

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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4		.	

ORIGINAL STAMP BELOW

The Committee on Insurance offered the following:

Amendment (with title amendment)

remove from the bill: everything after the enacting clause,
and insert in lieu thereof:

Section 1. Subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS RESIDENTIAL PROPERTY INSURANCE CORPORATION AND CASUALTY JOINT UNDERWRITING ASSOCIATION.--

(a)1. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in ensuring that property in the state is insured so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare; to the economy of the state; and to the

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1 revenues of the state and local governments needed to provide
2 for the public welfare. It is necessary, therefore, to
3 provide, and to facilitate the provision of, property
4 insurance to applicants who are in good faith entitled to
5 procure insurance through the voluntary market but are unable
6 to do so. The Legislature intends by this subsection that such
7 insurance be provided and continued, as long as necessary,
8 through an entity organized to achieve efficiencies and
9 economies, all toward the achievement of the foregoing public
10 purposes.

11 2. The Residential Property and Casualty Joint
12 Underwriting Association originally created by this statute
13 shall be known, as of January 1, 2002, as the Citizens
14 Property Insurance Corporation. The corporation shall provide
15 insurance and coinsurance for residential and commercial

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

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1 lines residential coverage, which consists of the type of
2 coverage provided by condominium association, apartment
3 building, and similar policies.

4 (b)1. All insurers authorized to write one or more
5 subject lines of business in this state are subject to
6 assessment by the corporation, and, for the purposes of this
7 subsection, shall be referred to collectively as "assessable
8 insurers", ~~other than underwriting associations or other~~
9 ~~entities created under this section, must participate in and~~
10 ~~be members of the Residential Property and Casualty Joint~~
11 ~~Underwriting Association.~~ Insurers writing one or more subject
12 lines of business in this state pursuant to part VIII of
13 chapter 626 are not assessable insurers but insureds who
14 procure one or more subject lines of business in this state
15 pursuant to part VIII of chapter 626 shall be subject to
16 assessment by the corporation and shall be referred to
17 collectively as "assessable insureds." An authorized insurer's
18 assessment liability ~~A member's participation~~ shall begin on
19 the first day of the calendar year following the year in which
20 the insurer ~~member~~ was issued a certificate of authority to
21 transact insurance for subject lines of business in this state
22 and shall terminate 1 year after the end of the first calendar
23 year during which the insurer ~~member~~ no longer holds a
24 certificate of authority to transact insurance for subject
25 lines of business in this state.

26 2.a. All revenues, assets, liabilities, losses, and
27 expenses of the corporation ~~association~~ shall be divided into
28 three ~~two~~ separate accounts as follows:

29 (I) A personal lines account for personal residential
30 policies issued by the corporation or issued by the
31 Residential Property and Casualty Joint Underwriting

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1 Association and renewed by the corporation on risks that are
2 not located in areas eligible for coverage in the Florida
3 Windstorm Underwriting Association as those areas were defined
4 on January 1, 2001;

5 (II) A commercial lines account for commercial
6 residential policies issued by the corporation or issued by
7 the Residential Property and Casualty Joint Underwriting
8 Association and renewed by the corporation on risks that are
9 not located in areas eligible for coverage in the Florida
10 Windstorm Underwriting Association as those areas were defined
11 on January 1, 2001; and

12 (III) A high-risk account for personal residential
13 policies and commercial residential and commercial
14 nonresidential property policies issued by the corporation or
15 transferred to the corporation on risks that are located in
16 areas eligible for coverage in the Florida Windstorm
17 Underwriting Association as those areas were defined on
18 January 1, 2001. The high-risk account shall also include
19 coinsurance of eligible risks under subparagraph (c)2.

20 b. The three separate accounts shall be maintained as
21 long as financing obligations entered into by the Florida
22 Windstorm Underwriting Association or Residential Property and
23 Casualty Joint Underwriting Association are outstanding, in
24 accordance with the terms of the corresponding financing
25 documents. At such time as such financing obligations are no
26 longer outstanding, in accordance with the terms of the
27 corresponding financing documents, the corporation may use a
28 single account for all revenues, assets, liabilities, losses,
29 and expenses of the corporation, one of which is for personal
30 lines residential coverages and the other of which is for
31 commercial lines residential coverages.

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1 c. Revenues, assets, liabilities, losses, and expenses
2 not attributable to particular accounts ~~coverages~~ shall be
3 prorated among ~~between~~ the accounts.

4 d. The Legislature finds that the revenues of the
5 corporation are revenues that are necessary to meet the
6 requirements set forth in documents authorizing the issuance
7 of bonds under this subsection.

8 e. No part of the income of the corporation may inure
9 to the benefit of any private person.

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

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

18 b. When the deficit incurred in a particular calendar
19 year exceeds 10 percent of the aggregate statewide direct
20 written premium for the subject lines of business for the
21 prior calendar year ~~for all member insurers~~, the corporation
22 association shall levy regular assessments ~~an assessment~~ on
23 assessable member insurers under paragraph (g) and on
24 assessable insureds in an amount equal to the greater of 10
25 percent of the deficit or 10 percent of the aggregate
26 statewide direct written premium for the subject lines of
27 business for the prior calendar year ~~for all member insurers~~.
28 Any remaining deficit shall be recovered through emergency
29 assessments under sub-subparagraph d.

30 c. Each assessable member insurer's share of the
31 amount being assessed ~~total assessment~~ under sub-subparagraph

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1 a. or sub-subparagraph b. shall be in the proportion that the
2 assessable member insurer's direct written premium for the
3 subject lines of business for the year preceding the
4 assessment bears to the aggregate statewide direct written
5 premium for the subject lines of business for that year ~~for~~
6 ~~all member insurers~~. Assessment percentage applicable to each
7 assessable insured shall be the ratio of the amount being
8 assessed under sub-subparagraph a. or sub-subparagraph b. to
9 the aggregate statewide direct written premium for the subject
10 lines of business for the prior year. Assessments levied by
11 the corporation on assessable insurers under sub-subparagraphs
12 a. and b. shall be paid as required by the corporation's plan
13 of operation and paragraph (g). Assessments levied by the
14 corporation on assessable insureds under sub-subparagraphs a.
15 and b. shall be collected by the surplus lines agent at the
16 time the surplus lines agent collects the surplus lines tax
17 required by s. 626.932 and shall be paid to the Florida
18 Surplus Lines Service Office at the time the surplus lines
19 agent pays the surplus lines tax to the Florida Surplus Lines
20 Service Office. Upon receipt of regular assessments from
21 surplus lines agents, the Florida Surplus Lines Service Office
22 shall transfer such assessments directly to the corporation as
23 determined by the corporation.

