

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Cosgrove offered the following:

**Amendment (with title amendment)**

On page 1, between lines 17 and 18, of the bill

insert:

Section 2. Subsection (2) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(2) HURRICANE ~~WINDSTORM~~ INSURANCE RISK

APPORTIONMENT.--

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

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a

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

22         1. For the purpose of this section, properties  
23 eligible for such hurricane ~~windstorm~~ coverage are defined as  
24 dwellings, buildings, and other structures, including mobile  
25 homes which are used as dwellings and which are tied down in  
26 compliance with mobile home tie-down requirements prescribed  
27 by the Department of Highway Safety and Motor Vehicles  
28 pursuant to s. 320.8325, and the contents of all such  
29 properties. An applicant or policyholder is eligible for  
30 coverage only if an offer of coverage cannot be obtained by or  
31 for the applicant or policyholder from an admitted insurer at

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1 approved rates.

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

31           (II) The plan of operation shall provide for a board

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

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

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

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

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

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

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

31           c. The Legislature finds that the potential for

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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1 association determines appropriate.

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

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

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

14  
15 The acceptance or rejection of a risk by the association  
16 pursuant to such criteria and procedures must be construed as  
17 the private placement of insurance, and the provisions of  
18 chapter 120 do not apply.

19 e. The plan of operation must provide for an insured's  
20 choice of full replacement cost or actual cash value for all  
21 covered losses, at a cost of no more than the approved rate of  
22 the authorized insurer with the highest percentage of market  
23 share.

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

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

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

16 h. The plan shall provide for granting credits against  
17 premiums for policies issued by the association for:

18 (I) Separate flood insurance.

19 (II) Separating out any peril other than hurricane  
20 that might otherwise be covered under policies issued by the  
21 association.

22 (III) Mitigation of loss from damage resulting from a  
23 hurricane.

24  
25 6.a. The plan of operation may authorize the formation  
26 of a private nonprofit corporation, a private nonprofit  
27 unincorporated association, a partnership, a trust, a limited  
28 liability company, or a nonprofit mutual company which may be  
29 empowered, among other things, to borrow money by issuing  
30 bonds or by incurring other indebtedness and to accumulate  
31 reserves or funds to be used for the payment of insured

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1 catastrophe losses. The plan may authorize all actions  
2 necessary to facilitate the issuance of bonds, including the  
3 pledging of assessments or other revenues.

4       b. Any entity created under this subsection, or any  
5 entity formed for the purposes of this subsection, may sue and  
6 be sued, may borrow money; issue bonds, notes, or debt  
7 instruments; pledge or sell assessments, market equalization  
8 surcharges and other surcharges, rights, premiums, contractual  
9 rights, projected recoveries from the Florida Hurricane  
10 Catastrophe Fund, other reinsurance recoverables, and other  
11 assets as security for such bonds, notes, or debt instruments;  
12 enter into any contracts or agreements necessary or proper to  
13 accomplish such borrowings; and take other actions necessary  
14 to carry out the purposes of this subsection. The association  
15 may issue bonds or incur other indebtedness, or have bonds  
16 issued on its behalf by a unit of local government pursuant to  
17 subparagraph (g)2., in the absence of a hurricane or other  
18 weather-related event, upon a determination by the association  
19 subject to approval by the department that such action would  
20 enable it to efficiently meet the financial obligations of the  
21 association and that such financings are reasonably necessary  
22 to effectuate the requirements of this subsection. Any such  
23 entity may accumulate reserves and retain surpluses as of the  
24 end of any association year to provide for the payment of  
25 losses incurred by the association during that year or any  
26 future year. The association shall incorporate and continue  
27 the plan of operation and articles of agreement in effect on  
28 the effective date of chapter 76-96, Laws of Florida, to the  
29 extent that it is not inconsistent with chapter 76-96, and as  
30 subsequently modified consistent with chapter 76-96. The board  
31 of directors and officers currently serving shall continue to

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1 serve until their successors are duly qualified as provided  
2 under the plan. The assets and obligations of the plan in  
3 effect immediately prior to the effective date of chapter  
4 76-96 shall be construed to be the assets and obligations of  
5 the successor plan created herein.

