

Bill No. HB 1607, 2nd Eng.

Amendment No. Barcode 473958

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Latvala moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 23, line 27, through page 63, line 3, delete
15 those lines

16

17 and insert:

18 Section 16. Effective July 1, 2001, subsections (2)
19 and (6) of section 627.351, Florida Statutes, are amended to
20 read:

21 627.351 Insurance risk apportionment plans.--

22 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

31 (b) The department shall require all insurers holding

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

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

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

30 (II) The plan of operation shall provide for a board
31 of directors consisting of the members of the State Board of

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1 Administration, which shall oversee the operations of the
2 association and shall carry out any other duties provided by
3 law. The board shall appoint an advisory council consisting
4 of an actuary, a meteorologist, an engineer, a representative
5 of insurers, a representative of insurance agents, and three
6 consumers who shall also be representatives of other
7 professions and industries, to provide the board with
8 information and advice in connection with its duties under
9 this section. Members of the advisory council shall be
10 eligible for per diem and travel expenses under s. 112.061.
11 The association shall not be considered a state agency and its
12 obligations shall not be considered obligations of the state.
13 In the event that specifying the State Board of Administration
14 as the board of directors of the corporation is judicially
15 determined, or determined by an advisory opinion of the
16 Florida Supreme Court, to subject the premiums or revenues of
17 the corporation to the revenue limitations of Article VII,
18 Section 1 of the Florida Constitution, the board of directors
19 of the corporation shall no longer be members of the State
20 Board of Administration and shall, instead, be the board of
21 the Residential Property and Casualty Joint Underwriting
22 Association as specified in subsection (6) consisting of the
23 ~~Insurance Consumer Advocate appointed under s. 627.0613, 1~~
24 ~~consumer representative appointed by the Insurance~~
25 ~~Commissioner, 1 consumer representative appointed by the~~
26 ~~Governor, and 12 additional members appointed as specified in~~
27 ~~the plan of operation. One of the 12 additional members shall~~
28 ~~be elected by the domestic companies of this state on the~~
29 ~~basis of cumulative weighted voting based on the net direct~~
30 ~~premiums of domestic companies in this state. Nothing in the~~
31 ~~1997 amendments to this paragraph terminates the existing~~

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1 ~~board or the terms of any members of the board.~~

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

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

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

15 (VI) The plan of operation may also provide for the
16 award of credits, for a period not to exceed 3 years, from a
17 regular assessment pursuant to sub-sub-subparagraph d.(I) or
18 sub-sub-subparagraph d.(II) as an incentive for taking
19 policies out of the Residential Property and Casualty Joint
20 Underwriting Association. In order to qualify for the
21 exemption under this sub-sub-subparagraph, the take-out plan
22 must provide that at least 40 percent of the policies removed
23 from the Residential Property and Casualty Joint Underwriting
24 Association cover risks located in Dade, Broward, and Palm
25 Beach Counties or at least 30 percent of the policies so
26 removed cover risks located in Dade, Broward, and Palm Beach
27 Counties and an additional 50 percent of the policies so
28 removed cover risks located in other coastal counties, and
29 must also provide that no more than 15 percent of the policies
30 so removed may exclude windstorm coverage. With the approval
31 of the department, the association may waive these geographic

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

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

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

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

7 (II) When the deficit incurred in a particular
8 calendar year exceeds 10 percent of the aggregate statewide
9 direct written premium for property insurance for the prior
10 calendar year for all member insurers, the association shall
11 levy an assessment on member insurers in an amount equal to
12 the greater of 10 percent of the deficit or 10 percent of the
13 aggregate statewide direct written premium for property
14 insurance for the prior calendar year for member insurers. Any
15 remaining deficit shall be recovered through emergency
16 assessments under sub-sub-subparagraph (III).

17 (III) Upon a determination by the board of directors
18 that a deficit exceeds the amount that will be recovered
19 through regular assessments on member insurers, pursuant to
20 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
21 board shall levy, after verification by the department,
22 emergency assessments to be collected by member insurers and
23 by underwriting associations created pursuant to this section
24 which write property insurance, upon issuance or renewal of
25 property insurance policies other than National Flood
26 Insurance policies in the year or years following levy of the
27 regular assessments. The amount of the emergency assessment
28 collected in a particular year shall be a uniform percentage
29 of that year's direct written premium for property insurance
30 for all member insurers and underwriting associations,
31 excluding National Flood Insurance policy premiums, as

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

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1 | been made for the payment of such bonds or other indebtedness
 2 | pursuant to the document governing such bonds or other
 3 | indebtedness. Emergency assessments collected under this
 4 | sub-sub-subparagraph are not part of an insurer's rates, are
 5 | not premium, and are not subject to premium tax, fees, or
 6 | commissions; however, failure to pay the emergency assessment
 7 | shall be treated as failure to pay premium.

8 | (IV) Each member insurer's share of the total regular
 9 | assessments under sub-sub-subparagraph (I) or
 10 | sub-sub-subparagraph (II) shall be in the proportion that the
 11 | insurer's net direct premium for property insurance in this
 12 | state, for the year preceding the assessment bears to the
 13 | aggregate statewide net direct premium for property insurance
 14 | of all member insurers, as reduced by any credits for
 15 | voluntary writings for that year.

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

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

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

15 3. The plan shall also provide that any member with a
16 surplus as to policyholders of ~~\$25~~^{\$20} million or less writing
17 25 percent or more of its total countrywide property insurance
18 premiums in this state may petition the department, within the
19 first 90 days of each calendar year, to qualify as a limited
20 apportionment company. The apportionment of such a member
21 company in any calendar year for which it is qualified shall
22 not exceed its gross participation, which shall not be
23 affected by the formula for voluntary writings. In no event
24 shall a limited apportionment company be required to
25 participate in any apportionment of losses pursuant to
26 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
27 in the aggregate which exceeds \$50 million after payment of
28 available plan funds in any calendar year. However, a limited
29 apportionment company shall collect from its policyholders any
30 emergency assessment imposed under sub-sub-subparagraph
31 2.d.(III). The plan shall provide that, if the department

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1 determines that any regular assessment will result in an
2 impairment of the surplus of a limited apportionment company,
3 the department may direct that all or part of such assessment
4 be deferred. However, there shall be no limitation or
5 deferment of an emergency assessment to be collected from
6 policyholders under sub-sub-subparagraph 2.d.(III).

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

20 5.a. The plan of operation may include deductibles and
21 rules for classification of risks and rate modifications
22 consistent with the objective of providing and maintaining
23 funds sufficient to pay catastrophe losses.

24 b. The association may require arbitration of a rate
25 filing under s. 627.062(6).

26 It is the intent of the Legislature that the rates for
27 coverage provided by the association be actuarially sound and
28 not competitive with approved rates charged in the admitted
29 voluntary market such that the association functions as a
30 residual market mechanism to provide insurance only when the
31 insurance cannot be procured in the voluntary market. The

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1 plan of operation shall provide a mechanism to assure that,
2 beginning no later than January 1, 1999, the rates charged by
3 the association for each line of business are reflective of
4 approved rates in the voluntary market for hurricane coverage
5 for each line of business in the various areas eligible for
6 association coverage.

7 c. The association shall provide for windstorm
8 coverage on residential properties in limits up to \$10 million
9 for commercial lines residential risks and up to \$1 million
10 for personal lines residential risks. If coverage with the
11 association is sought for a residential risk valued in excess
12 of these limits, coverage shall be available to the risk up to
13 the replacement cost or actual cash value of the property, at
14 the option of the insured, if coverage for the risk cannot be
15 located in the authorized market. The association must accept
16 a commercial lines residential risk with limits above \$10
17 million or a personal lines residential risk with limits above
18 \$1 million if coverage is not available in the authorized
19 market. The association may write coverage above the limits
20 specified in this subparagraph with or without facultative or
21 other reinsurance coverage, as the association determines
22 appropriate.

23 d. The plan of operation must provide objective
24 criteria and procedures, approved by the department, to be
25 uniformly applied for all applicants in determining whether an
26 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 (I) Whether the likelihood of a loss for the
30 individual risk is substantially higher than for other risks
31 of the same class; and

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1 (II) 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
6 pursuant to such criteria and procedures must be construed as
7 the private placement of insurance, and the provisions of
8 chapter 120 do not apply.

