

By Representative Goodlette

1 A bill to be entitled
2 An act relating to insurance risk apportionment
3 plans; amending s. 627.351, F.S.; creating the
4 Citizens Property Insurance Corporation;
5 revising and applying provisions relating to
6 the Residential Property and Casualty Joint
7 Underwriting Association and the association's
8 member insurers to the corporation and the
9 corporation's participating insurers; requiring
10 certain insurers to participate in the
11 corporation; providing for application to
12 commercial property as well as residential;
13 requiring a plan of operation; providing for
14 division of revenues, assets, liabilities,
15 losses, and expenses of the corporation into
16 three accounts, to be maintained for certain
17 purposes; amending ss. 215.555, 624.4071,
18 624.4072, 626.752, 627.0628, 627.3511,
19 627.3513, 627.3515, 627.3516, 627.7013, and
20 627.7014, F.S., to conform; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraphs (b) and (d) of subsection (2)
26 and subsection (6) of section 627.351, Florida Statutes, are
27 amended to read:

28 627.351 Insurance risk apportionment plans.--

29 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

31

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

30 (II) The plan of operation shall provide for a board
31 of directors consisting of the Insurance Consumer Advocate

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

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

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

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

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

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

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

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

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

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

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

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

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

20 e. The governing body of any unit of local government,
21 any residents of which are insured under the plan, may issue
22 bonds as defined in s. 125.013 or s. 166.101 to fund an
23 assistance program, in conjunction with the association, for
24 the purpose of defraying deficits of the association. In order
25 to avoid needless and indiscriminate proliferation,
26 duplication, and fragmentation of such assistance programs,
27 any unit of local government, any residents of which are
28 insured by the association, may provide for the payment of
29 losses, regardless of whether or not the losses occurred
30 within or outside of the territorial jurisdiction of the local
31 government. Revenue bonds may not be issued until validated

1 pursuant to chapter 75, unless a state of emergency is
2 declared by executive order or proclamation of the Governor
3 pursuant to s. 252.36 making such findings as are necessary to
4 determine that it is in the best interests of, and necessary
5 for, the protection of the public health, safety, and general
6 welfare of residents of this state and the protection and
7 preservation of the economic stability of insurers operating
8 in this state, and declaring it an essential public purpose to
9 permit certain municipalities or counties to issue bonds as
10 will provide relief to claimants and policyholders of the
11 association and insurers responsible for apportionment of plan
12 losses. Any such unit of local government may enter into such
13 contracts with the association and with any other entity
14 created pursuant to this subsection as are necessary to carry
15 out this paragraph. Any bonds issued under this
16 sub-subparagraph shall be payable from and secured by moneys
17 received by the association from assessments under this
18 subparagraph, and assigned and pledged to or on behalf of the
19 unit of local government for the benefit of the holders of
20 such bonds. The funds, credit, property, and taxing power of
21 the state or of the unit of local government shall not be
22 pledged for the payment of such bonds. If any of the bonds
23 remain unsold 60 days after issuance, the department shall
24 require all insurers subject to assessment to purchase the
25 bonds, which shall be treated as admitted assets; each insurer
26 shall be required to purchase that percentage of the unsold
27 portion of the bond issue that equals the insurer's relative
28 share of assessment liability under this subsection. An
29 insurer shall not be required to purchase the bonds to the
30 extent that the department determines that the purchase would
31 endanger or impair the solvency of the insurer. The authority

1 granted by this sub-subparagraph is additional to any bonding
2 authority granted by subparagraph 6.

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

26 4. The plan shall provide for the deferment, in whole
27 or in part, of a regular assessment of a member insurer under
28 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),
29 but not for an emergency assessment collected from
30 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
31 opinion of the commissioner, payment of such regular

1 assessment would endanger or impair the solvency of the member
2 insurer. In the event a regular assessment against a member
3 insurer is deferred in whole or in part, the amount by which
4 such assessment is deferred may be assessed against the other
5 member insurers in a manner consistent with the basis for
6 assessments set forth in sub-sub-subparagraph 2.d.(I) or
7 sub-sub-subparagraph 2.d.(II).