24 d. Upon a determination by the board of governors that
25 a deficit in an account exceeds the amount that will be
26 recovered through regular assessments ~~on member insurers~~ under
27 sub-subparagraph a. or sub-subparagraph b., the board shall
28 levy, after verification by the department, emergency
29 assessments to be collected by assessable member insurers and
30 the corporation and collected from assessable insureds by
31 ~~underwriting associations created under this section which~~

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1 ~~write subject lines of business~~ upon issuance or renewal of
2 policies for subject lines of business, excluding National
3 Flood Insurance policies, ~~in the year or years following levy~~
4 ~~of the regular assessments~~. The amount of the emergency
5 assessment collected in a particular year shall be a uniform
6 percentage of that year's direct written premium for subject
7 lines of business ~~for all member insurers~~ and all accounts of
8 the corporation underwriting associations, excluding National
9 Flood Insurance Program policy premiums, as annually
10 determined by the board and verified by the department. The
11 department shall verify the arithmetic calculations involved
12 in the board's determination within 30 days after receipt of
13 the information on which the determination was based.
14 Notwithstanding any other provision of law, the corporation
15 and each assessable member insurer that ~~and each underwriting~~
16 ~~association created under this section which~~ writes subject
17 lines of business shall collect emergency assessments from its
18 policyholders without such obligation being affected by any
19 credit, limitation, exemption, or deferment. Emergency
20 assessments levied by the corporation on assessable insureds
21 shall be collected by the surplus lines agent at the time the
22 surplus lines agent collects the surplus lines tax required by
23 s. 626.932 and shall be paid to the Florida Surplus Lines
24 Service Office at the time the surplus lines agent pays the
25 surplus lines tax to the Florida Surplus Lines Service Office.
26 The emergency assessments so collected shall be transferred
27 directly to the corporation ~~association~~ on a periodic basis as
28 determined by the corporation ~~association~~. The aggregate
29 amount of emergency assessments levied under this
30 sub-subparagraph in any calendar year may not exceed the
31 greater of 10 percent of the amount needed to cover the

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

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

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1 assessments under sub-subparagraph d. shall continue as long
2 as any bonds issued or other indebtedness incurred with
3 respect to a deficit for which the assessment was imposed
4 remain outstanding, unless adequate provision has been made
5 for the payment of such bonds or other indebtedness pursuant
6 to the documents governing such bonds or other indebtedness.

7 f. As used in this subsection, the term "subject lines
8 of business" means insurance written by assessable insurers or
9 procured by assessable insureds on real or personal property,
10 as defined in s. 624.604, including insurance for fire,
11 industrial fire, allied lines, farmowners multiperil,
12 homeowners multiperil, commercial multiperil, and mobile
13 homes, including liability coverage on all such insurance but
14 excluding inland marine as defined in s. 624.607(3) and
15 excluding vehicle insurance as defined in s. 624.605(1) other
16 than insurance on mobile homes used as permanent dwellings.

17 g. The Florida Surplus Lines Service Office shall
18 determine annually the aggregate statewide written premium in
19 subject lines of business procured by assessable insureds and
20 shall report such information to the corporation in such form
21 and at such time as the corporation specifies to ensure that
22 the corporation can meet the requirements of this subsection
23 and the corporation's financing obligations.

24 h. The Florida Surplus Lines Service Office shall
25 verify the proper application by surplus lines agents of
26 assessment percentages for regular assessments and emergency
27 assessments levied under this subparagraph on assessable
28 insureds and shall assist the corporation in ensuring the
29 accurate, timely collection and payment of such assessments by
30 surplus lines agents as required by the corporation, with
31 ~~respect to the personal lines account, any personal lines~~

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1 ~~policy defined in s. 627.4025, and means, with respect to the~~
2 ~~commercial lines account, all commercial property and~~
3 ~~commercial fire insurance.~~

4 (c) The plan of operation of the corporation
5 association:

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

17 ~~1.2.~~ Must provide for adoption of residential property
18 and casualty insurance policy forms and commercial residential
19 and nonresidential property insurance forms, which forms must
20 be approved by the department prior to use. The corporation
21 association shall adopt the following policy forms:

22 a. Standard personal lines policy forms ~~including wind~~
23 ~~coverage~~, which are multiperil policies providing what is
24 generally considered to be full coverage of a residential
25 property similar to the coverage provided under an HO-2, HO-3,
26 HO-4, or HO-6 policy.

27 ~~b. Standard personal lines policy forms without wind~~
28 ~~coverage, which are the same as the policies described in~~
29 ~~sub-subparagraph a. except that they do not include wind~~
30 ~~coverage.~~

31 ~~b.c.~~ Basic personal lines policy forms ~~including wind~~

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1 coverage, which are policies similar to an HO-8 policy or a
2 dwelling fire policy that provide coverage meeting the
3 requirements of the secondary mortgage market, but which
4 coverage is more limited than the coverage under a standard
5 policy.

6 ~~d. Basic personal lines policy forms without wind~~
7 ~~coverage, which are the same as the policies described in~~
8 ~~sub-subparagraph c. except they do not include wind coverage.~~

9 ~~c.e. Commercial lines residential policy forms~~
10 ~~including wind coverage that are generally similar to the~~
11 ~~basic perils of full coverage obtainable for commercial~~
12 ~~residential structures in the admitted voluntary market.~~

13 d. Commercial nonresidential property insurance forms
14 that cover the peril of wind only. Such form is applicable
15 only to commercial nonresidential properties located in areas
16 eligible for coverage in the Florida Windstorm Underwriting
17 Association as those areas were defined on January 1, 2001.

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

22 2.a. Must provide that the corporation adopt a
23 coinsurance program whereby the corporation coinsures with
24 authorized insurers hurricane coverage, as defined in s.
25 627.4025(2)(a), for eligible risks, and adopt property
26 insurance forms for eligible risks which cover the peril of
27 wind only. As used in this subsection, the term:

28 (I) "Coinsurance" means an agreement between the
29 corporation and an authorized insurer wherein each is
30 severally responsible for a specified percentage of the
31 hurricane coverage for an eligible risk.

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1 (II) "Eligible risks" means personal residential and
2 commercial residential risks that meet the underwriting
3 criteria of the corporation and are located in areas that were
4 eligible for coverage by the Florida Windstorm Underwriting
5 Association on January 1, 2001. It is the intent of the
6 Legislature that the areas in which eligible risks are located
7 be reduced to the extent practicable. If the corporation
8 determines after a public hearing that the voluntary market is
9 stable and competitive in an area in which eligible risks are
10 located, it may, subject to approval by the department, remove
11 such areas from the areas in which eligible risks are located;
12 however, if an area is removed from an area in which eligible
13 risks are located, the corporation shall continue to offer
14 coinsurance agreements in such a removed area. The corporation
15 shall not seek to remove any area from the areas in which
16 eligible risks are located before the corporation's
17 coinsurance program is available to insurers.

18 b. The corporation shall provide coinsurance levels of
19 90 percent and 50 percent.

20 c. If the corporation determines that additional
21 coinsurance levels are necessary to maximize participation in
22 coinsurance agreements by authorized insurers, the corporation
23 may establish additional coinsurance levels. However, in no
24 event shall the corporation's coinsurance percentage exceed 90
25 percent.

26 d. Any coinsurance agreement entered into between an
27 authorized insurer and the corporation must provide for a
28 uniform specified percentage of coverage of hurricane losses
29 for all eligible coinsured risks of the authorized insurer.

30 e. Any coinsurance agreement entered into between an
31 authorized insurer and the corporation shall be subject to

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1 review and approval by the department.

2 f. The authorized insurer and the corporation shall
3 reconcile and separately report their exposures on coinsured
4 eligible risks to the Florida Hurricane Catastrophe Fund on
5 forms and in the manner required by the Florida Hurricane
6 Catastrophe Fund.

7 g. The rates charged by the corporation for coinsuring
8 eligible personal lines residential risks for the coinsurance
9 levels in sub-subparagraphs b. and c. shall be calculated by
10 multiplying the ratio of the latest approved Insurance
11 Services Office hurricane loss costs to the latest approved
12 Insurance Services Office total loss costs by the rates
13 developed in subparagraph (d)2. The corporation's coinsurance
14 rates for commercial lines residential risks must be based on
15 approved commercial lines residential hurricane rates
16 developed by the Insurance Services Office for relevant areas
17 of each county. The corporation shall file its coinsurance
18 rates with the department in conjunction with its filings
19 pursuant to paragraph (d). The corporation's coinsurance rates
20 must reflect the coinsurance levels established in
21 sub-subparagraphs b. and c. and Insurance Services Office
22 expense data for average acquisition costs, policy issuance
23 and administration, and adjustment of hurricane losses.