9 e. The policies issued by the association must provide
10 that if the association obtains an offer from an authorized
11 insurer to cover the risk with equivalent coverage at rates
12 that are no higher than the total premium that the insured is
13 paying (after application of any discounts the insured may be
14 receiving at the time of the offer) and if the offering
15 insurer makes available at no increased premium additional
16 endorsements or policies that will replace all coverages which
17 the insured then has ~~at its approved rates under either a~~
18 ~~standard policy including wind coverage or, if consistent with~~
19 ~~the insurer's underwriting rules as filed with the department,~~
20 ~~a basic policy including wind coverage,~~ the risk is no longer
21 eligible for coverage through the association. Upon
22 termination of eligibility, the association shall provide
23 written notice to the policyholder and agent of record stating
24 that the association policy must be canceled as of 60 days
25 after the date of the notice because of the offer of coverage
26 from an authorized insurer. Other provisions of the insurance
27 code relating to cancellation and notice of cancellation do
28 not apply to actions under this sub-subparagraph.

29 f. Association policies and applications must include
30 a notice that the association policy could, under this
31 section, be replaced with a policy issued by an authorized

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1 insurer that does not provide coverage identical to the
2 coverage provided by the association. The notice shall also
3 specify that acceptance of association coverage creates a
4 conclusive presumption that the applicant or policyholder is
5 aware of this potential.

6 g. If the risk accepts an offer of coverage through
7 the market assistance program or through a mechanism
8 established by the association, either before the policy is
9 issued by the association or during the first 30 days of
10 coverage by the association, and the producing agent who
11 submitted the application to the association is not currently
12 appointed by the insurer, the insurer shall either:

13 (I) Pay to the producing agent of record of the
14 policy, for the first year, an amount that is the greater of
15 the insurer's usual and customary commission for the type of
16 policy written or a fee equal to the usual and customary
17 commission of the association; or

18 (II) Offer to allow the producing agency of record of
19 the policy to continue servicing the policy for a period of
20 not less than 1 year and offer to pay the agent the greater of
21 the insurer's or the association's usual and customary
22 commission for the type of policy written.

23
24 If the new or producing agent is unwilling or unable to accept
25 appointment, the new insurer shall pay the agent in accordance
26 with sub-sub-subparagraph (I).

27 h. When the association enters into a contractual
28 agreement for a take-out plan, the producing agent of record
29 of the association policy is entitled to retain any unearned
30 commission on the policy, and the insurer shall either:

31 (I) Pay to the producing agent of record of the

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1 association policy, for the first year, an amount that is the
2 greater of the insurer's usual and customary commission for
3 the type of policy written or a fee equal to the usual and
4 customary commission of the association; or

5 (II) Offer to allow the producing agent of record of
6 the association policy to continue servicing the policy for a
7 period of not less than 1 year and offer to pay the agent the
8 greater of the insurer's or the association's usual and
9 customary commission for the type of policy written.

10

11 If the new or producing agent is unwilling or unable to accept
12 appointment, the new insurer shall pay the agent in accordance
13 with sub-sub-subparagraph(I).

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

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

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1 enter into any contracts or agreements necessary or proper to
2 accomplish such borrowings; and take other actions necessary
3 to carry out the purposes of this subsection. The association
4 may issue bonds or incur other indebtedness, or have bonds
5 issued on its behalf by a unit of local government pursuant to
6 subparagraph (g)2., in the absence of a hurricane or other
7 weather-related event, upon a determination by the association
8 subject to approval by the department that such action would
9 enable it to efficiently meet the financial obligations of the
10 association and that such financings are reasonably necessary
11 to effectuate the requirements of this subsection. Any such
12 entity may accumulate reserves and retain surpluses as of the
13 end of any association year to provide for the payment of
14 losses incurred by the association during that year or any
15 future year. The association shall incorporate and continue
16 the plan of operation and articles of agreement in effect on
17 the effective date of chapter 76-96, Laws of Florida, to the
18 extent that it is not inconsistent with chapter 76-96, and as
19 subsequently modified consistent with chapter 76-96. The board
20 of directors and officers currently serving shall continue to
21 serve until their successors are duly qualified as provided
22 under the plan. The assets and obligations of the plan in
23 effect immediately prior to the effective date of chapter
24 76-96 shall be construed to be the assets and obligations of
25 the successor plan created herein.

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

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1 by the association or any other entity created under this
2 subsection.

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

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

25 9. Notwithstanding any other provision of law:

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

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1 the continuation of, and after, any rehabilitation,
2 insolvency, liquidation, bankruptcy, receivership,
3 conservatorship, reorganization, or similar proceeding against
4 the association under the laws of this state or any other
5 applicable laws.

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

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

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

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1 any other obligation of the association related to such bonds
2 or indebtedness.

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

21 f. 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, agents or employees of the
24 association, members of the board of directors of the
25 association, or the department or its representatives, for any
26 action taken by them in the performance of their duties or
27 responsibilities under this subsection. Such immunity does not
28 apply to actions for breach of any contract or agreement
29 pertaining to insurance, or any willful tort.

30 10. It is the intent of the Legislature that the
31 association vigorously pursue an exemption from federal income

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1 taxation and tax-free status for bonds issued by or on behalf
2 of the association. In furtherance of this intent:

3 a. The association shall retain such expert tax
4 counsel and bond counsel as necessary and expend such funds as
5 necessary to pursue such negotiations or litigation as may
6 lead to favorable tax rulings.

7 b. The association shall, no later than January 1,
8 2002, provide a report to the Governor, the Insurance
9 Commissioner, the President of the Senate, and the Speaker of
10 the House of Representatives detailing the status of the
11 negotiations or litigation and recommending statutory changes,
12 if any, needed to secure favorable tax rulings.

13 (c) The provisions of paragraph (b) are applicable
14 only with respect to:

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

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

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

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

29 c. Extending windstorm insurance coverage to such
30 county or area is consistent with and will implement and
31 further the policies and objectives set forth in applicable

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1 state laws, rules, and regulations governing coastal
2 management, coastal construction, comprehensive planning,
3 beach and shore preservation, barrier island preservation,
4 coastal zone protection, and the Coastal Zone Protection Act
5 of 1985.

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

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

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

23 (f) Notwithstanding the provisions of paragraph (c),
24 after October 1, 2001, the association may not accept an
25 application for coverage under a new policy, in the area
26 between I-95 and U.S. 1 in Miami-Dade, Broward, and Palm Beach
27 Counties. The provisions of this paragraph do not prevent the
28 association from renewing coverage for risks that are insured
29 by the association on October 1, 2001.

30 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
31 UNDERWRITING ASSOCIATION.--

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

20 (b)1. All insurers authorized to write subject lines
21 of business in this state, other than underwriting
22 associations or other entities created under this section,
23 must participate in and be members of the Residential Property
24 and Casualty Joint Underwriting Association. A member's
25 participation shall begin on the first day of the calendar
26 year following the year in which the member was issued a
27 certificate of authority to transact insurance for subject
28 lines of business in this state and shall terminate 1 year
29 after the end of the first calendar year during which the
30 member no longer holds a certificate of authority to transact
31 insurance for subject lines of business in this state.

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1 2. All revenues, assets, liabilities, losses, and
 2 expenses of the association shall be divided into two separate
 3 accounts, one of which is for personal lines residential
 4 coverages and the other of which is for commercial lines
 5 residential coverages. Revenues, assets, liabilities, losses,
 6 and expenses not attributable to particular coverages shall be
 7 prorated between the accounts.

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

9 a. When the deficit incurred in a particular calendar
 10 year is not greater than 10 percent of the aggregate statewide
 11 direct written premium for the subject lines of business for
 12 the prior calendar year for all member insurers, the entire
 13 deficit shall be recovered through assessments of member
 14 insurers under paragraph (g).

15 b. When the deficit incurred in a particular calendar
 16 year exceeds 10 percent of the aggregate statewide direct
 17 written premium for the subject lines of business for the
 18 prior calendar year for all member insurers, the association
 19 shall levy an assessment on member insurers in an amount equal
 20 to the greater of 10 percent of the deficit or 10 percent of
 21 the aggregate statewide direct written premium for the subject
 22 lines of business for the prior calendar year for all member
 23 insurers. Any remaining deficit shall be recovered through
 24 emergency assessments under sub-subparagraph d.