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

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

26 c. The association shall provide for windstorm
27 coverage on residential properties in limits up to \$10 million
28 for commercial lines residential risks and up to \$1 million
29 for personal lines residential risks. If coverage with the
30 association is sought for a residential risk valued in excess
31 of these limits, coverage shall be available to the risk up to

1 the replacement cost or actual cash value of the property, at
2 the option of the insured, if coverage for the risk cannot be
3 located in the authorized market. The association must accept
4 a commercial lines residential risk with limits above \$10
5 million or a personal lines residential risk with limits above
6 \$1 million if coverage is not available in the authorized
7 market. The association may write coverage above the limits
8 specified in this subparagraph with or without facultative or
9 other reinsurance coverage, as the association determines
10 appropriate.

11 d. The plan of operation must provide objective
12 criteria and procedures, approved by the department, to be
13 uniformly applied for all applicants in determining whether an
14 individual risk is so hazardous as to be uninsurable. In
15 making this determination and in establishing the criteria and
16 procedures, the following shall be considered:

17 (I) Whether the likelihood of a loss for the
18 individual risk is substantially higher than for other risks
19 of the same class; and

20 (II) Whether the uncertainty associated with the
21 individual risk is such that an appropriate premium cannot be
22 determined.

23
24 The acceptance or rejection of a risk by the association
25 pursuant to such criteria and procedures must be construed as
26 the private placement of insurance, and the provisions of
27 chapter 120 do not apply.

28 e. The policies issued by the association must provide
29 that if the association obtains an offer from an authorized
30 insurer to cover the risk at its approved rates under either a
31 standard policy including wind coverage or, if consistent with

1 the insurer's underwriting rules as filed with the department,
2 a basic policy including wind coverage, the risk is no longer
3 eligible for coverage through the association. Upon
4 termination of eligibility, the association shall provide
5 written notice to the policyholder and agent of record stating
6 that the association policy must 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 sub-subparagraph.

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

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

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

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

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

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

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

31 9. Notwithstanding any other provision of law:

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

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

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

29 d. As used in this subsection, the term "financing
30 documents" means any agreement, instrument, or other document
31 now existing or hereafter created evidencing any bonds or

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

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

27 f. There shall be no liability on the part of, and no
28 cause of action of any nature shall arise against, any member
29 insurer or its agents or employees, agents or employees of the
30 association, members of the board of directors of the
31 association, or the department or its representatives, for any

1 action taken by them in the performance of their duties or
2 responsibilities under this subsection. Such immunity does not
3 apply to actions for breach of any contract or agreement
4 pertaining to insurance, or any willful tort.

5 (d) For the purpose of evaluating whether the criteria
6 of paragraph (c) are met, such criteria shall be applied as
7 the situation would exist if policies had not been written by
8 the Citizens Property Insurance Corporation Florida
9 ~~Residential Property and Casualty Joint Underwriting~~
10 ~~Association~~ and property insurance for such policyholders was
11 not available.

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

14 (a)1. The Legislature finds that actual and threatened
15 catastrophic losses to property in this state from hurricanes
16 have caused insurers to be unwilling or unable to provide
17 property insurance coverage to the extent sought and needed.
18 It is in the public interest and a public purpose to assist in
19 assuring that property in the state is insured so as to
20 facilitate the remediation, reconstruction, and replacement of
21 damaged or destroyed property in order to reduce or avoid the
22 negative effects otherwise resulting to the public health,
23 safety, and welfare; to the economy of the state; and to the
24 revenues of the state and local governments needed to provide
25 for the public welfare. It is necessary therefor, through
26 this subsection, to provide property insurance to applicants
27 who are in good faith entitled, but are unable, to procure
28 insurance through the voluntary market. The Legislature's
29 purpose in enacting this subsection is that such insurance be
30 provided and continued, as long as necessary, through a public
31 benefits corporation which is organized to achieve

1 efficiencies and economies all toward the achievement of the
2 public purposes stated above.

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

24 (b)1. All insurers authorized to write one or more
25 subject lines of business in this state, and insurers writing
26 one or more subject lines of business pursuant to part VIII of
27 chapter 626 ~~other than underwriting associations or other~~
28 ~~entities created under this section~~, must participate in the
29 corporation as participating insurers ~~and be members of the~~
30 ~~Residential Property and Casualty Joint Underwriting~~
31 ~~Association~~. An authorized insurer's ~~A member's~~ participation

1 shall begin on the first day of the calendar year following
2 the year in which the insurer ~~member~~ was issued a certificate
3 of authority to transact insurance for subject lines of
4 business in this state and shall terminate 1 year after the
5 end of the first calendar year during which the member no
6 longer holds a certificate of authority to transact insurance
7 for subject lines of business in this state. For insurers
8 transacting insurance for subject lines of business in this
9 state pursuant to part VIII of chapter 626, the insurer's
10 participation shall begin on the first day of the calendar
11 year following the year in which the insurer began transacting
12 insurance for subject lines of business in this state and
13 shall terminate 1 year after the corporation no longer has any
14 liabilities in this state for the subject lines of business.

