          distributing premium taxes to local  
18          governments; prohibiting the Department of  
19          Insurance from auditing insurers with respect  
20          to certain data; repealing s. 627.062(6), F.S.,  
21          relating to an insurer's alternative under rate  
22          standards to require arbitration of rate  
23          filings; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

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27           Section 1. Paragraph (b) of subsection (2) and  
28 paragraph (d) of subsection (6) of section 627.351, Florida  
29 Statutes, are amended to read:

30           627.351 Insurance risk apportionment plans.--  
31           (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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. 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. An  
30 applicant or policyholder is eligible for coverage only if an  
31

1 offer of coverage cannot be obtained by or for the applicant  
2 or policyholder from an admitted insurer at approved rates.  
3       2.a.(I) All insurers required to be members of such  
4 association shall participate in its writings, expenses, and  
5 losses. Surplus of the association shall be retained for the  
6 payment of claims and shall not be distributed to the member  
7 insurers. Such participation by member insurers shall be in  
8 the proportion that the net direct premiums of each member  
9 insurer written for property insurance in this state during  
10 the preceding calendar year bear to the aggregate net direct  
11 premiums for property insurance of all member insurers, as  
12 reduced by any credits for voluntary writings, in this state  
13 during the preceding calendar year. For the purposes of this  
14 subsection, the term "net direct premiums" means direct  
15 written premiums for property insurance, reduced by premium  
16 for liability coverage and for the following if included in  
17 allied lines: rain and hail on growing crops; livestock;  
18 association direct premiums booked; National Flood Insurance  
19 Program direct premiums; and similar deductions specifically  
20 authorized by the plan of operation and approved by the  
21 department. A member's participation shall begin on the first  
22 day of the calendar year following the year in which it is  
23 issued a certificate of authority to transact property  
24 insurance in the state and shall terminate 1 year after the  
25 end of the calendar year during which it no longer holds a  
26 certificate of authority to transact property insurance in the  
27 state. The commissioner, after review of annual statements,  
28 other reports, and any other statistics that the commissioner  
29 deems necessary, shall certify to the association the  
30 aggregate direct premiums written for property insurance in  
31 this state by all member insurers.

1           (II) The plan of operation shall provide for a board  
2 of directors consisting of the Insurance Consumer Advocate  
3 appointed under s. 627.0613, 1 consumer representative  
4 appointed by the Insurance Commissioner, 1 consumer  
5 representative appointed by the Governor, and 12 additional  
6 members appointed as specified in the plan of operation. One  
7 of the 12 additional members shall be elected by the domestic  
8 companies of this state on the basis of cumulative weighted  
9 voting based on the net direct premiums of domestic companies  
10 in this state. Nothing in the 1997 amendments to this  
11 paragraph terminates the existing board or the terms of any  
12 members of the board.

13           (III) The plan of operation shall provide a formula  
14 whereby a company voluntarily providing windstorm coverage in  
15 affected areas will be relieved wholly or partially from  
16 apportionment of a regular assessment pursuant to  
17 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

18           (IV) A company which is a member of a group of  
19 companies under common management may elect to have its  
20 credits applied on a group basis, and any company or group may  
21 elect to have its credits applied to any other company or  
22 group.

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

26           (VI) The plan of operation may also provide for the  
27 award of credits, for a period not to exceed 3 years, from a  
28 regular assessment pursuant to sub-sub-subparagraph d.(I) or  
29 sub-sub-subparagraph d.(II) as an incentive for taking  
30 policies out of the Residential Property and Casualty Joint  
31 Underwriting Association. In order to qualify for the