25 c. Each member insurer's share of the total assessment
 26 under sub-subparagraph a. or sub-subparagraph b. shall be in
 27 the proportion that the member insurer's direct written
 28 premium for the subject lines of business for the year
 29 preceding the assessment bears to the aggregate statewide
 30 direct written premium for the subject lines of business for
 31 that year for all member insurers.

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

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1 required reserves, and other costs associated with financing
 2 of the original deficit, or 10 percent of the aggregate
 3 statewide direct written premium for subject lines of business
 4 written by member insurers and underwriting associations for
 5 the prior year, plus interest, fees, commissions, required
 6 reserves, and other costs associated with financing the
 7 original deficit.

8 e. The board may pledge the proceeds of assessments,
 9 projected recoveries from the Florida Hurricane Catastrophe
 10 Fund, other insurance and reinsurance recoverables, market
 11 equalization surcharges and other surcharges, and other funds
 12 available to the association as the source of revenue for and
 13 to secure bonds issued under paragraph (g), bonds or other
 14 indebtedness issued under subparagraph (c)3., or lines of
 15 credit or other financing mechanisms issued or created under
 16 this subsection, or to retire any other debt incurred as a
 17 result of deficits or events giving rise to deficits, or in
 18 any other way that the board determines will efficiently
 19 recover such deficits. The purpose of the lines of credit or
 20 other financing mechanisms is to provide additional resources
 21 to assist the association in covering claims and expenses
 22 attributable to a catastrophe. As used in this subsection, the
 23 term "assessments" includes regular assessments under
 24 sub-subparagraph a., sub-subparagraph b., or subparagraph
 25 (g)1. and emergency assessments under sub-subparagraph d.
 26 Emergency assessments collected under sub-subparagraph d. are
 27 not part of an insurer's rates, are not premium, and are not
 28 subject to premium tax, fees, or commissions; however, failure
 29 to pay the emergency assessment shall be treated as failure to
 30 pay premium. The emergency assessments under sub-subparagraph
 31 d. shall continue as long as any bonds issued or other

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1 indebtedness incurred with respect to a deficit for which the
2 assessment was imposed remain outstanding, unless adequate
3 provision has been made for the payment of such bonds or other
4 indebtedness pursuant to the documents governing such bonds or
5 other indebtedness.

6 f. As used in this subsection, the term "subject lines
7 of business" means, with respect to the personal lines
8 account, any personal lines policy defined in s. 627.4025, and
9 means, with respect to the commercial lines account, all
10 commercial property and commercial fire insurance.

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

12 1. May provide for one or more designated insurers,
13 able and willing to provide policy and claims service, to act
14 on behalf of the association to provide such service. Each
15 licensed agent shall be entitled to indicate the order of
16 preference regarding who will service the business placed by
17 the agent. The association shall adhere to each agent's
18 preferences unless after consideration of other factors in
19 assigning agents, including, but not limited to, servicing
20 capacity and fee arrangements, the association has reason to
21 believe it is in the best interest of the association to make
22 a different assignment.

23 2. Must provide for adoption of residential property
24 and casualty insurance policy forms, which forms must be
25 approved by the department prior to use. The association
26 shall adopt the following policy forms:

27 a. Standard personal lines policy forms including wind
28 coverage, which are multiperil policies providing what is
29 generally considered to be full coverage of a residential
30 property similar to the coverage provided under an HO-2, HO-3,
31 HO-4, or HO-6 policy.

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

5 c. Basic personal lines policy forms including wind
6 coverage, which are policies similar to an HO-8 policy or a
7 dwelling fire policy that provide coverage meeting the
8 requirements of the secondary mortgage market, but which
9 coverage is more limited than the coverage under a standard
10 policy.

11 d. Basic personal lines policy forms without wind
12 coverage, which are the same as the policies described in
13 sub-subparagraph c. except that they do not include wind
14 coverage.

15 e. Commercial lines residential policy forms including
16 wind coverage that are generally similar to the basic perils
17 of full coverage obtainable for commercial residential
18 structures in the admitted voluntary market.

19 f. Commercial lines residential policy forms without
20 wind coverage, which are the same as the policies described in
21 sub-subparagraph e. except that they do not include wind
22 coverage.

23 3. May provide that the association may employ or
24 otherwise contract with individuals or other entities to
25 provide administrative or professional services that may be
26 appropriate to effectuate the plan. The association shall
27 have the power to borrow funds, by issuing bonds or by
28 incurring other indebtedness, and shall have other powers
29 reasonably necessary to effectuate the requirements of this
30 subsection. The association may issue bonds or incur other
31 indebtedness, or have bonds issued on its behalf by a unit of

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1 local government pursuant to subparagraph (g)2., in the
2 absence of a hurricane or other weather-related event, upon a
3 determination by the association, subject to approval by the
4 department, that such action would enable it to efficiently
5 meet the financial obligations of the association and that
6 such financings are reasonably necessary to effectuate the
7 requirements of this subsection. The association is
8 authorized to take all actions needed to facilitate tax-free
9 status for any such bonds or indebtedness, including formation
10 of trusts or other affiliated entities. The association shall
11 have the authority to pledge assessments, projected recoveries
12 from the Florida Hurricane Catastrophe Fund, other reinsurance
13 recoverables, market equalization and other surcharges, and
14 other funds available to the association as security for bonds
15 or other indebtedness. In recognition of s. 10, Art. I of the
16 State Constitution, prohibiting the impairment of obligations
17 of contracts, it is the intent of the Legislature that no
18 action be taken whose purpose is to impair any bond indenture
19 or financing agreement or any revenue source committed by
20 contract to such bond or other indebtedness.

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

- 25 a. The insurance consumer advocate appointed under s.
26 627.0613.
- 27 b. Five members designated by the insurance industry.
- 28 c. Five consumer representatives appointed by the
29 Insurance Commissioner. Two of the consumer representatives
30 must, at the time of appointment, be holders of policies
31 issued by the association, who are selected with consideration

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1 given to reflecting the geographic balance of association
2 policyholders. Two of the consumer members must be individuals
3 who are minority persons as defined in s. 288.703(3). One of
4 the consumer members shall have expertise in the field of
5 mortgage lending.

6 d. Two representatives of the insurance industry
7 appointed by the Insurance Commissioner. Of the two insurance
8 industry representatives appointed by the Insurance
9 Commissioner, at least one must be an individual who is a
10 minority person as defined in s. 288.703(3).

11

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

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

18 a. With respect to personal lines residential risks,
19 if the risk is offered coverage from an authorized insurer at
20 the insurer's approved rate under either a standard policy
21 including wind coverage or, if consistent with the insurer's
22 underwriting rules as filed with the department, a basic
23 policy including wind coverage, the risk is not eligible for
24 any policy issued by the association.

25 (I) If the risk accepts an offer of coverage through
26 the market assistance program or through a mechanism
27 established by the association, either before the policy is
28 issued by the association or during the first 30 days of
29 coverage by the association, and the producing agent who
30 submitted the application to the association is not currently
31 appointed by the insurer, the insurer shall either:

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1 (A) Pay to the producing agent of record of the
2 policy, for the first year, an amount that is the greater of
3 the insurer's usual and customary commission for the type of
4 policy written or a fee equal to the usual and customary
5 commission of the association; or

6 (B) Offer to allow the producing agent of record of
7 the policy to continue servicing the policy for a period of
8 not less than 1 year and offer to pay the agent the greater of
9 the insurer's or the association's usual and customary
10 commission for the type of policy written.

11
12 If the new or producing agent is unwilling or unable to accept
13 appointment, the new insurer shall pay the agent in accordance
14 with sub-sub-sub-subparagraph (A).