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

18 (I) A personal lines account for personal residential
19 policies issued by the corporation or issued by the
20 Residential Property and Casualty Joint Underwriting
21 Association and renewed by the corporation on risks which are
22 not located in areas eligible for coverage in the Florida
23 Windstorm Underwriting Association as those areas were defined
24 on January 1, 2001.

25 (II) A commercial lines account for commercial
26 residential policies issued by the corporation or issued by
27 the Residential Property and Casualty Joint Underwriting
28 Association and renewed by the corporation on risks which are
29 not located in areas eligible for coverage in the Florida
30 Windstorm Underwriting Association as those areas were defined
31 on January 1, 2001.

1 (III) A high-risk account for personal residential
2 policies and commercial residential and commercial
3 nonresidential property policies issued by the corporation or
4 transferred to the corporation on risks which are located in
5 areas eligible for coverage in the Florida Windstorm
6 Underwriting Association as those areas were defined on
7 January 1, 2001.

8
9 The three separate accounts shall be maintained as long as
10 financing obligations entered into by the Florida Windstorm
11 Underwriting Association or Residential Property and Casualty
12 Joint Underwriting Association are outstanding in accordance
13 with the terms of the corresponding financing documents. At
14 such time as such financing obligations are no longer
15 outstanding, in accordance with the terms of the corresponding
16 financing documents, the corporation may utilize a single
17 account for all revenues, assets, liabilities, losses, and
18 expenses of the corporation, one of which is for personal
19 lines residential coverages and the other of which is for
20 commercial lines residential coverages.

21 b. Revenues, assets, liabilities, losses, and expenses
22 not attributable to particular coverages shall be prorated
23 among ~~between~~ the accounts.

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

25 a. When the deficit incurred in a particular calendar
26 year is not greater than 10 percent of the aggregate statewide
27 direct written premium for the subject lines of business for
28 the prior calendar year for all participating ~~member~~ insurers,
29 the entire deficit shall be recovered through assessments of
30 participating ~~member~~ insurers under paragraph (g).

31

1 b. When the deficit incurred in a particular calendar
2 year exceeds 10 percent of the aggregate statewide direct
3 written premium for the subject lines of business for the
4 prior calendar year for all participating ~~member~~ insurers, the
5 corporation ~~association~~ shall levy an assessment on
6 participating ~~member~~ insurers in an amount equal to the
7 greater of 10 percent of the deficit or 10 percent of the
8 aggregate statewide direct written premium for the subject
9 lines of business for the prior calendar year for all
10 participating ~~member~~ insurers. Any remaining deficit shall be
11 recovered through emergency assessments under sub-subparagraph
12 d.

13 c. Each participating ~~member~~ insurer's share of the
14 total assessment under sub-subparagraph a. or sub-subparagraph
15 b. shall be in the proportion that the participating ~~member~~
16 insurer's direct written premium for the subject lines of
17 business for the year preceding the assessment bears to the
18 aggregate statewide direct written premium for the subject
19 lines of business for that year for all participating ~~member~~
20 insurers.

21 d. Upon a determination by the board of governors that
22 a deficit in an account exceeds the amount that will be
23 recovered through regular assessments on participating ~~member~~
24 insurers under sub-subparagraph a. or sub-subparagraph b., the
25 board shall levy, after verification by the department,
26 emergency assessments to be collected by participating ~~member~~
27 insurers and by the corporation ~~underwriting associations~~
28 ~~created under this section which write subject lines of~~
29 ~~business~~ upon issuance or renewal of policies for subject
30 lines of business, excluding National Flood Insurance
31 policies, in the year or years following levy of the regular

