

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

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

11 Representative(s) Ryan, Alexander, and Waters offered the  
12 following:

**Amendment to Amendment (823559) (with title amendment)**

On page 1, between lines 16 and 17 of the amendment

insert:

Section 1. Effective July 1, 2001, paragraph (b) of subsection (2) and paragraph (c) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (f) is added to subsection (2) of said section, to read:

627.351 Insurance risk apportionment plans.--

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a

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1 reasonable plan or plans for the equitable apportionment or  
2 sharing among such insurers of windstorm coverage, which may  
3 include formation of an association for this purpose. As used  
4 in this subsection, the term "property insurance" means  
5 insurance on real or personal property, as defined in s.  
6 624.604, including insurance for fire, industrial fire, allied  
7 lines, farmowners multiperil, homeowners' multiperil,  
8 commercial multiperil, and mobile homes, and including  
9 liability coverages on all such insurance, but excluding  
10 inland marine as defined in s. 624.607(3) and excluding  
11 vehicle insurance as defined in s. 624.605(1)(a) other than  
12 insurance on mobile homes used as permanent dwellings. The  
13 department shall adopt rules that provide a formula for the  
14 recovery and repayment of any deferred assessments.

15         1. For the purpose of this section, properties  
16 eligible for such windstorm coverage are defined as dwellings,  
17 buildings, and other structures, including mobile homes which  
18 are used as dwellings and which are tied down in compliance  
19 with mobile home tie-down requirements prescribed by the  
20 Department of Highway Safety and Motor Vehicles pursuant to s.  
21 320.8325, and the contents of all such properties. An  
22 applicant or policyholder is eligible for coverage only if an  
23 offer of coverage cannot be obtained by or for the applicant  
24 or policyholder from an admitted insurer at approved rates.

25         2.a.(I) All insurers required to be members of such  
26 association shall participate in its writings, expenses, and  
27 losses. Surplus of the association shall be retained for the  
28 payment of claims and shall not be distributed to the member  
29 insurers. Such participation by member insurers shall be in  
30 the proportion that the net direct premiums of each member  
31 insurer written for property insurance in this state during

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

23 (II) The plan of operation shall provide for a board  
24 of directors consisting of the members of the State Board of  
25 Administration, which shall oversee the operations of the  
26 association and shall carry out any other duties provided by  
27 law. The board shall appoint an advisory council consisting  
28 of an actuary, a meteorologist, an engineer, a representative  
29 of insurers, a representative of insurance agents, and three  
30 consumers who shall also be representatives of other  
31 professions and industries, to provide the board with

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1 information and advice in connection with its duties under  
2 this section. Members of the advisory council shall be  
3 eligible for per diem and travel expenses under s. 112.061.  
4 The association shall not be considered a state agency and its  
5 obligations shall not be considered obligations of the state  
6 consisting of the Insurance Consumer Advocate appointed under  
7 s. 627.0613, 1 consumer representative appointed by the  
8 Insurance Commissioner, 1 consumer representative appointed by  
9 the Governor, and 12 additional members appointed as specified  
10 in the plan of operation. One of the 12 additional members  
11 shall be elected by the domestic companies of this state on  
12 the basis of cumulative weighted voting based on the net  
13 direct premiums of domestic companies in this state. Nothing  
14 in the 1997 amendments to this paragraph terminates the  
15 existing board or the terms of any members of the board.

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

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

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

29 (VI) The plan of operation may also provide for the  
30 award of credits, for a period not to exceed 3 years, from a  
31 regular assessment pursuant to sub-sub-subparagraph d.(I) or

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

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

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

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

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

31           (III) Upon a determination by the board of directors

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

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

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

30 (V) If regular deficit assessments are made under  
31 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by

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

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

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

29           3. The plan shall also provide that any member with a  
30 surplus as to policyholders of ~~\$25~~<sup>\$20</sup> million or less writing  
31 25 percent or more of its total countrywide property insurance

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1 premiums in this state may petition the department, within the  
2 first 90 days of each calendar year, to qualify as a limited  
3 apportionment company. The apportionment of such a member  
4 company in any calendar year for which it is qualified shall  
5 not exceed its gross participation, which shall not be  
6 affected by the formula for voluntary writings. In no event  
7 shall a limited apportionment company be required to  
8 participate in any apportionment of losses pursuant to  
9 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)  
10 in the aggregate which exceeds \$50 million after payment of  
11 available plan funds in any calendar year. However, a limited  
12 apportionment company shall collect from its policyholders any  
13 emergency assessment imposed under sub-sub-subparagraph  
14 2.d.(III). The plan shall provide that, if the department  
15 determines that any regular assessment will result in an  
16 impairment of the surplus of a limited apportionment company,  
17 the department may direct that all or part of such assessment  
18 be deferred. However, there shall be no limitation or  
19 deferment of an emergency assessment to be collected from  
20 policyholders under sub-sub-subparagraph 2.d.(III).