15 (II) When the association enters into a contractual
16 agreement for a take-out plan, the producing agent of record
17 of the association policy is entitled to retain any unearned
18 commission on the policy, and the insurer shall either:

19 (A) Pay to the producing agent of record of the
20 association policy, for the first year, an amount that is the
21 greater of the insurer's usual and customary commission for
22 the type of policy written or a fee equal to the usual and
23 customary commission of the association; or

24 (B) Offer to allow the producing agent of record of
25 the association policy to continue servicing the policy for a
26 period of not less than 1 year and offer to pay the agent the
27 greater of the insurer's or the association's usual and
28 customary commission for the type of policy written.

29
30 If the new or producing agent is unwilling or unable to accept
31 appointment, the new insurer shall pay the agent in accordance

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

27 b. With respect to commercial lines residential risks,
28 if the risk is offered coverage under a policy including wind
29 coverage from an authorized insurer at its approved rate, the
30 risk is not eligible for any policy issued by the association.

31 (I) If the risk accepts an offer of coverage through

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1 the market assistance program or through a mechanism
2 established by the association, either before the policy is
3 issued by the association or during the first 30 days of
4 coverage by the association, and the producing agent who
5 submitted the application to the association is not currently
6 appointed by the insurer, the insurer shall either:

7 (A) Pay to the producing agent of record of the
8 policy, for the first year, an amount that is the greater of
9 the insurer's usual and customary commission for the type of
10 policy written or a fee equal to the usual and customary
11 commission of the association; or

12 (B) Offer to allow the producing agent of record of
13 the policy to continue servicing the policy for a period of
14 not less than 1 year and offer to pay the agent the greater of
15 the insurer's or the association's usual and customary
16 commission for the type of policy written.

17

18 If the new or producing agent is unwilling or unable to accept
19 appointment, the new insurer shall pay the agent in accordance
20 with sub-sub-sub-subparagraph (A).

21 (II) When the association enters into a contractual
22 agreement for a take-out plan, the producing agent of record
23 of the association policy is entitled to retain any unearned
24 commission on the policy, and the insurer shall either:

25 (A) Pay to the producing agent of record of the
26 association policy, for the first year, an amount that is the
27 greater of the insurer's usual and customary commission for
28 the type of policy written or a fee equal to the usual and
29 customary commission of the association; or

30 (B) Offer to allow the producing agent of record of
31 the association policy to continue servicing the policy for a

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1 period of not less than 1 year and offer to pay the agent the
2 greater of the insurer's or the association's usual and
3 customary commission for the type of policy written.

4
5 If the new or producing agent is unwilling or unable to accept
6 appointment, the new insurer shall pay the agent in accordance
7 with sub-sub-sub-subparagraph (A). ~~If the risk accepts an~~
8 ~~offer of coverage through the market assistance plan or an~~
9 ~~offer of coverage through a mechanism established by the~~
10 ~~association before a policy is issued to the risk by the~~
11 ~~association, and the producing agent who submitted the~~
12 ~~application to the plan or the association is not currently~~
13 ~~appointed by the insurer, the insurer shall either appoint the~~
14 ~~agent to service the risk or, if the insurer places the~~
15 ~~coverage through a new agent, require the new agent who then~~
16 ~~writes the policy to pay not less than 50 percent of the first~~
17 ~~year's commission to the producing agent who submitted the~~
18 ~~application to the plan, except that if the new agent is an~~
19 ~~employee or exclusive agent of the insurer, the new agent~~
20 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
21 ~~of splitting the commission.~~ If the risk is not able to obtain
22 any such offer, the risk is eligible for a policy including
23 wind coverage issued by the association.

24 c. This subparagraph does not require the association
25 to provide wind coverage or hurricane coverage in any area in
26 which such coverage is available through the Florida Windstorm
27 Underwriting Association.

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

30 7. Must provide that if premium and investment income
31 attributable to a particular plan year are in excess of

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1 projected losses and expenses of the plan attributable to that
2 year, such excess shall be held in surplus. Such surplus shall
3 be available to defray deficits as to future years and shall
4 be used for that purpose prior to assessing member insurers as
5 to any plan year.

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

11 a. Whether the likelihood of a loss for the individual
12 risk is substantially higher than for other risks of the same
13 class; and

14 b. Whether the uncertainty associated with the
15 individual risk is such that an appropriate premium cannot be
16 determined.

17

18 The acceptance or rejection of a risk by the association shall
19 be construed as the private placement of insurance, and the
20 provisions of chapter 120 shall not apply.

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

24 10. Must provide that in the event of regular deficit
25 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
26 (b)3.b., or by the Florida Windstorm Underwriting Association
27 under sub-sub-subparagraph (2)(b)2.d.(I) or
28 sub-sub-subparagraph (2)(b)2.d.(II), the association shall
29 levy upon association policyholders in its next rate filing,
30 or by a separate rate filing solely for this purpose, a market
31 equalization surcharge in a percentage equal to the total

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1 amount of such regular assessments divided by the aggregate
2 statewide direct written premium for subject lines of business
3 for member insurers for the prior calendar year. Market
4 equalization surcharges under this subparagraph are not
5 considered premium and are not subject to commissions, fees,
6 or premium taxes; however, failure to pay a market
7 equalization surcharge shall be treated as failure to pay
8 premium.

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

27 12. Association policies and applications must include
28 a notice that the association policy could, under this section
29 or s. 627.3511, be replaced with a policy issued by an
30 admitted insurer that does not provide coverage identical to
31 the coverage provided by the association. The notice shall

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1 also specify that acceptance of association coverage creates a
2 conclusive presumption that the applicant or policyholder is
3 aware of this potential.

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

20 (d)1. It is the intent of the Legislature that the
21 rates for coverage provided by the association be actuarially
22 sound and not competitive with approved rates charged in the
23 admitted voluntary market, so that the association functions
24 as a residual market mechanism to provide insurance only when
25 the insurance cannot be procured in the voluntary market.
26 Rates shall include an appropriate catastrophe loading factor
27 that reflects the actual catastrophic exposure of the
28 association and recognizes that the association has little or
29 no capital or surplus; and the association shall carefully
30 review each rate filing to assure that provider compensation
31 is not excessive.

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1 2. For each county, the average rates of the
2 association for each line of business for personal lines
3 residential policies shall be no lower than the average rates
4 charged by the insurer that had the highest average rate in
5 that county among the 20 insurers with the greatest total
6 direct written premium in the state for that line of business
7 in the preceding year, except that with respect to mobile home
8 coverages, the average rates of the association shall be no
9 lower than the average rates charged by the insurer that had
10 the highest average rate in that county among the 5 insurers
11 with the greatest total written premium for mobile home
12 owner's policies in the state in the preceding year.

13 3. Rates for commercial residential coverage shall not
14 be subject to the requirements of subparagraph 2., but shall
15 be subject to all other requirements of this paragraph and s.
16 627.062.

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

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

25 (e) Coverage through the association is hereby
26 activated effective upon approval of the plan, and shall
27 remain activated until coverage is deactivated pursuant to
28 paragraph (f). Thereafter, coverage through the association
29 shall be reactivated by order of the department only under one
30 of the following circumstances:

31 1. If the market assistance plan receives a minimum of

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

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

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

26 (g)1. The board shall certify to the department its
27 needs for annual assessments as to a particular calendar year,
28 and any startup or interim assessments that it deems to be
29 necessary to sustain operations as to a particular year
30 pending the receipt of annual assessments. Upon verification,
31 the department shall approve such certification, and the board

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

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

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

28 3.a. In addition to any credits, bonuses, or
29 exemptions provided under s. 627.3511, the board shall adopt a
30 program for the reduction of both new and renewal writings in
31 the association. The board may consider any prudent and not

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1 unfairly discriminatory approach to reducing association
2 writings, but must adopt at least a credit against assessment
3 liability or other liability that provides an incentive for
4 insurers to take risks out of the association and to keep
5 risks out of the association by maintaining or increasing
6 voluntary writings in counties in which association risks are
7 highly concentrated and a program to provide a formula under
8 which an insurer voluntarily taking risks out of the
9 association by maintaining or increasing voluntary writings
10 will be relieved wholly or partially from assessments under
11 sub-subparagraphs (b)3.a. and b.