24 h. The coinsurance agreement between the corporation
25 and an authorized insurer shall set forth the specific terms
26 under which such coinsurance is provided, including, but not
27 limited to, the reporting of information concerning eligible
28 risks, the payment of coinsurance premium to the corporation,
29 and the adjustment and payment of hurricane losses incurred on
30 eligible risks.

31 3. May provide that the corporation ~~association~~ may

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1 employ or otherwise contract with individuals or other
2 entities to provide administrative or professional services
3 that may be appropriate to effectuate the plan. The
4 corporation ~~association~~ shall have the power to borrow funds,
5 by issuing bonds or by incurring other indebtedness, and shall
6 have other powers reasonably necessary to effectuate the
7 requirements of this subsection. The corporation is
8 authorized, but is not required, to seek judicial validation
9 of its bonds or other indebtedness under chapter 75.The
10 corporation ~~association~~ may issue bonds or incur other
11 indebtedness, or have bonds issued on its behalf by a unit of
12 local government pursuant to subparagraph (g)2., in the
13 absence of a hurricane or other weather-related event, upon a
14 determination by the corporation ~~association~~, subject to
15 approval by the department, that such action would enable it
16 to efficiently meet the financial obligations of the
17 corporation ~~association~~ and that such financings are
18 reasonably necessary to effectuate the requirements of this
19 subsection. The corporation ~~association~~ is authorized to take
20 all actions needed to facilitate tax-free status for any such
21 bonds or indebtedness, including formation of trusts or other
22 affiliated entities. The corporation ~~association~~ shall have
23 the authority to pledge assessments, projected recoveries from
24 the Florida Hurricane Catastrophe Fund, other reinsurance
25 recoverables, market equalization and other surcharges, and
26 other funds available to the corporation ~~association~~ as
27 security for bonds or other indebtedness. In recognition of s.
28 10, Art. I of the State Constitution, prohibiting the
29 impairment of obligations of contracts, it is the intent of
30 the Legislature that no action be taken whose purpose is to
31 impair any bond indenture or financing agreement or any

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1 revenue source committed by contract to such bond or other
2 indebtedness.

3 4.a. Must require that the corporation association
4 operate subject to the supervision and approval of a board of
5 governors consisting of 9 13 individuals from diverse
6 geographical areas of this state appointed by the Insurance
7 Commissioner. The board shall consist of 4 insurance consumer
8 advocates appointed under 627.0613; 1 representative of a
9 financial institution engaging in residential mortgage lending
10 within the association's eligible areas; 1 representative of
11 realtors engaged in the sale of residential property within
12 the association's eligible areas; 1 representative who has
13 expertise in State Minimum Building Codes and coastal
14 construction; 1 association policyholder; and 1 representative
15 who is a licensed property and casualty insurance agent.

16
17 The Insurance Commissioner shall designate one of the
18 appointees, including 1 who is elected as chair. The Insurance
19 Commissioner may appoint a technical advisory group to provide
20 information and advice to the board of governors in connection
21 with the board's duties under this subsection.~~The board shall~~
22 ~~consist of:~~

23 a. ~~The insurance consumer advocate appointed under s.~~
24 ~~627.0613.~~

25 b. To ensure the effective and efficient
26 implementation of this act, the Insurance Commissioner shall
27 appoint the board of governors no later than July 1, 2001.
28 Upon appointment of its members, the board of governors shall
29 work in conjunction with the residential property insurance
30 market coordinating council to address appropriate
31 organizational, operational, and financial matters relating to

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1 the formation of the corporation. In addition, after
2 consultation with the residential property insurance market
3 coordinating council, the board of governors may postpone the
4 January 1, 2002, effective dates set forth in paragraph (1)
5 and any other provision of the act related to the operation of
6 the corporation if it determines that phasing in these
7 provisions is necessary to ensure the effective and efficient
8 implementation of the corporation's operations or financing
9 arrangements. However, the board of governors may not affect
10 any provision in paragraph (b) or any other provision of this
11 act related to financing arrangements entered into by the
12 Florida Windstorm Underwriting Association or the Florida
13 Residential Property and Casualty Joint Underwriting
14 Association and the ability of those entities or the
15 corporation to service its debts and maintain the capacity to
16 repay funds secured under these arrangements.

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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1
2 Any board member may be disapproved or removed and replaced by
3 the commissioner at any time for cause. All board members,
4 including the chair, must be appointed to serve for 3-year
5 terms beginning annually on a date designated by the plan. Any
6 board vacancy must be filled for the unexpired term of such
7 board member by appointment by the Insurance Commissioner.

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

10 a. With respect to personal lines residential risks,
11 if the risk is offered full coverage from an authorized
12 insurer at the insurer's approved rate under either a standard
13 policy ~~including wind coverage~~ or, if consistent with the
14 insurer's underwriting rules as filed with the department, a
15 basic policy ~~including wind coverage~~, the risk is not eligible
16 for any policy issued by the corporation; however, this
17 provision shall not apply to personal lines wind-only risks
18 transferred from the Florida Windstorm Underwriting
19 Association for the time period specified in sub-subparagraph
20 (g)3.b association. If the risk accepts an offer of coverage
21 through the market assistance plan or an offer of coverage
22 through a mechanism established by the corporation association
23 before a policy is issued to the risk by the corporation
24 ~~association~~ or during the first 30 days of coverage by the
25 corporation association, and the producing agent who submitted
26 the application to the plan or to the corporation association
27 is not currently appointed by the insurer, the insurer shall
28 either:

29 (I) Pay to the producing agent of record of the
30 policy, for the first year, an amount that is the greater of
31 the insurer's usual and customary commission for the type of

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1 policy written or a policy fee equal to the usual and
2 customary commission of the corporation; or
3 (II) Offer to allow the producing agent of record of
4 the policy to continue servicing the policy for a period of
5 not less than 1 year and offer to pay the agent the greater of
6 the insurer's or the corporation's usual and customary
7 commission for the type of policy written.~~appoint the agent~~
8 ~~to service the risk or, if the insurer places the coverage~~
9 ~~through a new agent, require the new agent who then writes the~~
10 ~~policy to pay not less than 50 percent of the first year's~~
11 ~~commission to the producing agent who submitted the~~
12 ~~application to the plan or the association, except that if the~~
13 ~~new agent is an employee or exclusive agent of the insurer,~~
14 ~~the new agent shall pay a policy fee of \$50 to the producing~~
15 ~~agent in lieu of splitting the commission.~~
16
17 If the new or producing agent is unwilling or unable to accept
18 appointment by the new insurer, the new insurer shall pay the
19 agent in accordance with sub-sub-subparagraph (I).~~If the risk~~
20 ~~is not able to obtain any such offer, the risk is eligible for~~
21 ~~either a standard policy including wind coverage or a basic~~
22 ~~policy including wind coverage issued by the corporation~~
23 ~~association; however, if the risk could not be insured under a~~
24 ~~standard policy including wind coverage regardless of market~~
25 ~~conditions, the risk shall be eligible for a basic policy~~
26 ~~including wind coverage unless rejected under subparagraph 7.~~
27 ~~8.~~The corporation association shall determine the type of
28 policy to be provided on the basis of objective standards
29 specified in the underwriting manual and based on generally
30 accepted underwriting practices.
31 b. With respect to commercial ~~lines residential~~ risks,