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

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1 assessments set forth in sub-sub-subparagraph 2.d.(I) or  
2 sub-sub-subparagraph 2.d.(II).

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

7           b.(I) Subject to the provisions of  
8 sub-sub-subparagraph (II), all rate filings under this  
9 subsection relating to coverage for windstorm losses must  
10 reflect historical insurance data. When using a computer model  
11 in making a rate filing under this subsection, the association  
12 may use only a computer model which is based upon standards  
13 and guidelines developed or established by the Florida  
14 Commission on Hurricane Loss Projection Methodology under s.  
15 627.0628. Consideration of historical insurance data and the  
16 use of computer models shall be consistent with applicable  
17 Standards of Practice of the American Academy of Actuaries.

18 The association may require arbitration of a rate filing under  
19 s. 627.062(6).

20           ~~(II) It is the intent of the Legislature that the~~  
21 Rates for coverage provided by the association must be  
22 actuarially sound and not competitive with approved rates  
23 charged in the admitted voluntary market such that the  
24 association functions as a residual market mechanism to  
25 provide insurance only when the insurance cannot be procured  
26 in the voluntary market. The plan of operation shall provide  
27 a mechanism to assure that the average base rates for each  
28 line of business charged by the association for hurricane  
29 coverage for each unmitigated risk in a particular county  
30 shall be no lower than the highest department-approved rate  
31 within the association's eligible area for hurricane coverage

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1 in the voluntary market for each line of business in such  
2 county, among the 20 largest insurers actually writing such  
3 coverage in such county, beginning no later than January 1,  
4 1999, the rates charged by the association for each line of  
5 business are reflective of approved rates in the voluntary  
6 market for hurricane coverage for each line of business in the  
7 various areas eligible for association coverage.

8 (III) Notwithstanding any other provision of law,  
9 windstorm rates under this subsection previously adjudicated  
10 for use and in effect as of the effective date of this act,  
11 and the related mitigation credit program, shall apply to  
12 rates of the association and shall continue in effect until  
13 such rates are fully phased in. The rate for a particular  
14 group or class of policies may be increased only after the  
15 full phase-in of the current rate plan as to that group or  
16 class of policies.

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

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1 appropriate.

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

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

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

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

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

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1 not apply to actions under this sub-subparagraph.

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

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

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

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

27  
28 If the new or producing agent is unwilling or unable to accept  
29 appointment, the new insurer shall pay the agent in accordance  
30 with sub-sub-subparagraph (I).

31 h. When the association enters into a contractual

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1 agreement for a take-out plan, the producing agent of record  
2 of the association policy is entitled to retain any unearned  
3 commission on the policy, and the insurer shall either:

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

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

14  
15 If the new or producing agent is unwilling or unable to accept  
16 appointment, the new insurer shall pay the agent in accordance  
17 with sub-sub-subparagraph(I).

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

28 b. Any entity created under this subsection, or any  
29 entity formed for the purposes of this subsection, may sue and  
30 be sued, may borrow money; issue bonds, notes, or debt  
31 instruments; pledge or sell assessments, market equalization

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

30 c. In recognition of s. 10, Art. I of the State  
31 Constitution, prohibiting the impairment of obligations of

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1 contracts, it is the intent of the Legislature that no action  
2 be taken whose purpose is to impair any bond indenture or  
3 financing agreement or any revenue source committed by  
4 contract to such bond or other indebtedness issued or incurred  
5 by the association or any other entity created under this  
6 subsection.