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

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

24 4. The plan shall provide for the deferment, in whole
25 or in part, of the assessment of a member insurer, other than
26 an emergency assessment collected from policyholders pursuant
27 to sub-subparagraph (b)3.d., if the department finds that
28 payment of the assessment would endanger or impair the
29 solvency of the insurer. In the event an assessment against a
30 member insurer is deferred in whole or in part, the amount by
31 which such assessment is deferred may be assessed against the

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1 other member insurers in a manner consistent with the basis
2 for assessments set forth in paragraph (b).

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

6 (i) There shall be no liability on the part of, and no
7 cause of action of any nature shall arise against, any member
8 insurer or its agents or employees, the association or its
9 agents or employees, members of the board of governors or
10 their respective designees at a board meeting, association
11 committee members, or the department or its representatives,
12 for any action taken by them in the performance of their
13 duties or responsibilities under this subsection. Such
14 immunity does not apply to:

15 1. Any of the foregoing persons or entities for any
16 willful tort;

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

20 3. The association with respect to issuance or payment
21 of debt; or

22 4. Any member insurer with respect to any action to
23 enforce a member insurer's obligations to the association
24 under this subsection.

25 (j) The Residential Property and Casualty Joint
26 Underwriting Association is not a state agency, board, or
27 commission. However, for the purposes of s. 199.183(1), the
28 Residential Property and Casualty Joint Underwriting
29 Association shall be considered a political subdivision of the
30 state and shall be exempt from the corporate income tax.

31 (k) Upon a determination by the board of governors

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1 that the conditions giving rise to the establishment and
 2 activation of the association no longer exist, and upon the
 3 consent thereto by order of the department, the association is
 4 dissolved. Upon dissolution, the assets of the association
 5 shall be applied first to pay all debts, liabilities, and
 6 obligations of the association, including the establishment of
 7 reasonable reserves for any contingent liabilities or
 8 obligations, and all remaining assets of the association shall
 9 become property of the state and deposited in the Florida
 10 Hurricane Catastrophe Fund.

11 (1) All obligations, rights, assets, and liabilities
 12 of the Florida Property and Casualty Joint Underwriting
 13 Association created by subsection (5), which obligations,
 14 rights, assets, or liabilities relate to the provision of
 15 commercial lines residential property insurance coverage as
 16 described in this section are hereby transferred to the
 17 Residential Property and Casualty Joint Underwriting
 18 Association. The Residential Property and Casualty Joint
 19 Underwriting Association is not required to issue endorsements
 20 or certificates of assumption to insureds during the remaining
 21 term of in-force transferred policies.

22 (m) Notwithstanding any other provision of law:
 23 1. The pledge or sale of, the lien upon, and the
 24 security interest in any rights, revenues, or other assets of
 25 the association created or purported to be created pursuant to
 26 any financing documents to secure any bonds or other
 27 indebtedness of the association shall be and remain valid and
 28 enforceable, notwithstanding the commencement of and during
 29 the continuation of, and after, any rehabilitation,
 30 insolvency, liquidation, bankruptcy, receivership,
 31 conservatorship, reorganization, or similar proceeding against

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1 the association under the laws of this state.

2 2. No such proceeding shall relieve the association of
3 its obligation, or otherwise affect its ability to perform its
4 obligation, to continue to collect, or levy and collect,
5 assessments, market equalization or other surcharges under
6 subparagraph (c)10., or any other rights, revenues, or other
7 assets of the association pledged pursuant to any financing
8 documents.

9 3. Each such pledge or sale of, lien upon, and
10 security interest in, including the priority of such pledge,
11 lien, or security interest, any such assessments, market
12 equalization or other surcharges, or other rights, revenues,
13 or other assets which are collected, or levied and collected,
14 after the commencement of and during the pendency of, or
15 after, any such proceeding shall continue unaffected by such
16 proceeding. As used in this subsection, the term "financing
17 documents" means any agreement or agreements, instrument or
18 instruments, or other document or documents now existing or
19 hereafter created evidencing any bonds or other indebtedness
20 of the association or pursuant to which any such bonds or
21 other indebtedness has been or may be issued and pursuant to
22 which any rights, revenues, or other assets of the association
23 are pledged or sold to secure the repayment of such bonds or
24 indebtedness, together with the payment of interest on such
25 bonds or such indebtedness, or the payment of any other
26 obligation of the association related to such bonds or
27 indebtedness.

28 4. Any such pledge or sale of assessments, revenues,
29 contract rights, or other rights or assets of the association
30 shall constitute a lien and security interest, or sale, as the
31 case may be, that is immediately effective and attaches to

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

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

19 a. Underwriting files, except that a policyholder or
20 an applicant shall have access to his or her own underwriting
21 files.

22 b. Claims files, until termination of all litigation
23 and settlement of all claims arising out of the same incident,
24 although portions of the claims files may remain exempt, as
25 otherwise provided by law. Confidential and exempt claims file
26 records may be released to other governmental agencies upon
27 written request and demonstration of need; such records held
28 by the receiving agency remain confidential and exempt as
29 provided for herein.

30 c. Records obtained or generated by an internal
31 auditor pursuant to a routine audit, until the audit is

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1 completed, or if the audit is conducted as part of an
2 investigation, until the investigation is closed or ceases to
3 be active. An investigation is considered "active" while the
4 investigation is being conducted with a reasonable, good faith
5 belief that it could lead to the filing of administrative,
6 civil, or criminal proceedings.

7 d. Matters reasonably encompassed in privileged
8 attorney-client communications.

9 e. Proprietary information licensed to the association
10 under contract and the contract provides for the
11 confidentiality of such proprietary information.

12 f. All information relating to the medical condition
13 or medical status of an association employee which is not
14 relevant to the employee's capacity to perform his or her
15 duties, except as otherwise provided in this paragraph.
16 Information which is exempt shall include, but is not limited
17 to, information relating to workers' compensation, insurance
18 benefits, and retirement or disability benefits.

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

27 h. Information relating to negotiations for financing,
28 reinsurance, depopulation, or contractual services, until the
29 conclusion of the negotiations.

30 i. Minutes of closed meetings regarding underwriting
31 files, and minutes of closed meetings regarding an open claims

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1 file until termination of all litigation and settlement of all
2 claims with regard to that claim, except that information
3 otherwise confidential or exempt by law will be redacted.

4
5 When an authorized insurer is considering underwriting a risk
6 insured by the association, relevant underwriting files and
7 confidential claims files may be released to the insurer
8 provided the insurer agrees in writing, notarized and under
9 oath, to maintain the confidentiality of such files. When a
10 file is transferred to an insurer that file is no longer a
11 public record because it is not held by an agency subject to
12 the provisions of the public records law. Underwriting files
13 and confidential claims files may also be released to staff of
14 and the board of governors of the market assistance plan
15 established pursuant to s. 627.3515, who must retain the
16 confidentiality of such files, except such files may be
17 released to authorized insurers that are considering assuming
18 the risks to which the files apply, provided the insurer
19 agrees in writing, notarized and under oath, to maintain the
20 confidentiality of such files. Finally, the association or
21 the board or staff of the market assistance plan may make the
22 following information obtained from underwriting files and
23 confidential claims files available to licensed general lines
24 insurance agents: name, address, and telephone number of the
25 residential property owner or insured; location of the risk;
26 rating information; loss history; and policy type. The
27 receiving licensed general lines insurance agent must retain
28 the confidentiality of the information received.

29 2. Portions of meetings of the Residential Property
30 and Casualty Joint Underwriting Association are exempt from
31 the provisions of s. 286.011 and s. 24(b), Art. I of the State

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1 Constitution wherein confidential underwriting files or
2 confidential open claims files are discussed. All portions of
3 association meetings which are closed to the public shall be
4 recorded by a court reporter. The court reporter shall record
5 the times of commencement and termination of the meeting, all
6 discussion and proceedings, the names of all persons present
7 at any time, and the names of all persons speaking. No
8 portion of any closed meeting shall be off the record.
9 Subject to the provisions hereof and s. 119.07(2)(a), the
10 court reporter's notes of any closed meeting shall be retained
11 by the association for a minimum of 5 years. A copy of the
12 transcript, less any exempt matters, of any closed meeting
13 wherein claims are discussed shall become public as to
14 individual claims after settlement of the claim.