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1 if the risk is offered coverage under a policy ~~including wind~~
2 ~~coverage~~ from an authorized insurer at its approved rate, the
3 risk is not eligible for any policy issued by the corporation
4 ~~association~~. If the risk accepts an offer of coverage through
5 the market assistance plan or an offer of coverage through a
6 mechanism established by the corporation association before a
7 policy is issued to the risk by the corporation association,
8 and the producing agent who submitted the application to the
9 plan or the corporation association is not currently appointed
10 by the insurer, the insurer shall either:

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

16 (II) Offer to allow the producing agent of record of
17 the policy to continue servicing the policy for a period of
18 not less than 1 year and offer to pay the agent the greater of
19 the insurer's or the corporation's usual and customary
20 commission for the type of policy written. ~~appoint the agent~~
21 ~~to service the risk or, if the insurer places the coverage~~
22 ~~through a new agent, require the new agent who then writes the~~
23 ~~policy to pay not less than 50 percent of the first year's~~
24 ~~commission to the producing agent who submitted the~~
25 ~~application to the plan, except that if the new agent is an~~
26 ~~employee or exclusive agent of the insurer, the new agent~~
27 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
28 ~~of splitting the commission.~~

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

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1 agent in accordance with sub-sub-subparagraph (I). If the risk
2 is not able to obtain any such offer, the risk is eligible for
3 a policy ~~including wind coverage~~ issued by the corporation
4 ~~association.~~

5 ~~c. This subparagraph does not require the association~~
6 ~~to provide wind coverage or hurricane coverage in any area in~~
7 ~~which such coverage is available through the Florida Windstorm~~
8 ~~Underwriting Association.~~

9 6. Must include rules for classifications of risks and
10 rates therefor.

11 7. Must provide that if premium and investment income
12 for an account attributable to a particular calendar plan year
13 are in excess of projected losses and expenses for the account
14 ~~of the plan~~ attributable to that year, such excess shall be
15 held in surplus in the account. Such surplus shall be
16 available to defray deficits as to future years and shall be
17 used for that purpose prior to assessing assessable member
18 insurers and assessable insureds as to any calendar plan year.

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

24 a. Whether the likelihood of a loss for the individual
25 risk is substantially higher than for other risks of the same
26 class; and

27 b. Whether the uncertainty associated with the
28 individual risk is such that an appropriate premium cannot be
29 determined.

30

31 The acceptance or rejection of a risk by the corporation

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1 ~~association~~ shall be construed as the private placement of
2 insurance, and the provisions of chapter 120 shall not apply.

3 9. Must provide that the corporation ~~association~~ shall
4 make its best efforts to procure catastrophe reinsurance at
5 reasonable rates, as determined by the board of governors.

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

24 11. The policies issued by the corporation ~~association~~
25 must provide that, if the corporation ~~association~~ or the
26 market assistance plan obtains an offer from an authorized
27 insurer to cover the risk at its approved rates ~~under either a~~
28 ~~standard policy including wind coverage or a basic policy~~
29 ~~including wind coverage~~, the risk is no longer eligible for
30 renewal coverage through the corporation ~~association~~. However,
31 ~~if the risk is located in an area in which Florida Windstorm~~

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1 ~~Underwriting Association coverage is available, such an offer~~
2 ~~of a standard or basic policy terminates eligibility~~
3 ~~regardless of whether or not the offer includes wind coverage.~~
4 ~~Upon termination of eligibility, the association shall provide~~
5 ~~written notice to the policyholder and agent of record stating~~
6 ~~that the association policy shall be canceled as of 60 days~~
7 ~~after the date of the notice because of the offer of coverage~~
8 ~~from an authorized insurer. Other provisions of the insurance~~
9 ~~code relating to cancellation and notice of cancellation do~~
10 ~~not apply to actions under this subparagraph.~~

11 12. Corporation Association policies and applications
12 must include a notice that the corporation association policy
13 could, under this section or s. 627.3511, be replaced with a
14 policy issued by an authorized ~~admitted~~ insurer that does not
15 provide coverage identical to the coverage provided by the
16 corporation association. The notice shall also specify that
17 acceptance of corporation association coverage creates a
18 conclusive presumption that the applicant or policyholder is
19 aware of this potential.

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

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

5 14. Shall provide that, with respect to the high-risk
6 account, any assessable insurer with a surplus as to
7 policyholders of \$25 million or less writing 25 percent or
8 more of its total countrywide property insurance premiums in
9 this state may petition the department, within the first 90
10 days of each calendar year, to qualify as a limited
11 apportionment corporation. In no event shall a limited
12 apportionment corporation be required to participate in any
13 assessment, within the high-risk account, pursuant to
14 sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the
15 aggregate which exceeds \$50 million after payment of available
16 high-risk account funds in any calendar year. However, a
17 limited apportionment corporation shall collect from its
18 policyholders any emergency assessment imposed under
19 sub-subparagraph (b)3.d. The plan shall provide that, if the
20 department determines that any regular assessment will result
21 in an impairment of the surplus of a limited apportionment
22 corporation, the department may direct that all or part of
23 such assessment be deferred. However, there shall be no
24 limitation or deferment of an emergency assessment to be
25 collected from policyholders under sub-subparagraph (b)3.d.

26 15. Must provide that the corporation appoint as its
27 licensed agents only those agents who also hold an appointment
28 as defined in s. 626.104 with an insurer who at the time of
29 the agent's initial appointment by the corporation is
30 authorized to write and is actually writing personal
31 residential property coverage, commercial residential property

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1 coverage, or commercial nonresidential property coverage
2 within the state.

3 (d)1. It is the intent of the Legislature that the
4 rates for coverage provided by the corporation ~~association~~ be
5 actuarially sound and not competitive with approved rates
6 charged in the admitted voluntary market, so that the
7 corporation ~~association~~ functions as a residual market
8 mechanism to provide insurance only when the insurance cannot
9 be procured in the voluntary market. Rates shall include an
10 appropriate catastrophe loading factor that reflects the
11 actual catastrophic exposure of the corporation ~~association~~
12 ~~and recognizes that the association has little or no capital~~
13 ~~or surplus; and the association shall carefully review each~~
14 ~~rate filing to assure that provider compensation is not~~
15 ~~excessive.~~

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

30 3. Rates for personal lines residential wind-only
31 policies shall be actuarially sound and not competitive with

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1 approved rates charged by authorized insurers. Rates of the
2 Florida Windstorm Underwriting Association adjudicated for
3 use, and the related mitigation credit program, shall apply to
4 the wind-only rates of the corporation.

5 ~~4.3.~~ Rates for commercial ~~residential~~ coverage shall
6 not be subject to the requirements of subparagraph 2., but
7 shall be subject to all other requirements of this paragraph
8 and s. 627.062.

9 ~~5.4.~~ Nothing in this paragraph shall require or allow
10 the corporation ~~association~~ to adopt a rate that is inadequate
11 under s. 627.062 ~~or to reduce rates approved under s. 627.062.~~

12 6. Notwithstanding the exemption from the premium tax
13 in paragraph (6)(j), the corporation, in addition to the rates
14 otherwise determined pursuant to this paragraph, shall impose
15 and collect an amount equal to the premium tax provided for in
16 s. 624.509 to augment the financial resources of the
17 corporation available to carry out its public purposes.

18 ~~7.5. The association may require arbitration of a~~
19 ~~filing pursuant to s. 627.062(6). Rate filings of the~~
20 ~~association under this paragraph shall be made on a use and~~
21 ~~file basis under s. 627.062(2)(a)2.~~ The corporation
22 ~~association~~ shall make a rate filing at least once a year, but
23 no more often than quarterly.