1 assessments. The amount of the emergency assessment collected
2 in a particular year shall be a uniform percentage of that
3 year's direct written premium for subject lines of business
4 for all participating member insurers and the corporation
5 ~~underwriting associations~~, excluding National Flood Insurance
6 Program policy premiums, as annually determined by the board
7 and verified by the department. The department shall verify
8 the arithmetic calculations involved in the board's
9 determination within 30 days after receipt of the information
10 on which the determination was based. Notwithstanding any
11 other provision of law, each participating member insurer and
12 the corporation ~~each underwriting association created under~~
13 ~~this section~~ which writes subject lines of business shall
14 collect emergency assessments from its policyholders without
15 such obligation being affected by any credit, limitation,
16 exemption, or deferment. The emergency assessments so
17 collected shall be transferred directly to the corporation
18 ~~association~~ on a periodic basis as determined by the
19 corporation association. The aggregate amount of emergency
20 assessments levied under this sub-subparagraph in any calendar
21 year may not exceed the greater of 10 percent of the amount
22 needed to cover the original deficit, plus interest, fees,
23 commissions, required reserves, and other costs associated
24 with financing of the original deficit, or 10 percent of the
25 aggregate statewide direct written premium for subject lines
26 of business written by participating member insurers and the
27 corporation ~~underwriting associations~~ for the prior year, plus
28 interest, fees, commissions, required reserves, and other
29 costs associated with financing the original deficit. For
30 participating insurers writing one or more subject lines of
31 business pursuant to part VIII of chapter 626, the Florida

1 Surplus Lines Service Office shall verify and collect
2 emergency assessments for policyholders of such insurers and
3 remit as instructed by the corporation. The Florida Surplus
4 Lines Service Office shall also require insurers transacting
5 business in this state pursuant to part VIII of chapter 626 to
6 identify those premiums which are attributable to the subject
7 lines of business.

8 e. The board may pledge the proceeds of assessments,
9 projected recoveries from the Florida Hurricane Catastrophe
10 Fund, other insurance and reinsurance recoverables, market
11 equalization surcharges and other surcharges, and other funds
12 available to the corporation ~~association~~ as the source of
13 revenue for and to secure bonds issued under paragraph (g),
14 bonds or other indebtedness issued under subparagraph (c)~~2.3~~,
15 or lines of credit or other financing mechanisms issued or
16 created under this subsection, or to retire any other debt
17 incurred as a result of deficits or events giving rise to
18 deficits, or in any other way that the board determines will
19 efficiently recover such deficits. The purpose of the lines of
20 credit or other financing mechanisms is to provide additional
21 resources to assist the corporation ~~association~~ in covering
22 claims and expenses attributable to a catastrophe. As used in
23 this subsection, the term "assessments" includes regular
24 assessments under sub-subparagraph a., sub-subparagraph b., or
25 subparagraph (g)1. and emergency assessments under
26 sub-subparagraph d. Emergency assessments collected under
27 sub-subparagraph d. are not part of an insurer's rates, are
28 not premium, and are not subject to premium tax, fees, or
29 commissions; however, failure to pay the emergency assessment
30 shall be treated as failure to pay premium. The emergency
31 assessments under sub-subparagraph d. shall continue as long

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

6 f. As used in this subsection, the term "subject lines
7 of business" means insurance on real or personal property, as
8 defined in s. 624.604, including, but not limited to,
9 insurance for fire, industrial fire, allied lines, farmowners
10 multiperil, homeowners multiperil, commercial multiperil, and
11 mobile homes, and liability coverage on all such insurance,
12 excluding inland marine as defined in s. 624.607(3) and
13 excluding vehicle insurance as defined in s. 624.605(1) other
14 than insurance on mobile homes used as permanent dwellings,
15 ~~with respect to the personal lines account, any personal lines~~
16 ~~policy defined in s. 627.4025, and means, with respect to the~~
17 ~~commercial lines account, all commercial property and~~
18 ~~commercial fire insurance.~~

19 g. The procedures to be used by the corporation to
20 determine the statewide direct written premium for the subject
21 lines of business shall be included in the plan of operation.

22 (c) The plan of operation of the corporation
23 ~~association:~~

24 ~~1. May provide for one or more designated insurers,~~
25 ~~able and willing to provide policy and claims service, to act~~
26 ~~on behalf of the association to provide such service. Each~~
27 ~~licensed agent shall be entitled to indicate the order of~~
28 ~~preference regarding who will service the business placed by~~
29 ~~the agent. The association shall adhere to each agent's~~
30 ~~preferences unless after consideration of other factors in~~
31 ~~assigning agents, including, but not limited to, servicing~~

1 ~~capacity and fee arrangements, the association has reason to~~
2 ~~believe it is in the best interest of the association to make~~
3 ~~a different assignment.~~

4 1.2. Must provide for adoption of residential property
5 and casualty insurance policy forms and commercial residential
6 and nonresidential property insurance forms, which forms must
7 be approved by the department prior to use. The corporation
8 ~~association~~ shall adopt the following policy forms:

9 a. Standard personal lines policy forms ~~including wind~~
10 ~~coverage~~, which are multiperil policies providing what is
11 generally considered to be full coverage of a residential
12 property similar to the coverage provided under an HO-2, HO-3,
13 HO-4, or HO-6 policy.