15 Section 17. Subsection (4) of section 627.3511,
16 Florida Statutes, is amended to read:

17 627.3511 Depopulation of Residential Property and
18 Casualty Joint Underwriting Association.--

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

25 (a) Pay to the producing agent of record of the
26 association policy, for the first year, an amount that is the
27 greater of the insurer's usual and customary commission for
28 the type of policy written or a fee equal to the usual and
29 customary commission of the association ~~an amount equal to the~~
30 ~~insurer's usual and customary commission for the type of~~
31 ~~policy written if the term of the association policy was in~~

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1 ~~excess of 6 months, or one-half of such usual and customary~~
2 ~~commission if the term of the association policy was 6 months~~
3 ~~or less; or~~

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

9
10 If the new or producing agent is unwilling or unable to accept
11 appointment, the new insurer shall pay the agent in accordance
12 with paragraph (a).The insurer need not take any further
13 action if the offer is rejected. This subsection does not
14 apply to any reciprocal interinsurance exchange, nonprofit
15 federation, or any subsidiary or affiliate of such
16 organization. This subsection does not apply if the agent is
17 also the agent of record on the new coverage. The requirement
18 of this subsection that the producing agent of record is
19 entitled to retain the unearned commission on an association
20 policy does not apply to a policy for which coverage has been
21 provided in the association for 30 days or less or for which a
22 cancellation notice has been issued pursuant to s.
23 627.351(6)(c)11. during the first 30 days of coverage.

24 Section 18. Subsection (7) of section 627.7295,
25 Florida Statutes, is amended to read:

26 627.7295 Motor vehicle insurance contracts.--

27 (7) A policy of private passenger motor vehicle
28 insurance or a binder for such a policy may be initially
29 issued in this state only if the insurer or agent has
30 collected from the insured an amount equal to 2 months'
31 premium. An insurer, agent, or premium finance company may

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1 not directly or indirectly take any action resulting in the
2 insured having paid from the insured's own funds an amount
3 less than the 2 months' premium required by this subsection.
4 This subsection applies without regard to whether the premium
5 is financed by a premium finance company or is paid pursuant
6 to a periodic payment plan of an insurer or an insurance
7 agent. This subsection does not apply if an insured or member
8 of the insured's family is renewing or replacing a policy or a
9 binder for such policy written by the same insurer or a member
10 of the same insurer group. This subsection does not apply to
11 an insurer that issues private passenger motor vehicle
12 coverage primarily to active duty or former military personnel
13 or their dependents. This subsection does not apply if all
14 policy payments are paid pursuant to a payroll deduction plan
15 or an automatic electronic funds transfer payment plan from
16 the policyholder, provided that the first policy payment may
17 be ~~is~~ made by cash, cashier's check, check, or a money order.
18 This subsection and subsection (4) do not apply if all policy
19 payments to an insurer are paid pursuant to an automatic
20 electronic funds transfer payment plan from an agent or a
21 managing general agent, or if the policy is issued pursuant to
22 the transfer of a book of business by an agent from one
23 insurer to another, provided that ~~and if~~ the policy includes,
24 at a minimum, personal injury protection pursuant to ss.
25 627.730-627.7405; motor vehicle property damage liability
26 pursuant to s. 627.7275; and bodily injury liability in at
27 least the amount of \$10,000 because of bodily injury to, or
28 death of, one person in any one accident and in the amount of
29 \$20,000 because of bodily injury to, or death of, two or more
30 persons in any one accident. This subsection and subsection
31 (4) do not apply if an insured has had a policy in effect for

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1 at least 6 months, the insured's agent is terminated by the
2 insurer that issued the policy, and the insured obtains
3 coverage on the policy's renewal date with a new company
4 through the terminated agent.

5 Section 19. Subsection (1) of section 627.901, Florida
6 Statutes, is amended to read:

7 627.901 Premium financing by an insurance agent or
8 agency.--

9 (1) A general lines agent may make reasonable service
10 charges for financing insurance premiums on policies issued or
11 business produced by such an agent or agency, s. 626.9541
12 notwithstanding. The service charge shall not exceed \$1 per
13 installment, or a \$6 total service charge per year, for any
14 premium balance of \$120 or less. For any premium balance
15 greater than \$120 but not more than \$220, the service charge
16 shall not exceed \$9 per year. The maximum service charge for
17 any premium balance greater than \$220 shall not exceed \$12 per
18 year. In lieu of such service charges, an insurance agent or
19 agency may charge interest or service charges, which may be
20 level amounts and subject to endorsement changes, that in the
21 aggregate do not exceed a rate of interest not to exceed 18
22 percent simple interest per year on the average unpaid balance
23 as billed over the term of the policy.

24 Section 20. Paragraphs (n) of subsection (1) of
25 section 626.9541, Florida Statutes, is amended to read:

26 626.9541 Unfair methods of competition and unfair or
27 deceptive acts or practices defined.--

28 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
29 DECEPTIVE ACTS.--The following are defined as unfair methods
30 of competition and unfair or deceptive acts or practices:

31 (n) Free insurance prohibited.--

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- 1 1. Advertising, offering, or providing free insurance
2 as an inducement to the purchase or sale of real or personal
3 property or of services directly or indirectly connected with
4 such real or personal property.
- 5 2. For the purposes of this paragraph, "free"
6 insurance is:
- 7 a. Insurance for which no identifiable and additional
8 charge is made to the purchaser of such real property,
9 personal property, or services.
- 10 b. Insurance for which an identifiable or additional
11 charge is made in an amount less than the cost of such
12 insurance as to the seller or other person, other than the
13 insurer, providing the same.
- 14 3. Subparagraphs 1. and 2. do not apply to:
- 15 a. Insurance of, loss of, or damage to the real or
16 personal property involved in any such sale or services, under
17 a policy covering the interests therein of the seller or
18 vendor.
- 19 b. Blanket disability insurance as defined in s.
20 627.659.
- 21 c. Credit life insurance or credit disability
22 insurance.
- 23 d. Any individual, isolated, nonrecurring unadvertised
24 transaction not in the regular course of business.
- 25 e. Title insurance.
- 26 f. Any purchase agreement involving the purchase of a
27 cemetery lot or lots in which, under stated conditions, any
28 balance due is forgiven upon the death of the purchaser.
- 29 g. Life insurance, trip cancellation insurance, or
30 lost baggage insurance offered by a travel agency as part of a
31 travel package offered by and booked through the agency.

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1 h. Third-party payor programs approved by the
2 department.

3 4. Using the word "free" or words which imply the
4 provision of insurance without a cost to describe life or
5 disability insurance, in connection with the advertising or
6 offering for sale of any kind of goods, merchandise, or
7 services.

8 Section 21. Section 627.7013, Florida Statutes, is
9 amended to read:

10 627.7013 Orderly markets for personal lines
11 residential property insurance.--

12 (1) FINDINGS AND PURPOSE.--

13 (a) The Legislature finds, on May 1, 2001, that
14 personal lines residential property insurers, as a condition
15 of doing business in this state, have a responsibility to
16 contribute to an orderly market for personal lines residential
17 property insurance and that there is a compelling state
18 interest in maintaining an orderly market for personal lines
19 residential property insurance. The Legislature further finds
20 that Hurricane Andrew, which caused over \$15 billion of
21 insured losses in South Florida, has reinforced the need of
22 consumers to have reliable homeowner's insurance coverage;
23 however, the enormous monetary impact to insurers of Hurricane
24 Andrew claims has prompted insurers to propose substantial
25 cancellation or nonrenewal of their homeowner's insurance
26 policyholders. The Legislature further finds that the massive
27 cancellations and nonrenewals announced, proposed, or
28 contemplated by certain insurers constituted ~~constitute~~ a
29 significant danger to the public health, safety, and welfare,
30 and destabilized ~~destabilize~~ the insurance market and that
31 such danger to the public health, safety, and welfare, and