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

30 1. If the market assistance plan receives a minimum of
31 100 applications for coverage within a 3-month period, or 200

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

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

19 (f)1. The corporation shall file with the department
20 quarterly statements of financial condition, an annual
21 statement of financial condition, and audited financial
22 statements in the manner prescribed by law. In addition, the
23 corporation shall report to the department monthly on the
24 types, premium, exposure, and distribution by county of its
25 policies in force, and shall submit such other reports as the
26 department requires to carry out its oversight of the
27 corporation.

28 2. The activities of the corporation association shall
29 be reviewed at least annually by the department to determine
30 whether board and, upon recommendation by the board or
31 petition of any interested party, coverage shall be

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1 deactivated in an account on the basis if the department finds
2 that the conditions giving rise to its activation no longer
3 exist.

4 (g)1. The corporation board shall certify to the
5 department its needs for annual assessments as to a particular
6 calendar year, and for any startup or interim assessments that
7 it deems to be necessary to sustain operations as to a
8 particular year pending the receipt of annual assessments.
9 Upon verification, the department shall approve such
10 certification, and the corporation board shall levy such
11 annual, ~~startup,~~ or interim assessments. Such assessments
12 shall be prorated as provided in paragraph (b). The
13 corporation board shall take all reasonable and prudent steps
14 necessary to collect the amount of assessment due from each
15 assessable participating member insurer, including, if
16 prudent, filing suit to collect such assessment. If the
17 corporation board is unable to collect an assessment from any
18 assessable member insurer, the uncollected assessments shall
19 be levied as an additional assessment against the assessable
20 ~~participating member~~ insurers and any assessable ~~member~~
21 insurer required to pay an additional assessment as a result
22 of such failure to pay shall have a cause of action against
23 such nonpaying assessable member insurer. Assessments shall be
24 included as an appropriate factor in the making of rates. The
25 failure of a surplus lines agent to collect and remit any
26 regular or emergency assessment levied by the corporation
27 shall be deemed a violation of s. 626.936 and shall subject
28 the surplus lines agent to the penalties provided in that
29 section.

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

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

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

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

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1 corporation policy is entitled to retain any unearned
2 commission on such policy, and the insurer shall either:
3 (I) Pay to the producing agent of record of the
4 policy, for the first year, an amount that is the greater of
5 the insurer's usual and customary commission for the type of
6 policy written or a policy fee equal to the usual and
7 customary commission of the corporation; or
8 (II) Offer to allow the producing agent of record of
9 the policy to continue servicing the policy for a period of
10 not less than 1 year and offer to pay the agent the greater of
11 the insurer's or the corporation's usual and customary
12 commission for the type of policy written.

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

17 b. Notwithstanding s. 627.351(2)(b)5.e., to facilitate
18 the implementation of this act, the Florida Windstorm
19 Underwriting Association shall not enter into an agreement
20 with an insurer on or after July 1, 2001, to remove policies
21 from the Florida Windstorm Underwriting Association. The
22 corporation shall not enter into an agreement with an insurer
23 during the period from January 1, 2002, to December 31, 2002,
24 to remove any policy transferred to the corporation from the
25 Florida Windstorm Underwriting Association. The corporation
26 may extend such period if it determines that an extension is
27 necessary and appropriate.

28 ~~c.b.~~ Any credit or exemption from regular assessments
29 adopted under this subparagraph shall last no longer than the
30 3 years following the cancellation or expiration of the policy
31 by the corporation ~~association~~. With the approval of the

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1 department, the corporation board may extend such credits for
2 an additional year if the insurer guarantees an additional
3 year of renewability for all policies removed from the
4 corporation association, or for 2 additional years if the
5 insurer guarantees 2 additional years of renewability for all
6 policies so removed.

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

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

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

24 (i) There shall be no liability on the part of, and no
25 cause of action of any nature shall arise against, any
26 assessable ~~member~~ insurer or its agents or employees, the
27 corporation association or its agents or employees, members of
28 the board of governors or their respective designees at a
29 board meeting, corporation association committee members, or
30 the department or its representatives, for any action taken by
31 them in the performance of their duties or responsibilities

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1 under this subsection. Such immunity does not apply to:

2 1. Any of the foregoing persons or entities for any
3 willful tort;

4 2. The corporation ~~association~~ or its ~~servicing or~~
5 producing agents for breach of any contract or agreement
6 pertaining to insurance coverage;

7 3. The corporation ~~association~~ with respect to
8 issuance or payment of debt; or

9 4. Any assessable member insurer with respect to any
10 action to enforce an assessable ~~a member~~ insurer's obligations
11 to the corporation ~~association~~ under this subsection.

12 (j)1. The corporation Residential Property and
13 ~~Casualty Joint Underwriting Association~~ is not a state agency,
14 board, or commission, but is a legislatively created
15 corporation serving a public purpose. However, For the
16 purposes of s. 199.183(1), the corporation Residential
17 ~~Property and Casualty Joint Underwriting Association~~ shall be
18 considered a political subdivision of the state and shall be
19 exempt from the corporate income tax and the state premium
20 tax.

21 2. The corporation is not required to obtain or to
22 hold a certificate of authority issued by the department, nor
23 is it a member insurer of the Florida Insurance Guaranty
24 Association. However, the corporation shall pay assessments
25 pledged by the Florida Insurance Guaranty Association to
26 secure bonds issued or other indebtedness incurred to pay
27 covered claims arising from insurer insolvencies caused by, or
28 proximately related to, hurricane losses.

29 3. It is the intent of the Legislature that the tax
30 exemptions provided in this paragraph shall augment the
31 financial resources of the corporation to better enable the

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1 corporation to fulfill its public purposes. Any bonds issued
2 by the corporation, their transfer, and the income therefrom,
3 including any profit made on the sale thereof, shall at all
4 times be free from taxation of every kind by the state and any
5 political subdivision or local unit or other instrumentality
6 thereof; however, this exemption does not apply to any tax
7 imposed by chapter 220 on interest, income, or profits on debt
8 obligations owned by corporations other than the corporation.

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

21 (l) 1. Effective January 1, 2002, policies of the
22 Residential Property and Casualty Joint Underwriting
23 Association shall become policies of the corporation. All
24 obligations, rights, assets, and liabilities of the
25 Residential Property and Casualty Joint Underwriting
26 Association, including bonds, notes, and debt obligations, and
27 the financing documents pertaining to them, become those of
28 the corporation as of January 1, 2002, without the need for
29 any further action. The corporation is not required to issue
30 endorsements or certificates of assumption to insureds during
31 the remaining term of such in-force policies.

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1 2. Effective January 1, 2002, policies of the Florida
2 Windstorm Underwriting Association are transferred to the
3 corporation and shall become policies of the corporation. All
4 obligations, rights, assets, and liabilities of the Florida
5 Windstorm Underwriting Association, including bonds, notes,
6 and debt obligations, and the financing documents pertaining
7 to them, are transferred to and assumed by the corporation on
8 January 1, 2002, without the need for any further action. The
9 corporation is not required to issue endorsements or
10 certificates of assumption to insureds during the remaining
11 term of in-force transferred policies.