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

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

29           9. Notwithstanding any other provision of law:

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

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

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

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

27           d. As used in this subsection, the term "financing  
28 documents" means any agreement, instrument, or other document  
29 now existing or hereafter created evidencing any bonds or  
30 other indebtedness of the association or pursuant to which any  
31 such bonds or other indebtedness has been or may be issued and

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

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

25 f. There shall be no liability on the part of, and no  
26 cause of action of any nature shall arise against, any member  
27 insurer or its agents or employees, agents or employees of the  
28 association, members of the board of directors of the  
29 association, or the department or its representatives, for any  
30 action taken by them in the performance of their duties or  
31 responsibilities under this subsection. Such immunity does not

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1 apply to actions for breach of any contract or agreement  
2 pertaining to insurance, or any willful tort.

3 10. It is the intent of the Legislature that the  
4 association vigorously pursue an exemption from federal income  
5 taxation and tax-free status for bonds issued by or on behalf  
6 of the association. In furtherance of this intent:

7 a. The association shall retain such expert tax  
8 counsel and bond counsel as necessary and expend such funds as  
9 necessary to pursue such negotiations or litigation as may  
10 lead to favorable tax rulings.

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

17 (f)1. In recognition of the fact that the association  
18 created under this subsection furthers an essentially  
19 governmental purpose, the association is exempt from premium  
20 taxes effective July 1, 2002.

21 2. Begining with the 2002-2003 fiscal year, and except  
22 for years in which the association is collecting regular or  
23 emergency assessments under this subsection, the association  
24 shall annually transfer the sum of \$5 million to the General  
25 Revenue Fund, which moneys shall be appropriated for hurricane  
26 loss mitigation purposes as specified in s. 215.555(7)(c).  
27 Such appropriations are in addition to any appropriations  
28 required or authorized by s. 215.555(7)(c).

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

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

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

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

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

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

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

31           d. Basic personal lines policy forms without wind

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1 coverage, which are the same as the policies described in  
2 sub-subparagraph c. except that they do not include wind  
3 coverage.

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

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

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

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

10 4. Must require that the association operate subject  
11 to the supervision and approval of a board of governors  
12 consisting of the members of the State Board of

13 Administration consisting of 13 individuals, including 1 who  
14 is elected as chair. The board shall consist of:

15 a. ~~The insurance consumer advocate appointed under s.~~  
16 ~~627.0613.~~

17 b. ~~Five members designated by the insurance industry.~~

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

27 d. ~~Two representatives of the insurance industry~~  
28 ~~appointed by the Insurance Commissioner. Of the two insurance~~  
29 ~~industry representatives appointed by the Insurance~~  
30 ~~Commissioner, at least one must be an individual who is a~~  
31 ~~minority person as defined in s. 288.703(3).~~

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

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

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

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

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

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

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1  
2 If the new or producing agent is unwilling or unable to accept  
3 appointment, the new insurer shall pay the agent in accordance  
4 with sub-sub-sub-subparagraph (A).

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

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

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

19  
20 If the new or producing agent is unwilling or unable to accept  
21 appointment, the new insurer shall pay the agent in accordance  
22 with sub-sub-sub-subparagraph (A).~~If the risk accepts an~~  
23 ~~offer of coverage through the market assistance plan or an~~  
24 ~~offer of coverage through a mechanism established by the~~  
25 ~~association before a policy is issued to the risk by the~~  
26 ~~association or during the first 30 days of coverage by the~~  
27 ~~association, and the producing agent who submitted the~~  
28 ~~application to the plan or to the association is not currently~~  
29 ~~appointed by the insurer, the insurer shall either appoint the~~  
30 ~~agent to service the risk or, if the insurer places the~~  
31 ~~coverage through a new agent, require the new agent who then~~

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

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

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

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

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1 commission of the association; or

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

7  
8 If the new or producing agent is unwilling or unable to accept  
9 appointment, the new insurer shall pay the agent in accordance  
10 with sub-sub-sub-subparagraph (A).

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

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

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

25  
26 If the new or producing agent is unwilling or unable to accept  
27 appointment, the new insurer shall pay the agent in accordance  
28 with sub-sub-sub-subparagraph (A). ~~If the risk accepts an~~  
29 ~~offer of coverage through the market assistance plan or an~~  
30 ~~offer of coverage through a mechanism established by the~~  
31 ~~association before a policy is issued to the risk by the~~

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

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

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

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

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

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1           a. Whether the likelihood of a loss for the individual  
2 risk is substantially higher than for other risks of the same  
3 class; and

4           b. Whether the uncertainty associated with the  
5 individual risk is such that an appropriate premium cannot be  
6 determined.