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1 destabilization of the market may occur after another
2 hurricane. In furtherance of the overwhelming public
3 necessity for an orderly market for property insurance, if the
4 Governor and Cabinet determine, after a hurricane and the
5 declaration by the Governor of a state of emergency pursuant
6 to s. 252.36, that a danger to the public health, safety, and
7 welfare exists due to the threat of massive cancellations and
8 non-renewals by insurers, the Governor and Cabinet may issue
9 an order imposing the Legislature, in chapter 93-401, Laws of
10 Florida, imposed, for a limited time, not to exceed 180 days,
11 a moratorium on cancellation or nonrenewal of ~~personal lines~~
12 residential property insurance policies subject to such
13 conditions and exceptions as the Governor and Cabinet may
14 reasonably require to adequately protect the public health,
15 safety, and welfare. ~~The Legislature further finds that upon~~
16 ~~expiration of the moratorium, additional actions are required~~
17 ~~to maintain an orderly market for personal lines residential~~
18 ~~property insurance in this state. The purposes of this section~~
19 ~~are to provide for a phaseout of the moratorium and to require~~
20 ~~advance planning and approval for programs of exposure~~
21 ~~reduction.~~

22 (b) ~~The Legislature finds, as of the beginning of the~~
23 ~~1996 Regular Session of the Legislature, that:~~

24 1. ~~The conditions described in paragraph (a) remain~~
25 ~~applicable to the property insurance market in this state in~~
26 ~~1996 and are likely to remain applicable for several years~~
27 ~~thereafter.~~

28 2. ~~The Residential Property and Casualty Joint~~
29 ~~Underwriting Association, a residual market mechanism created~~
30 ~~to alleviate temporary unavailability of property insurance~~
31 ~~coverage, remains the primary or exclusive source of new~~

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1 ~~property insurance coverage in significant portions of the~~
2 ~~state.~~

3 ~~3. Recent enactments intended to restore a~~
4 ~~competitive, private sector property insurance market,~~
5 ~~including creation and enhancement of the Florida Hurricane~~
6 ~~Catastrophe Fund, incentives for depopulation of the~~
7 ~~Residential Property and Casualty Joint Underwriting~~
8 ~~Association, incentives for hurricane loss mitigation and~~
9 ~~prevention, creation of the Florida Commission on Hurricane~~
10 ~~Loss Projection Methodology, and revisions of laws relating to~~
11 ~~rates and coverages, are beginning to have their intended~~
12 ~~effects; however, the market instability that persists could~~
13 ~~frustrate these efforts to restore the market.~~

14 ~~4. The moratorium completion provided in this section~~
15 ~~is the least intrusive method for maintaining an orderly~~
16 ~~market, insofar as it applies only to hurricane-related~~
17 ~~cancellations and nonrenewals of personal lines residential~~
18 ~~policies that were in force on the effective date, and insofar~~
19 ~~as it allows an insurer annually to nonrenew up to 5 percent~~
20 ~~of the total number of such policies as of the effective date.~~

21 ~~(c) The Legislature finds, as of January 1, 1998,~~
22 ~~that:~~

23 ~~1. The conditions described in paragraphs (a) and (b)~~
24 ~~remain applicable to the property insurance market in this~~
25 ~~state in 1998 and are likely to remain applicable for several~~
26 ~~years thereafter.~~

27 ~~2. The general instability of the market is reflected~~
28 ~~by the following facts:~~

29 ~~a. In spite of depopulation efforts under which~~
30 ~~approximately 600,000 policies have been transferred from the~~
31 ~~Residential Property and Casualty Joint Underwriting~~

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1 ~~Association to the voluntary market, the joint underwriting~~
2 ~~association, with approximately 500,000 policies in force,~~
3 ~~remains the primary or exclusive source of new property~~
4 ~~insurance coverage in significant portions of the state.~~

5 ~~b. The Florida Windstorm Underwriting Association is~~
6 ~~growing rapidly, with more than 400,000 policies in force,~~
7 ~~approximately half of which were initially issued in 1997.~~

8 ~~3. A further extension of the operation of this~~
9 ~~section until June 1, 2001, will provide an opportunity for~~
10 ~~the market to stabilize and for continuation of residual~~
11 ~~market depopulation efforts.~~

12 ~~(2) MORATORIUM COMPLETION.--~~

13 ~~(a) As used in this subsection, the term "total number~~
14 ~~of policies" means the number of an insurer's policies of a~~
15 ~~specified type that were in force on June 1, 1996, or the date~~
16 ~~on which this section became law, whichever was later.~~

17 ~~(b) The following restrictions apply only to~~
18 ~~cancellation or nonrenewal of personal lines residential~~
19 ~~property insurance policies that were in force on June 1,~~
20 ~~1996, or the date on which this section became law, whichever~~
21 ~~was later.~~

22 ~~1. In any 12-month period, an insurer may not cancel~~
23 ~~or nonrenew more than 5 percent of such insurer's total number~~
24 ~~of homeowner's policies, 5 percent of such insurer's total~~
25 ~~number of mobile home owner's policies, or 5 percent of such~~
26 ~~insurer's total number of personal lines residential policies~~
27 ~~of all types and classes in the state for the purpose of~~
28 ~~reducing the insurer's exposure to hurricane claims and may~~
29 ~~not, with respect to any county, cancel or nonrenew more than~~
30 ~~10 percent of its total number of homeowner's policies, 10~~
31 ~~percent of its total number of mobile home owner's policies,~~

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1 ~~or 10 percent of its total number of personal lines~~
2 ~~residential policies of all types and classes in the county~~
3 ~~for the purpose of reducing the insurer's exposure to~~
4 ~~hurricane claims. This subparagraph does not prohibit any~~
5 ~~cancellations or nonrenewals of such policies for any other~~
6 ~~lawful reason unrelated to the risk of loss from hurricane~~
7 ~~exposure.~~

8 ~~2.a. If, for any 12-month period, an insurer proposes~~
9 ~~to cancel or nonrenew personal lines residential policies to~~
10 ~~an extent not authorized by subparagraph 1. for the purpose of~~
11 ~~reducing exposure to hurricane claims, the insurer must file a~~
12 ~~phaseout plan with the department at least 90 days prior to~~
13 ~~the effective date of the plan. In the plan, the insurer must~~
14 ~~demonstrate to the department that the insurer is protecting~~
15 ~~market stability and the interests of its policyholders. The~~
16 ~~plan may not be implemented unless it is approved by the~~
17 ~~department. In developing the plan, the insurer must consider~~
18 ~~policyholder longevity, the use of voluntary incentives to~~
19 ~~accomplish the reduction, and geographic distribution. The~~
20 ~~insurer must demonstrate that under the plan the insurer will~~
21 ~~not cancel or nonrenew more policies in the 12-month period~~
22 ~~than the largest number of similar policies the insurer~~
23 ~~canceled or nonrenewed for any reason in any 12-month period~~
24 ~~between August 24, 1989, and August 24, 1992.~~

25 ~~b. If the insurer considers the number of~~
26 ~~cancellations and nonrenewals under sub-subparagraph a. to be~~
27 ~~insufficient, the insurer may apply for approval of additional~~
28 ~~cancellations or nonrenewals on the basis of an unreasonable~~
29 ~~risk of insolvency. In evaluating a request under this~~
30 ~~sub-subparagraph, the department shall consider and shall~~
31 ~~require the insurer to provide information relevant to: the~~

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1 ~~insurer's size, market concentration, and general financial~~
2 ~~condition; the portion of the insurer's business in this state~~
3 ~~represented by personal lines residential property insurance;~~
4 ~~the reasonableness of assumptions with respect to size,~~
5 ~~frequency, severity, and path of hurricanes; the reinsurance~~
6 ~~available to the insurer and potential recoveries from the~~
7 ~~Florida Hurricane Catastrophe Fund; and the extent to which~~
8 ~~the insurer's assets have been voluntarily transferred by~~
9 ~~dividend or otherwise from the insurer to its stockholders,~~
10 ~~parent companies, or affiliated companies since June 1, 1996,~~
11 ~~or the date on which this section became law, whichever was~~
12 ~~later. In the implementation of exposure reductions under this~~
13 ~~sub-subparagraph, the department and the insurer shall~~
14 ~~consider such factors as policyholder longevity, the use of~~
15 ~~voluntary incentives to accomplish the exposure reduction, and~~
16 ~~geographic distribution.~~

17 ~~c. A policy shall not be counted as having been~~
18 ~~canceled or nonrenewed for purposes of this subsection if any~~
19 ~~of the following apply:~~