1 exemption under this sub-sub-subparagraph, the take-out plan  
2 must provide that at least 40 percent of the policies removed  
3 from the Residential Property and Casualty Joint Underwriting  
4 Association cover risks located in Dade, Broward, and Palm  
5 Beach Counties or at least 30 percent of the policies so  
6 removed cover risks located in Dade, Broward, and Palm Beach  
7 Counties and an additional 50 percent of the policies so  
8 removed cover risks located in other coastal counties, and  
9 must also provide that no more than 15 percent of the policies  
10 so removed may exclude windstorm coverage. With the approval  
11 of the department, the association may waive these geographic  
12 criteria for a take-out plan that removes at least the lesser  
13 of 100,000 Residential Property and Casualty Joint  
14 Underwriting Association policies or 15 percent of the total  
15 number of Residential Property and Casualty Joint Underwriting  
16 Association policies, provided the governing board of the  
17 Residential Property and Casualty Joint Underwriting  
18 Association certifies that the take-out plan will materially  
19 reduce the Residential Property and Casualty Joint  
20 Underwriting Association's 100-year probable maximum loss from  
21 hurricanes. With the approval of the department, the board  
22 may extend such credits for an additional year if the insurer  
23 guarantees an additional year of renewability for all policies  
24 removed from the Residential Property and Casualty Joint  
25 Underwriting Association, or for 2 additional years if the  
26 insurer guarantees 2 additional years of renewability for all  
27 policies removed from the Residential Property and Casualty  
28 Joint Underwriting Association.

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

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

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

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

28           (III) Upon a determination by the board of directors  
29 that a deficit exceeds the amount that will be recovered  
30 through regular assessments on member insurers, pursuant to  
31 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the

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

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

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

27 (V) If regular deficit assessments are made under  
28 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by  
29 the Residential Property and Casualty Joint Underwriting  
30 Association under sub-subparagraph (6)(b)3.a. or  
31 sub-subparagraph (6)(b)3.b., the association shall levy upon



1 the association's policyholders, as part of its next rate  
2 filing, or by a separate rate filing solely for this purpose,  
3 a market equalization surcharge in a percentage equal to the  
4 total amount of such regular assessments divided by the  
5 aggregate statewide direct written premium for property  
6 insurance for member insurers for the prior calendar year.  
7 Market equalization surcharges under this sub-sub-subparagraph  
8 are not considered premium and are not subject to commissions,  
9 fees, or premium taxes; however, failure to pay a market  
10 equalization surcharge shall be treated as failure to pay  
11 premium.

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

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

26           3. The plan shall also provide that any member with a  
27 surplus as to policyholders of \$20 million or less writing 25  
28 percent or more of its total countrywide property insurance  
29 premiums in this state may petition the department, within the  
30 first 90 days of each calendar year, to qualify as a limited  
31 apportionment company. The apportionment of such a member

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

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

31

1           5.a. The plan of operation may include deductibles and  
2 rules for classification of risks and rate modifications  
3 consistent with the objective of providing and maintaining  
4 funds sufficient to pay catastrophe losses.

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

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

1 specified in this subparagraph with or without facultative or  
2 other reinsurance coverage, as the association determines  
3 appropriate.

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

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

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

16

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

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

1 from an authorized insurer. Other provisions of the insurance  
2 code relating to cancellation and notice of cancellation do  
3 not apply to actions under this sub-subparagraph.

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

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

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

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

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

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

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

23           9. Notwithstanding any other provision of law:

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



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

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

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

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

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

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

28 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT  
29 UNDERWRITING ASSOCIATION.--

30 (d)1. It is the intent of the Legislature that the  
31 rates for coverage provided by the association be actuarially

1 sound and not competitive with approved rates charged in the  
2 admitted voluntary market, so that the association functions  
3 as a residual market mechanism to provide insurance only when  
4 the insurance cannot be procured in the voluntary market.  
5 Rates shall include an appropriate catastrophe loading factor  
6 that reflects the actual catastrophic exposure of the  
7 association and recognizes that the association has little or  
8 no capital or surplus; and the association shall carefully  
9 review each rate filing to assure that provider compensation  
10 is not excessive.

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

23           3. Rates for commercial residential coverage shall not  
24 be subject to the requirements of subparagraph 2., but shall  
25 be subject to all other requirements of this paragraph and s.  
26 627.062.

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

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

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

4 Section 2. Subsections (3) and (7) of section 631.54,  
5 Florida Statutes, are amended to read:

6 631.54 Definitions.--As used in this part:

7 (3) "Covered claim" means an unpaid claim, including  
8 one of unearned premiums, which arises out of, and is within  
9 the coverage, and not in excess of, the applicable limits of  
10 an insurance policy to which this part applies, issued by an  
11 insurer, if such insurer becomes an insolvent insurer after  
12 October 1, 1970, and the claimant or insured is a resident of  
13 this state at the time of the insured event or the property  
14 from which the claim arises is permanently located in this  
15 state. "Covered claim" shall not include any amount due any  
16 reinsurer, insurer, insurance pool, the Florida Residential  
17 Property and Casualty Joint Underwriting Association formed  
18 pursuant to s. 627.351, or any other underwriting association,  
19 as subrogation, contribution, indemnification, recoveries or  
20 otherwise. Member insurers shall have no right of subrogation  
21 against the insured of any insolvent member.