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

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

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

30           11. The policies issued by the association must  
31 provide that, if the association or the market assistance plan

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

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

25           13. May establish, subject to approval by the  
26 department, different eligibility requirements and operational  
27 procedures for any line or type of coverage for any specified  
28 county or area if the board determines that such changes to  
29 the eligibility requirements and operational procedures are  
30 justified due to the voluntary market being sufficiently  
31 stable and competitive in such area or for such line or type

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

10 Section 2. Subsection (4) of section 627.3511, Florida  
11 Statutes, is amended to read:

12 627.3511 Depopulation of Residential Property and  
13 Casualty Joint Underwriting Association.--

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

20 (a) Pay to the producing agent of record of the  
21 association policy, for the first year, an amount that is the  
22 greater of the insurer's usual and customary commission for  
23 the type of policy written or a fee equal to the usual and  
24 customary commission of the association ~~an amount equal to the~~  
25 ~~insurer's usual and customary commission for the type of~~  
26 ~~policy written if the term of the association policy was in~~  
27 ~~excess of 6 months, or one-half of such usual and customary~~  
28 ~~commission if the term of the association policy was 6 months~~  
29 ~~or less; 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 paragraph (a).The insurer need not take any further  
8 action if the offer is rejected. This subsection does not  
9 apply to any reciprocal interinsurance exchange, nonprofit  
10 federation, or any subsidiary or affiliate of such  
11 organization. This subsection does not apply if the agent is  
12 also the agent of record on the new coverage. The requirement  
13 of this subsection that the producing agent of record is  
14 entitled to retain the unearned commission on an association  
15 policy does not apply to a policy for which coverage has been  
16 provided in the association for 30 days or less or for which a  
17 cancellation notice has been issued pursuant to s.  
18 627.351(6)(c)11. during the first 30 days of coverage.

19 Section 3. Subsection (2) of section 627.7013, Florida  
20 Statutes is amended to read:

21 627.7013 Orderly markets for personal lines  
22 residential property insurance.--

23 (2) MORATORIUM COMPLETION.--

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

28 (b) The following restrictions apply only to  
29 cancellation or nonrenewal of personal lines residential  
30 property insurance policies that were in force on June 1,  
31 1996, or the date on which this section became law, whichever

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1 was later.

2           1. In any 12-month period, an insurer may not cancel  
3 or nonrenew more than 5 percent of such insurer's total number  
4 of homeowner's policies, 5 percent of such insurer's total  
5 number of mobile home owner's policies, or 5 percent of such  
6 insurer's total number of personal lines residential policies  
7 of all types and classes in the state for the purpose of  
8 reducing the insurer's exposure to hurricane claims and may  
9 not, with respect to any county, cancel or nonrenew more than  
10 10 percent of its total number of homeowner's policies, 10  
11 percent of its total number of mobile home owner's policies,  
12 or 10 percent of its total number of personal lines  
13 residential policies of all types and classes in the county  
14 for the purpose of reducing the insurer's exposure to  
15 hurricane claims. This subparagraph does not prohibit any  
16 cancellations or nonrenewals of such policies for any other  
17 lawful reason unrelated to the risk of loss from hurricane  
18 exposure.

19           2.a. If, for any 12-month period, an insurer proposes  
20 to cancel or nonrenew personal lines residential policies to  
21 an extent not authorized by subparagraph 1. for the purpose of  
22 reducing exposure to hurricane claims, the insurer must file a  
23 phaseout plan with the department at least 90 days prior to  
24 the effective date of the plan. In the plan, the insurer must  
25 demonstrate to the department that the insurer is protecting  
26 market stability and the interests of its policyholders. The  
27 plan may not be implemented unless it is approved by the  
28 department. In developing the plan, the insurer must consider  
29 policyholder longevity, the use of voluntary incentives to  
30 accomplish the reduction, and geographic distribution. The  
31 insurer must demonstrate that under the plan the insurer will

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1 not cancel or nonrenew more policies in the 12-month period  
2 than the largest number of similar policies the insurer  
3 canceled or nonrenewed for any reason in any 12-month period  
4 between August 24, 1989, and August 24, 1992.