20 ~~(I) The policy was canceled or nonrenewed for an~~
21 ~~underwriting reason unrelated to the risk of loss from~~
22 ~~hurricane exposure, nonpayment of premium, or any other lawful~~
23 ~~reason that is unrelated to the risk of loss from hurricane~~
24 ~~exposure. The department shall consider the reason specified~~
25 ~~in the notice of cancellation or nonrenewal to be the reason~~
26 ~~for the cancellation or nonrenewal unless the department finds~~
27 ~~by a preponderance of the evidence that the stated reason was~~
28 ~~not the insurer's actual reason for the cancellation or~~
29 ~~nonrenewal.~~

30 ~~(II) The cancellation or nonrenewal was initiated by~~
31 ~~the insured.~~

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1 ~~(III) The insurer has offered the policyholder~~
2 ~~replacement or alternative coverage at approved rates, which~~
3 ~~coverage meets the requirements of the secondary mortgage~~
4 ~~market.~~

5 ~~d. In addition to any other cancellations or~~
6 ~~nonrenewals subject to the limitations in this subsection, a~~
7 ~~policy shall be considered as having been canceled or~~
8 ~~nonrenewed for purposes of this subsection if:~~

9 ~~(I) The insurer implements a rate increase under the~~
10 ~~use-and-file provisions of s. 627.062(2)(a)2., which rate~~
11 ~~increase exceeds 150 percent of the increase ultimately~~
12 ~~approved by the department, and, while the rate filing was~~
13 ~~pending, the policyholder voluntarily canceled or nonrenewed~~
14 ~~the policy and obtained replacement coverage from another~~
15 ~~insurer, including the Residential Property and Casualty Joint~~
16 ~~Underwriting Association; or~~

17 ~~(II) The insurer reduces the commission to an agent by~~
18 ~~more than 25 percent and the agent thereafter places the risk~~
19 ~~with another insurer, including the Residential Property and~~
20 ~~Casualty Joint Underwriting Association, or the Florida~~
21 ~~Windstorm Underwriting Association.~~

22 ~~e. The department must approve or disapprove an~~
23 ~~application for a waiver within 90 days after the department~~
24 ~~receives the application for waiver.~~

25 ~~3. In addition to the cancellations or nonrenewals~~
26 ~~authorized under this section, an insurer may cancel or~~
27 ~~nonrenew policies to the extent authorized by an exemption~~
28 ~~from or waiver of either the moratorium created by chapter~~
29 ~~93-401, Laws of Florida, or the moratorium phaseout under~~
30 ~~former s. 627.7013(2).~~

31 ~~4. Notwithstanding any provisions of this section to~~

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1 ~~the contrary, this section does not apply to any insurer that,~~
2 ~~prior to August 24, 1992, filed notice of such insurer's~~
3 ~~intent to discontinue writing insurance in this state under s.~~
4 ~~624.430, and for which a finding has been made by the~~
5 ~~department, the Division of Administrative Hearings of the~~
6 ~~Department of Management Services, or a court that such notice~~
7 ~~satisfied all requirements of s. 624.430. Nothing in this~~
8 ~~section shall be construed to authorize an insurer to withdraw~~
9 ~~from any line of property insurance business for the purpose~~
10 ~~of reducing exposure to risk of hurricane loss if such~~
11 ~~withdrawal commenced at any time that the moratorium under~~
12 ~~chapter 93-401, Laws of Florida, or the moratorium phaseout~~
13 ~~under this section is in effect.~~

14 ~~5. The following actions by an insurer do not~~
15 ~~constitute cancellations or nonrenewals for purposes of this~~
16 ~~subsection:~~

17 ~~a. The transfer of a risk from one admitted insurer to~~
18 ~~another admitted insurer, unless the terms of the new or~~
19 ~~replacement policy place the policyholder in default of a~~
20 ~~mortgage obligation.~~

21 ~~b. An increase in the hurricane deductible applicable~~
22 ~~to the policy, unless the new deductible places the~~
23 ~~policyholder in default of a mortgage obligation or the~~
24 ~~deductible exceeds the limits specified in s. 627.701.~~

25 ~~c. Any other lawful change in coverage that does not~~
26 ~~place the policyholder in default of a mortgage obligation.~~

27 ~~d. A cancellation or nonrenewal that is part of the~~
28 ~~same action as the removal of a policy including windstorm or~~
29 ~~hurricane coverage from the Residential Property and Casualty~~
30 ~~Joint Underwriting Association.~~

31 ~~6. In order to assure fair and effective enforcement~~

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1 ~~of this subsection, each insurer shall, no later than October~~
2 ~~1, 1996, report to the department the policy number of each~~
3 ~~policy subject to this subsection, arranged by county. The~~
4 ~~report shall include the policy number for each personal lines~~
5 ~~residential policy that was in force on June 1, 1996, or the~~
6 ~~date this section became law, whichever was later. Beginning~~
7 ~~October 1, 1996, each insurer shall also report, on a monthly~~
8 ~~basis, all cancellations and nonrenewals of policies included~~
9 ~~in such policy list and the reasons for the cancellations and~~
10 ~~nonrenewals.~~

11 ~~(c) The department may adopt rules to implement this~~
12 ~~subsection.~~

13 ~~(d) This section shall cease to operate at such time~~
14 ~~as the department determines that the insured value of all~~
15 ~~residential properties insured by the Florida Windstorm~~
16 ~~Underwriting Association and all properties insured by the~~
17 ~~Residential Property and Casualty Joint Underwriting~~
18 ~~Association under policies providing wind coverage, combined,~~
19 ~~has remained below \$25 billion for 3 consecutive months, based~~
20 ~~on exposure data reported to the department by the~~
21 ~~associations.~~

22 ~~(e) This subsection is repealed on June 1, 2001.~~

23 Section 22. Subsection (7) is added to section 631.57,
24 Florida Statutes, to read:

25 631.57 Powers and duties of the association.--

26 (7) Notwithstanding any other provision of law, the
27 net direct written premiums of medical malpractice insurance
28 are not subject to assessment under this section to cover
29 claims and administrative costs for the type of insurance
30 defined in s. 624.604.

31 Section 23. Effective June 1, 2001, section 627.7014,

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1 Florida Statutes, is repealed.

2

3

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

5 And the title is amended as follows:

6 On page 2, line 15, through page 3, line 8, delete
7 those lines

8

9 and insert:

10 amending s. 627.351, F.S.; specifying
11 membership of the board of the Florida
12 Windstorm Underwriting Association; revising
13 criteria for limited apportionment; specifying
14 duties with respect to pursuit of federal tax
15 exemptions and tax-free bond status; revising
16 conditions under which a risk is no longer
17 eligible for coverage from the association;
18 providing standards for certain payments to
19 agents of record of Florida Windstorm
20 Underwriting Association and Residential
21 Property and Casualty Joint Underwriting
22 Association policies; providing that risks in
23 certain areas are not eligible for new coverage
24 from the association; amending s. 627.3511,
25 F.S.; revising agent compensation in connection
26 with take-out plans; amending s. 627.7295,
27 F.S.; revising the exceptions to the
28 requirement that 2 months' premium be collected
29 by an insurer or agent for private passenger
30 motor vehicle insurance policies; amending s.
31 627.901, F.S.; revising the method of

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1 calculating interest or service charges for
2 premium financing by an insurance agent or
3 insurance agency; amending s. 626.9541, F.S.;
4 adding an exception to the prohibition against
5 free insurance; amending s. 631.57, F.S.;
6 exempting medical malpractice premiums from
7 assessments by the Florida Insurance Guaranty
8 Association due to insolvent property insurers;
9 amending s. 627.7013, F.S.; authorizing the
10 Governor and Cabinet to issue an order imposing
11 a moratorium on cancellation or nonrenewal of
12 residential property insurance policies;
13 deleting the provisions of the current
14 limitations on the number of residential
15 property insurance policies that may be
16 cancelled or nonrenewed; amending s. 631.57,
17 F.S.; exempting medical malpractice premiums
18 from assessments that are due to insolvent
19 property insurers; repealing s. 627.7014, F.S.;
20 repealing the current limitations on the number
21 of commercial residential property insurance
22 policies that may not be cancelled or
23 nonrenewed;

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