12 3. The Florida Windstorm Underwriting Association and
13 the Residential Property and Casualty Joint Underwriting
14 Association shall take all actions as may be proper to further
15 evidence such transfers and shall provide such documents and
16 instruments of further assurance as may reasonably be
17 requested by the corporation for such purpose. The corporation
18 shall execute such assumptions and instruments as the trustees
19 or other parties to the financing documents of the Florida
20 Windstorm Underwriting Association or the Residential Property
21 and Casualty Joint Underwriting Association may reasonably
22 request to further evidence such transfers and assumptions,
23 which transfers and assumptions, however, shall be effective
24 as of the date provided under this paragraph whether or not,
25 and regardless of the date on which, such assumptions or
26 instruments are executed by the corporation. Subject to the
27 relevant financing documents pertaining to their outstanding
28 bonds, notes, indebtedness, or other financing obligations,
29 the moneys, investments, receivables, choses in action, and
30 other intangibles of the Florida Windstorm Underwriting
31 Association shall be credited to the high-risk account of the

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1 corporation, and the personal lines residential coverage
2 account and the commercial lines residential coverage account
3 of the Residential Property and Casualty Joint Underwriting
4 Association shall be credited to the personal lines account
5 and the commercial lines account, respectively, of the
6 corporation.

7 4. Effective January 1, 2002, a new applicant for
8 property insurance coverage who would otherwise have been
9 eligible for coverage in the Florida Windstorm Underwriting
10 Association shall be eligible for coverage from the
11 corporation as provided in this paragraph.

12 5. The transfer of all policies, obligations, rights,
13 assets, and liabilities from the Florida Windstorm
14 Underwriting Association to the corporation and the renaming
15 of the Residential Property and Casualty Joint Underwriting
16 Association as the Citizens Property Insurance Corporation
17 shall in no way affect the coverage with respect to covered
18 policies as defined in s. 215.555(2)(c) provided to these
19 entities by the Florida Hurricane Catastrophe Fund. The
20 coverage provided by the Florida Hurricane Catastrophe Fund to
21 the Florida Windstorm Underwriting Association based on its
22 exposures as of June 30, 2001, and each June 30 thereafter
23 shall be redesignated as coverage for the high-risk account of
24 the corporation. The coverage provided by the Florida
25 Hurricane Catastrophe Fund to the Residential Property and
26 Casualty Joint Underwriting Association based on its exposures
27 as of June 30, 2001, and each June 30 thereafter shall be
28 transferred to the personal lines account and the commercial
29 lines account of the corporation. The high-risk account shall
30 be treated, for all Florida Hurricane Catastrophe Fund
31 purposes, as if it were a separate insurer with its own

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1 exposures, reimbursement premium, and loss reimbursement.
2 Likewise, the personal lines and commercial lines accounts
3 shall be treated, for all Florida Hurricane Catastrophe Fund
4 purposes, as if the two accounts were a single insurer with
5 its own exposures, reimbursement premium, and loss
6 reimbursement. All obligations, rights, assets, and
7 liabilities of the Florida Property and Casualty Joint
8 Underwriting Association created by subsection (5), which
9 obligations, rights, assets, or liabilities relate to the
10 provision of commercial lines residential property insurance
11 coverage as described in this section are hereby transferred
12 to the Residential Property and Casualty Joint Underwriting
13 Association. The Residential Property and Casualty Joint
14 Underwriting Association is not required to issue endorsements
15 or certificates of assumption to insureds during the remaining
16 term of in force transferred policies.

17 (m) Notwithstanding any other provision of law:
18 1. The pledge or sale of, the lien upon, and the
19 security interest in any rights, revenues, or other assets of
20 the corporation ~~association~~ created or purported to be created
21 pursuant to any financing documents to secure any bonds or
22 other indebtedness of the corporation ~~association~~ shall be and
23 remain valid and enforceable, notwithstanding the commencement
24 of and during the continuation of, and after, any
25 rehabilitation, insolvency, liquidation, bankruptcy,
26 receivership, conservatorship, reorganization, or similar
27 proceeding against the corporation ~~association~~ under the laws
28 of this state.
29 2. No such proceeding shall relieve the corporation
30 ~~association~~ of its obligation, or otherwise affect its ability
31 to perform its obligation, to continue to collect, or levy and

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1 collect, assessments, market equalization or other surcharges
2 under subparagraph (c)9.(c)10-, or any other rights,
3 revenues, or other assets of the corporation association
4 pledged pursuant to any financing documents.

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

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

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

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

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

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

28 c. Records obtained or generated by an internal
29 auditor pursuant to a routine audit, until the audit is
30 completed, or if the audit is conducted as part of an
31 investigation, until the investigation is closed or ceases to

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1 be active. An investigation is considered "active" while the
2 investigation is being conducted with a reasonable, good faith
3 belief that it could lead to the filing of administrative,
4 civil, or criminal proceedings.

5 d. Matters reasonably encompassed in privileged
6 attorney-client communications.

7 e. Proprietary information licensed to the corporation
8 ~~association~~ under contract and the contract provides for the
9 confidentiality of such proprietary information.

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

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

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

28 i. Minutes of closed meetings regarding underwriting
29 files, and minutes of closed meetings regarding an open claims
30 file until termination of all litigation and settlement of all
31 claims with regard to that claim, except that information

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1 otherwise confidential or exempt by law will be redacted.
2
3 When an authorized insurer is considering underwriting a risk
4 insured by the corporation ~~association~~, relevant underwriting
5 files and confidential claims files may be released to the
6 insurer provided the insurer agrees in writing, notarized and
7 under oath, to maintain the confidentiality of such files.
8 When a file is transferred to an insurer that file is no
9 longer a public record because it is not held by an agency
10 subject to the provisions of the public records law.
11 Underwriting files and confidential claims files may also be
12 released to staff of and the board of governors of the market
13 assistance plan established pursuant to s. 627.3515, who must
14 retain the confidentiality of such files, except such files
15 may be released to authorized insurers that are considering
16 assuming the risks to which the files apply, provided the
17 insurer agrees in writing, notarized and under oath, to
18 maintain the confidentiality of such files. Finally, the
19 corporation ~~association~~ or the board or staff of the market
20 assistance plan may make the following information obtained
21 from underwriting files and confidential claims files
22 available to licensed general lines insurance agents: name,
23 address, and telephone number of the residential property
24 owner or insured; location of the risk; rating information;
25 loss history; and policy type. The receiving licensed general
26 lines insurance agent must retain the confidentiality of the
27 information received.
28 2. Portions of meetings of the corporation ~~Residential~~
29 ~~Property and Casualty Joint Underwriting Association~~ are
30 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
31 of the State Constitution wherein confidential underwriting

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

15 (o) In enacting the provisions of this act, the
16 Legislature recognizes that both the Florida Windstorm
17 Underwriting Association and the Residential Property and
18 Casualty Joint Underwriting Association have entered into
19 financing arrangements that obligate each entity to service
20 its debts and maintain the capacity to repay funds secured
21 under these financing arrangements. It is the intent of the
22 Legislature that nothing herein be construed to compromise,
23 diminish, or interfere with the rights of creditors under such
24 financing arrangements. It is further the intent of the
25 Legislature to preserve the obligations of the Florida
26 Windstorm Underwriting Association and the Residential
27 Property and Casualty Joint Underwriting Association with
28 regard to outstanding financing arrangements, with such
29 obligations passing entirely and unchanged to the corporation.
30 So long as any bonds, notes, indebtedness, or other financing
31 obligations of the Florida Windstorm Underwriting Association

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1 or the Residential Property and Casualty Joint Underwriting
2 Association are outstanding, under the terms of the financing
3 documents pertaining to them, the governing board of the
4 corporation shall have and shall exercise the authority to
5 levy, charge, collect, and receive all premiums, assessments,
6 surcharges, charges, revenues, and receipts that such
7 associations had authority to levy, charge, collect, or
8 receive under the provisions of subsections (2) and (6),
9 respectively, as they existed on January 1, 2001, to the
10 extent necessary to provide moneys, together with other
11 available moneys of the corporation without exercise of the
12 authority provided by this paragraph, in at least the amounts,
13 and by the times, as would be provided under those former
14 provisions of subsection (2) or subsection (6), respectively,
15 so that the value, amount, and collectability of any assets,
16 revenues, or revenue source pledged or committed to, or any
17 lien thereon securing such outstanding bonds, notes,
18 indebtedness, or other financing obligations will not be
19 diminished, impaired, or adversely affected by the amendments
20 made by this act and to permit compliance with all provisions
21 of financing documents pertaining to such bonds, notes,
22 indebtedness, or other financing obligations, or the security
23 or credit enhancement for them, and any reference in this
24 subsection to bonds, notes, indebtedness, financing
25 obligations, or similar obligations of the corporation shall
26 include like instruments or contracts of the Florida Windstorm
27 Underwriting Association and the Residential Property and
28 Casualty Joint Underwriting Association to the extent not
29 inconsistent with the provisions of the financing documents
30 pertaining to them.