5       b. If the insurer considers the number of  
6 cancellations and nonrenewals under sub-subparagraph a. to be  
7 insufficient, the insurer may apply for approval of additional  
8 cancellations or nonrenewals on the basis of an unreasonable  
9 risk of insolvency. In evaluating a request under this  
10 sub-subparagraph, the department shall consider and shall  
11 require the insurer to provide information relevant to: the  
12 insurer's size, market concentration, and general financial  
13 condition; the portion of the insurer's business in this state  
14 represented by personal lines residential property insurance;  
15 the reasonableness of assumptions with respect to size,  
16 frequency, severity, and path of hurricanes; the reinsurance  
17 available to the insurer and potential recoveries from the  
18 Florida Hurricane Catastrophe Fund; and the extent to which  
19 the insurer's assets have been voluntarily transferred by  
20 dividend or otherwise from the insurer to its stockholders,  
21 parent companies, or affiliated companies since June 1, 1996,  
22 or the date on which this section became law, whichever was  
23 later. In the implementation of exposure reductions under this  
24 sub-subparagraph, the department and the insurer shall  
25 consider such factors as policyholder longevity, the use of  
26 voluntary incentives to accomplish the exposure reduction, and  
27 geographic distribution.

28       c. A policy shall not be counted as having been  
29 canceled or nonrenewed for purposes of this subsection if any  
30 of the following apply:

31       (I) The policy was canceled or nonrenewed for an

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1 underwriting reason unrelated to the risk of loss from  
2 hurricane exposure, nonpayment of premium, or any other lawful  
3 reason that is unrelated to the risk of loss from hurricane  
4 exposure. The department shall consider the reason specified  
5 in the notice of cancellation or nonrenewal to be the reason  
6 for the cancellation or nonrenewal unless the department finds  
7 by a preponderance of the evidence that the stated reason was  
8 not the insurer's actual reason for the cancellation or  
9 nonrenewal.

10 (II) The cancellation or nonrenewal was initiated by  
11 the insured.

12 (III) The insurer has offered the policyholder  
13 replacement or alternative coverage at approved rates, which  
14 coverage meets the requirements of the secondary mortgage  
15 market.

16 d. In addition to any other cancellations or  
17 nonrenewals subject to the limitations in this subsection, a  
18 policy shall be considered as having been canceled or  
19 nonrenewed for purposes of this subsection if:

20 (I) The insurer implements a rate increase under the  
21 use-and-file provisions of s. 627.062(2)(a)2., which rate  
22 increase exceeds 150 percent of the increase ultimately  
23 approved by the department, and, while the rate filing was  
24 pending, the policyholder voluntarily canceled or nonrenewed  
25 the policy and obtained replacement coverage from another  
26 insurer, including the Residential Property and Casualty Joint  
27 Underwriting Association; or

28 (II) The insurer reduces the commission to an agent by  
29 more than 25 percent and the agent thereafter places the risk  
30 with another insurer, including the Residential Property and  
31 Casualty Joint Underwriting Association, or the Florida

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1 Windstorm Underwriting Association.

2 e. The department must approve or disapprove an  
3 application for a waiver within 90 days after the department  
4 receives the application for waiver.

5 3. In addition to the cancellations or nonrenewals  
6 authorized under this section, an insurer may cancel or  
7 nonrenew policies to the extent authorized by an exemption  
8 from or waiver of either the moratorium created by chapter  
9 93-401, Laws of Florida, or the moratorium phaseout under  
10 former s. 627.7013(2).

11 4. Notwithstanding any provisions of this section to  
12 the contrary, this section does not apply to any insurer that,  
13 prior to August 24, 1992, filed notice of such insurer's  
14 intent to discontinue writing insurance in this state under s.  
15 624.430, and for which a finding has been made by the  
16 department, the Division of Administrative Hearings of the  
17 Department of Management Services, or a court that such notice  
18 satisfied all requirements of s. 624.430. Nothing in this  
19 section shall be construed to authorize an insurer to withdraw  
20 from any line of property insurance business for the purpose  
21 of reducing exposure to risk of hurricane loss if such  
22 withdrawal commenced at any time that the moratorium under  
23 chapter 93-401, Laws of Florida, or the moratorium phaseout  
24 under this section is in effect.

25 5. The following actions by an insurer do not  
26 constitute cancellations or nonrenewals for purposes of this  
27 subsection:

28 a. The transfer of a risk from one admitted insurer to  
29 another admitted insurer, unless the terms of the new or  
30 replacement policy place the policyholder in default of a  
31 mortgage obligation.

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1           b. An increase in the hurricane deductible applicable  
2 to the policy, unless the new deductible places the  
3 policyholder in default of a mortgage obligation or the  
4 deductible exceeds the limits specified in s. 627.701.