22 (7) "Member insurer" means any person who writes any  
23 kind of insurance to which this part applies under s. 631.52,  
24 including the exchange of reciprocal or interinsurance  
25 contracts, and who is licensed to transact insurance in this  
26 state. "Member insurer" shall not include the Florida  
27 Residential Property and Casualty Joint Underwriting  
28 Association formed pursuant to s. 627.351.

29 Section 3. Present subsections (4), (5), and (6) of  
30 section 631.57, Florida Statutes, are redesignated as

31

1 subsections (5), (6), and (7), respectively, and a new  
2 subsection (4) is added to that section to read:

3 631.57 Powers and duties of the association.--

4 (4) The Florida Residential Property and Casualty  
5 Joint Underwriting Association shall be exempt from all  
6 assessments made by the association except that the Florida  
7 Residential Property and Casualty Joint Underwriting  
8 Association shall be required to pay all assessments levied by  
9 the association to secure funds to pay or defease all  
10 interest, principal, redemption premium, if any, related costs  
11 of issuance of, and any other payments required under the bond  
12 resolution or trust indenture, of bond issues to pay covered  
13 claims arising from insurer insolvencies caused by, or  
14 proximately related to, any hurricane. Any assessment levied  
15 pursuant to this subsection shall be levied in the proportion  
16 that the Florida Residential Property and Casualty Joint  
17 Underwriting Association's net direct written premiums in this  
18 state in the classes protected by the account bears to the  
19 total of the net direct written premiums received in this  
20 state by all insurers for the preceding year for all coverages  
21 listed under s. 631.55(2)(c).

22 Section 4. Subsection (6) of section 627.062, Florida  
23 Statutes, is repealed.

24 Section 5. Effective upon this act becoming a law, the  
25 Department of Revenue, in consultation with the Department of  
26 Insurance and the Division of Retirement, shall conduct a  
27 study evaluating various alternatives to determining the  
28 method of calculating and distributing insurance premium taxes  
29 to participating municipalities and special fire control  
30 districts for use in funding the firefighter pensions under  
31 chapter 175, Florida Statutes, and municipal police pensions

1 under chapter 185, Florida Statutes. The study shall evaluate  
2 the effect of various distribution formulas and new  
3 technologies on participating municipalities and special fire  
4 control districts. At least one public workshop shall be held.  
5 This study shall also evaluate the feasibility of "hold  
6 harmless" provisions with the goal that no participating  
7 municipality or special fire control district shall receive  
8 less funding than was received during the year 2000. The  
9 Department of Revenue shall submit to the Legislature by  
10 February 1, 2001, a report containing the results of its study  
11 and the department's recommended legislation, if any. Until  
12 July 1, 2001, the Department of Insurance shall not take any  
13 action to audit insurers or finalize any pending audits of  
14 insurers with respect to the accuracy of coding the location  
15 of insured properties for purposes associated with these  
16 premium taxes.

17           Section 6. Except as otherwise provided in this act,  
18 this act shall take effect October 1, 2000.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 144

Provides that the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) shall not be assessed by the Florida Insurance Guaranty Association (FIGA) to fund claims of insolvent insurers unless a special assessment is necessary to fund a bond issue by FIGA.

Requires the Department of Revenue to conduct a study evaluating alternatives to determining the method of calculating and distributing insurance premium taxes to municipalities and fire control districts for use in funding the firefighter pensions and municipal police pensions. The Department of Revenue must submit to the Legislature by February 1, 2001, a report containing the results of its study and any recommended legislation. Until July 1, 2001, the Department of Insurance would be prohibited from taking any action to audit insurers or to finalize any pending audits of insurers with respect to the accuracy of coding the location of insured properties for purposes associated with these premium taxes.