31 Section 2. Subsection (2) of section 631.55, Florida

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1 Statutes, is amended to read:

2 631.55 Creation of the association.--

3 (2) For the purposes of administration and assessment,
4 the association shall be divided into four ~~three~~ separate
5 accounts:

6 (a) The auto liability account;

7 (b) The auto physical damage account;

8 (c) The medical malpractice account;and

9 (d)~~(c)~~ The account for all other insurance to which
10 this part applies.

11 Section 3. Effective upon this act becoming a law and
12 applicable to all policies in effect on or after the effective
13 date of this section, paragraph (b) of subsection (2) of
14 section 627.351, Florida Statutes, is amended to read:

15 627.351 Insurance risk apportionment plans.--

16 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

17 (b) The department shall require all insurers holding
18 a certificate of authority to transact property insurance on a
19 direct basis in this state, other than joint underwriting
20 associations and other entities formed pursuant to this
21 section, to provide windstorm coverage to applicants from
22 areas determined to be eligible pursuant to paragraph (c) who
23 in good faith are entitled to, but are unable to procure, such
24 coverage through ordinary means; or it shall adopt a
25 reasonable plan or plans for the equitable apportionment or
26 sharing among such insurers of windstorm coverage, which may
27 include formation of an association for this purpose. As used
28 in this subsection, the term "property insurance" means
29 insurance on real or personal property, as defined in s.
30 624.604, including insurance for fire, industrial fire, allied
31 lines, farmowners multiperil, homeowners' multiperil,

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1 commercial multiperil, and mobile homes, and including
2 liability coverages on all such insurance, but excluding
3 inland marine as defined in s. 624.607(3) and excluding
4 vehicle insurance as defined in s. 624.605(1)(a) other than
5 insurance on mobile homes used as permanent dwellings. The
6 department shall adopt rules that provide a formula for the
7 recovery and repayment of any deferred assessments.

8 1. For the purpose of this section, properties
9 eligible for such windstorm coverage are defined as dwellings,
10 buildings, and other structures, including mobile homes which
11 are used as dwellings and which are tied down in compliance
12 with mobile home tie-down requirements prescribed by the
13 Department of Highway Safety and Motor Vehicles pursuant to s.
14 320.8325, and the contents of all such properties. An
15 applicant or policyholder is eligible for coverage only if an
16 offer of coverage cannot be obtained by or for the applicant
17 or policyholder from an admitted insurer at approved rates.

18 2.a.(I) All insurers required to be members of such
19 association shall participate in its writings, expenses, and
20 losses. Surplus of the association shall be retained for the
21 payment of claims and shall not be distributed to the member
22 insurers. Such participation by member insurers shall be in
23 the proportion that the net direct premiums of each member
24 insurer written for property insurance in this state during
25 the preceding calendar year bear to the aggregate net direct
26 premiums for property insurance of all member insurers, as
27 reduced by any credits for voluntary writings, in this state
28 during the preceding calendar year. For the purposes of this
29 subsection, the term "net direct premiums" means direct
30 written premiums for property insurance, reduced by premium
31 for liability coverage and for the following if included in

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1 allied lines: rain and hail on growing crops; livestock;
2 association direct premiums booked; National Flood Insurance
3 Program direct premiums; and similar deductions specifically
4 authorized by the plan of operation and approved by the
5 department. A member's participation shall begin on the first
6 day of the calendar year following the year in which it is
7 issued a certificate of authority to transact property
8 insurance in the state and shall terminate 1 year after the
9 end of the calendar year during which it no longer holds a
10 certificate of authority to transact property insurance in the
11 state. The commissioner, after review of annual statements,
12 other reports, and any other statistics that the commissioner
13 deems necessary, shall certify to the association the
14 aggregate direct premiums written for property insurance in
15 this state by all member insurers.

16 (II) The plan of operation shall provide for a board
17 of directors consisting of the Insurance Consumer Advocate
18 appointed under s. 627.0613, 1 consumer representative
19 appointed by the Insurance Commissioner, 1 consumer
20 representative appointed by the Governor, and 12 additional
21 members appointed as specified in the plan of operation. One
22 of the 12 additional members shall be elected by the domestic
23 companies of this state on the basis of cumulative weighted
24 voting based on the net direct premiums of domestic companies
25 in this state. Nothing in the 1997 amendments to this
26 paragraph terminates the existing board or the terms of any
27 members of the board.

28 (III) The plan of operation shall provide a formula
29 whereby a company voluntarily providing windstorm coverage in
30 affected areas will be relieved wholly or partially from
31 apportionment of a regular assessment pursuant to

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1 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

2 (IV) A company which is a member of a group of
3 companies under common management may elect to have its
4 credits applied on a group basis, and any company or group may
5 elect to have its credits applied to any other company or
6 group.

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

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

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1 Residential Property and Casualty Joint Underwriting
2 Association certifies that the take-out plan will materially
3 reduce the Residential Property and Casualty Joint
4 Underwriting Association's 100-year probable maximum loss from
5 hurricanes. With the approval of the department, the board
6 may extend such credits for an additional year if the insurer
7 guarantees an additional year of renewability for all policies
8 removed from the Residential Property and Casualty Joint
9 Underwriting Association, or for 2 additional years if the
10 insurer guarantees 2 additional years of renewability for all
11 policies removed from the Residential Property and Casualty
12 Joint Underwriting Association.

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

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

27 d.(I) When the deficit incurred in a particular
28 calendar year is 10 percent or less of the aggregate statewide
29 direct written premium for property insurance for the prior
30 calendar year for all member insurers, the association shall
31 levy an assessment on member insurers in an amount equal to

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1 the deficit.

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

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

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

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1 commissions; however, failure to pay the emergency assessment
2 shall be treated as failure to pay premium.