6 c. In recognition of s. 10, Art. I of the State  
7 Constitution, prohibiting the impairment of obligations of  
8 contracts, it is the intent of the Legislature that no action  
9 be taken whose purpose is to impair any bond indenture or  
10 financing agreement or any revenue source committed by  
11 contract to such bond or other indebtedness issued or incurred  
12 by the association or any other entity created under this  
13 subsection.

14 7. On such coverage, an agent's remuneration shall be  
15 that amount of money payable to the agent by the terms of his  
16 or her contract with the company with which the business is  
17 placed. However, no commission will be paid on that portion of  
18 the premium which is in excess of the standard premium of that  
19 company.

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



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

5 9. Notwithstanding any other provision of law:

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

17 b. 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,  
21 projected recoveries from the Florida Hurricane Catastrophe  
22 Fund, reinsurance recoverables, or any other rights, revenues,  
23 or other assets of the association pledged.

24 c. 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, emergency  
27 assessments, market equalization or renewal surcharges,  
28 projected recoveries from the Florida Hurricane Catastrophe  
29 Fund, reinsurance recoverables, or other rights, revenues, or  
30 other assets which are collected, or levied and collected,  
31 after the commencement of and during the pendency of or after

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1 any such proceeding shall continue unaffected by such  
2 proceeding.

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

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

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1           f. There shall be no liability on the part of, and no  
2 cause of action of any nature shall arise against, any member  
3 insurer or its agents or employees, agents or employees of the  
4 association, members of the board of directors of the  
5 association, or the department or its representatives, for any  
6 action taken by them in the performance of their duties or  
7 responsibilities under this subsection. Such immunity does not  
8 apply to actions for breach of any contract or agreement  
9 pertaining to insurance, or any willful tort.

10           (c) The provisions of paragraph (b) are applicable  
11 only with respect to:

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

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

16           a. Due to the lack of hurricane ~~windstorm~~ insurance  
17 coverage in the county or area so affected, economic growth  
18 and development is being deterred or otherwise stifled in such  
19 county or area, mortgages are in default, and financial  
20 institutions are unable to make loans;

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

26           c. Extending hurricane ~~windstorm~~ insurance coverage to  
27 such county or area is consistent with and will implement and  
28 further the policies and objectives set forth in applicable  
29 state laws, rules, and regulations governing coastal  
30 management, coastal construction, comprehensive planning,  
31 beach and shore preservation, barrier island preservation,

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1 coastal zone protection, and the Coastal Zone Protection Act  
2 of 1985.

3  
4 Any time after the department has determined that the criteria  
5 referred to in this subparagraph do not exist with respect to  
6 any county or area of the state, the department shall ~~it may~~,  
7 after a subsequent public hearing, declare that such county or  
8 area is no longer eligible for hurricane ~~windstorm~~ coverage  
9 through the plan.

10 (d) For the purpose of evaluating whether the criteria  
11 of paragraph (c) are met, such criteria shall be applied as  
12 the situation would exist if policies had not been written by  
13 the Florida Residential Property and Casualty Joint  
14 Underwriting Association and property insurance for such  
15 policyholders was not available.

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

21 (f) After October 1, 2000, and notwithstanding any  
22 other provision of this subsection, no area or county shall be  
23 eligible for hurricane coverage through the plan for more than  
24 2 consecutive years. Any area or county which wishes to  
25 remain eligible for hurricane coverage through the plan after  
26 the expiration of any such period of eligibility shall  
27 petition the department for a redetermination of eligibility  
28 for such coverage under this subsection.

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Amendment No. \_\_\_\_ (for drafter's use only)

1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3         On page 1, line 5,

4

5 after the semicolon insert:

6         amending s. 627.351, F.S.; limiting application  
7         of insurance risk of the Florida Windstorm  
8         Underwriting Association to hurricanes only;  
9         revising the membership of the board of  
10         directors under the association's plan of  
11         operation; requiring the plan to provide for an  
12         insured's choice of actual cash value or full  
13         replacement cost of certain losses; specifying  
14         a rate limitation; requiring the association's  
15         plan to provide for credits for certain actions  
16         or alternative coverages; requiring the  
17         Department of Insurance to declare certain  
18         areas or counties ineligible for coverage  
19         through the plan under certain circumstances;  
20         limiting the time of eligibility for coverage  
21         under the association's plan;

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