5           c. Any other lawful change in coverage that does not  
6 place the policyholder in default of a mortgage obligation.

7           d. A cancellation or nonrenewal that is part of the  
8 same action as the removal of a policy including windstorm or  
9 hurricane coverage from the Residential Property and Casualty  
10 Joint Underwriting Association.

11           6. In order to assure fair and effective enforcement  
12 of this subsection, each insurer shall, no later than October  
13 1, 1996, report to the department the policy number of each  
14 policy subject to this subsection, arranged by county. The  
15 report shall include the policy number for each personal lines  
16 residential policy that was in force on June 1, 1996, or the  
17 date this section became law, whichever was later. Beginning  
18 October 1, 1996, each insurer shall also report, on a monthly  
19 basis, all cancellations and nonrenewals of policies included  
20 in such policy list and the reasons for the cancellations and  
21 nonrenewals.

22           (c) The department may adopt rules to implement this  
23 subsection.

24           (d) This section shall cease to operate at such time  
25 as the department determines that the insured value of all  
26 residential properties insured by the Florida Windstorm  
27 Underwriting Association and all properties insured by the  
28 Residential Property and Casualty Joint Underwriting  
29 Association under policies providing wind coverage, combined,  
30 has remained below \$25 billion for 3 consecutive months, based  
31 on exposure data reported to the department by the

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1 associations.

2 (e) This subsection is repealed on June 1, 2004 ~~2001~~.

3 Section 4. Subsections (1) and (4) of section  
4 624.4072, Florida Statutes, are amended to read:

5 624.4072 Minority-owned property and casualty  
6 insurers; limited exemption for taxation and assessments.--

7 (1) A minority business that is at least 51 percent  
8 owned by minority persons, as defined in s. 288.703(3),  
9 initially issued a certificate of authority in this state as  
10 an authorized insurer after May 1, 1998, to write property and  
11 casualty insurance shall be exempt, for a period not to exceed  
12 10 ~~5~~ years from the date of receiving its certificate of  
13 authority, from the following taxes and assessments:

14 (a) Taxes imposed under ss. 175.101, 185.08, and  
15 624.509;

16 (b) Assessments by the Florida Residential Property  
17 and Casualty Joint Underwriting Association or by the Florida  
18 Windstorm Underwriting Association, as provided under s.  
19 627.351, except for emergency assessments collected from  
20 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and  
21 (6)(b)3.d. Any such insurer shall be a member insurer of the  
22 Florida Windstorm Underwriting Association and the Florida  
23 Residential Property and Casualty Joint Underwriting  
24 Association. The premiums of such insurer shall be included in  
25 determining, for the Florida Windstorm Underwriting  
26 Association, the aggregate statewide direct written premium  
27 for property insurance and in determining, for the Florida  
28 Residential Property and Casualty Joint Underwriting  
29 Association, the aggregate statewide direct written premium  
30 for the subject lines of business for all member insurers.

31 (4) This section is repealed effective December 31,

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1 ~~2010 July 1, 2003~~, and the tax and assessment exemptions  
2 authorized by this section shall terminate on such date.

3  
4  
5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 On page 16, line 28, of the amendment  
8 remove: "the Department of Insurance"

9  
10 and insert in lieu thereof:

11 insurance; amending s. 627.351, F.S.;  
12 specifying membership of the boards of the  
13 Florida Windstorm Underwriting Association and  
14 the Residential Property and Casualty Joint  
15 Underwriting Association; revising criteria for  
16 limited apportionment; providing rate  
17 standards; specifying duties with respect to  
18 pursuit of federal tax exemptions and tax-free  
19 bond status; providing premium tax exemption;  
20 providing for appropriation of funds for  
21 hurricane loss mitigation purposes; providing  
22 standards for certain payments to agents of  
23 record of Florida Winstorm Underwriting  
24 Association and Residential Property and  
25 Casualty Joint Underwriting Association  
26 policies; amending s. 627.3511, F.S.; revising  
27 agent compensation in connection with take-out  
28 plans; amending s. 627.7013, F.S.; delaying the  
29 repeal date of the moratorium on  
30 hurricane-related cancellation or nonrenewal of  
31 property insurance policies; amending s.

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624.4072, F.S.; increasing a period of  
exemption from certain taxes and assessments  
for certain minority businesses; extending a  
future repeal;