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

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

27 e. The governing body of any unit of local government,
28 any residents of which are insured under the plan, may issue
29 bonds as defined in s. 125.013 or s. 166.101 to fund an
30 assistance program, in conjunction with the association, for
31 the purpose of defraying deficits of the association. In order

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1 to avoid needless and indiscriminate proliferation,
2 duplication, and fragmentation of such assistance programs,
3 any unit of local government, any residents of which are
4 insured by the association, may provide for the payment of
5 losses, regardless of whether or not the losses occurred
6 within or outside of the territorial jurisdiction of the local
7 government. Revenue bonds may not be issued until validated
8 pursuant to chapter 75, unless a state of emergency is
9 declared by executive order or proclamation of the Governor
10 pursuant to s. 252.36 making such findings as are necessary to
11 determine that it is in the best interests of, and necessary
12 for, the protection of the public health, safety, and general
13 welfare of residents of this state and the protection and
14 preservation of the economic stability of insurers operating
15 in this state, and declaring it an essential public purpose to
16 permit certain municipalities or counties to issue bonds as
17 will provide relief to claimants and policyholders of the
18 association and insurers responsible for apportionment of plan
19 losses. Any such unit of local government may enter into such
20 contracts with the association and with any other entity
21 created pursuant to this subsection as are necessary to carry
22 out this paragraph. Any bonds issued under this
23 sub-subparagraph shall be payable from and secured by moneys
24 received by the association from assessments under this
25 subparagraph, and assigned and pledged to or on behalf of the
26 unit of local government for the benefit of the holders of
27 such bonds. The funds, credit, property, and taxing power of
28 the state or of the unit of local government shall not be
29 pledged for the payment of such bonds. If any of the bonds
30 remain unsold 60 days after issuance, the department shall
31 require all insurers subject to assessment to purchase the

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1 bonds, which shall be treated as admitted assets; each insurer
2 shall be required to purchase that percentage of the unsold
3 portion of the bond issue that equals the insurer's relative
4 share of assessment liability under this subsection. An
5 insurer shall not be required to purchase the bonds to the
6 extent that the department determines that the purchase would
7 endanger or impair the solvency of the insurer. The authority
8 granted by this sub-subparagraph is additional to any bonding
9 authority granted by subparagraph 6.

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

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1 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

19 b. The association may require arbitration of a rate
20 filing under s. 627.062(6). It is the intent of the
21 Legislature that the rates for coverage provided by the
22 association be actuarially sound and not competitive with
23 approved rates charged in the admitted voluntary market such
24 that the association functions as a residual market mechanism
25 to provide insurance only when the insurance cannot be
26 procured in the voluntary market. The plan of operation shall
27 provide a mechanism to assure that, beginning no later than
28 January 1, 1999, the rates charged by the association for each
29 line of business are reflective of approved rates in the
30 voluntary market for hurricane coverage for each line of
31 business in the various areas eligible for association

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1 coverage.

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

18 d. The plan of operation must provide objective
19 criteria and procedures, approved by the department, to be
20 uniformly applied for all applicants in determining whether an
21 individual risk is so hazardous as to be uninsurable. In
22 making this determination and in establishing the criteria and
23 procedures, the following shall be considered:

24 (I) Whether the likelihood of a loss for the
25 individual risk is substantially higher than for other risks
26 of the same class; and

27 (II) Whether the uncertainty associated with the
28 individual risk is such that an appropriate premium cannot be
29 determined.

30

31 The acceptance or rejection of a risk by the association

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1 pursuant to such criteria and procedures must be construed as
2 the private placement of insurance, and the provisions of
3 chapter 120 do not apply.

4 ~~e. The policies issued by the association must provide~~
5 ~~that if the association obtains an offer from an authorized~~
6 ~~insurer to cover the risk at its approved rates under either a~~
7 ~~standard policy including wind coverage or, if consistent with~~
8 ~~the insurer's underwriting rules as filed with the department,~~
9 ~~a basic policy including wind coverage, the risk is no longer~~
10 ~~eligible for coverage through the association. Upon~~
11 ~~termination of eligibility, the association shall provide~~
12 ~~written notice to the policyholder and agent of record stating~~
13 ~~that the association policy must be canceled as of 60 days~~
14 ~~after the date of the notice because of the offer of coverage~~
15 ~~from an authorized insurer. Other provisions of the insurance~~
16 ~~code relating to cancellation and notice of cancellation do~~
17 ~~not apply to actions under this sub-subparagraph.~~

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

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

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1 reserves or funds to be used for the payment of insured
2 catastrophe losses. The plan may authorize all actions
3 necessary to facilitate the issuance of bonds, including the
4 pledging of assessments or other revenues.

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

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

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

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

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

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1 coverage is sought in connection with a real property
2 transfer, such requirements and procedures shall not provide
3 for an effective date of coverage later than the date of the
4 closing of the transfer as established by the transferor, the
5 transferee, and, if applicable, the lender.

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

18 b. No such proceeding shall relieve the association of
19 its obligation, or otherwise affect its ability to perform its
20 obligation, to continue to collect, or levy and collect,
21 assessments, market equalization or other surcharges,
22 projected recoveries from the Florida Hurricane Catastrophe
23 Fund, reinsurance recoverables, or any other rights, revenues,
24 or other assets of the association pledged.

25 c. Each such pledge or sale of, lien upon, and
26 security interest in, including the priority of such pledge,
27 lien, or security interest, any such assessments, emergency
28 assessments, market equalization or renewal surcharges,
29 projected recoveries from the Florida Hurricane Catastrophe
30 Fund, reinsurance recoverables, or other rights, revenues, or
31 other assets which are collected, or levied and collected,

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1 after the commencement of and during the pendency of or after
2 any such proceeding shall continue unaffected by such
3 proceeding.

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

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

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1 recordation, filing, or other action.

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

11 Section 4. Except as otherwise provided in this act,
12 this act shall take effect January 1, 2002, except that this
13 section and section 627.351(6)(c)4.b. and (g)3.b., Florida
14 Statutes, as created by this act, shall take effect June 1,
15 2001.

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

19 And the title is amended as follows:

20 On page 1, lines 2-21,
21 remove from the title of the bill: all of said lines,

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23 and insert in lieu thereof:

24 An act relating to insurance; amending s.
25 627.351, F.S.; renaming the Residential
26 Property and Casualty Joint Underwriting
27 Association as the Citizens Property Insurance
28 Corporation to provide residential and
29 commercial property insurance; requiring
30 insurers writing property insurance to be
31 assessed by the corporation; providing for

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1 regular and emergency assessments of assessable
2 insureds; providing for dividing the revenues,
3 assets, liabilities, losses, and expenses of
4 the corporation into three accounts; providing
5 for emergency assessments for policyholders of
6 assessable insurers; providing a plan of
7 operation; providing additional duties of the
8 Florida Surplus Lines Service Office; providing
9 for a board of governors; authorizing the
10 Insurance Commissioner to appoint a technical
11 advisory group for certain purposes; providing
12 that the corporation is not required to obtain
13 a certificate of authority from the Department
14 of Insurance; providing that the corporation is
15 not required to be a member of the Florida
16 Insurance Guaranty Association; requiring the
17 corporation to pay assessments pledged by the
18 association to secure bonds to pay covered
19 claims arising from insurer insolvencies caused
20 by hurricane losses; providing for transfer of
21 policies of the association and the Florida
22 Windstorm Underwriting Association to the
23 corporation; providing for a transfer of assets
24 and liabilities; requiring the associations to
25 take actions necessary to further such
26 transfers; providing that such transfers do not
27 affect the coverage of "covered policies";
28 providing for the redesignation of certain
29 coverage as the high-risk account of the
30 corporation; providing that such account be
31 treated as if it were a separate insurer for

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1 certain purposes; providing that the personal
2 lines and commercial lines accounts be treated
3 as a single insurer for certain purposes;
4 providing that the department may postpone the
5 October 1, 2001, effective date of transfer
6 under the act; providing legislative intent not
7 to interfere with the rights of creditors, to
8 preserve the obligations of the association,
9 and to assure that outstanding financing
10 agreements pass unchanged to the corporation;
11 amending s. 631.55, F.S.; creating a medical
12 malpractice account within the Florida
13 Insurance Guaranty Association; amending s.
14 627.351, F.S.; eliminating the provisions
15 making a risk no longer eligible for coverage
16 in the Florida Windstorm Underwriting
17 Association if an offer of coverage is made by
18 an authorized insurer; providing effective
19 dates.

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