14 ~~b. Standard personal lines policy forms without wind~~
15 ~~coverage, which are the same as the policies described in~~
16 ~~sub-subparagraph a. except that they do not include wind~~
17 ~~coverage.~~

18 ~~b.c.~~ Basic personal lines policy forms ~~including wind~~
19 ~~coverage~~, which are policies similar to an HO-8 policy or a
20 dwelling fire policy that provide coverage meeting the
21 requirements of the secondary mortgage market, but which
22 coverage is more limited than the coverage under a standard
23 policy.

24 ~~d. Basic personal lines policy forms without wind~~
25 ~~coverage, which are the same as the policies described in~~
26 ~~sub-subparagraph c. except that they do not include wind~~
27 ~~coverage.~~

28 c.e. Commercial lines residential policy forms
29 including wind coverage that are generally similar to the
30 basic perils of full coverage obtainable for commercial
31 residential structures in the admitted voluntary market.

1 d.f. Commercial nonresidential property insurance
2 forms which cover the peril of wind only. Such form is
3 applicable only to commercial nonresidential properties
4 located in areas eligible for coverage in the Florida
5 Windstorm Underwriting Association as those areas were defined
6 on January 1, 2001.~~Commercial lines residential policy forms~~
7 ~~without wind coverage, which are the same as the policies~~
8 ~~described in sub-subparagraph e. except that they do not~~
9 ~~include wind coverage.~~

10 ~~2.3.~~ May provide that the corporation ~~association~~ may
11 employ or otherwise contract with individuals or other
12 entities to provide administrative or professional services
13 that may be appropriate to effectuate the plan. The
14 corporation ~~association~~ shall have the power to borrow funds,
15 by issuing bonds or by incurring other indebtedness, and shall
16 have other powers reasonably necessary to effectuate the
17 requirements of this subsection. The corporation is
18 authorized, but not required, to seek judicial validation of
19 its bonds or other indebtedness under chapter 75.The
20 corporation ~~association~~ may issue bonds or incur other
21 indebtedness, or have bonds issued on its behalf by a unit of
22 local government pursuant to subparagraph (g)2., in the
23 absence of a hurricane or other weather-related event, upon a
24 determination by the corporation ~~association~~, subject to
25 approval by the department, that such action would enable it
26 to efficiently meet the financial obligations of the
27 corporation ~~association~~ and that such financings are
28 reasonably necessary to effectuate the requirements of this
29 subsection. The corporation ~~association~~ is authorized to take
30 all actions needed to facilitate tax-free status for any such
31 bonds or indebtedness, including formation of trusts or other

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

13 3.4. Must require that the corporation ~~association~~
14 operate subject to the supervision and approval of a board of
15 governors consisting of 7 ~~13~~ individuals, appointed by the
16 Insurance Commissioner. The Insurance Commissioner shall
17 designate one of the appointees including 1 who is elected as
18 chair. ~~The board shall consist of:~~

19 a. ~~The insurance consumer advocate appointed under s.~~
20 ~~627.0613.~~

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

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

31

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

6
7 All ~~Any~~ board members shall serve at the pleasure of the
8 Insurance Commissioner. All board members, including the
9 chair, shall be appointed to serve for 3-year terms beginning
10 annually on a date designated by the plan. Any board vacancy
11 shall be filled for the unexpired term of such board member by
12 an appointment by the Insurance Commissioner ~~member may be~~
13 ~~disapproved or removed and replaced by the commissioner at any~~
14 ~~time for cause. All board members, including the chair, must~~
15 ~~be appointed to serve for 3-year terms beginning annually on a~~
16 ~~date designated by the plan.~~

17 ~~4.5.~~ Must provide a procedure for determining the
18 eligibility of a risk for coverage, as follows:

19 a. With respect to personal lines residential risks,
20 if the risk is offered full coverage from an authorized
21 insurer at the insurer's approved rate under either a standard
22 ~~policy including wind coverage~~ or, if consistent with the
23 insurer's underwriting rules as filed with the department, a
24 ~~basic policy including wind coverage~~, the risk is not eligible
25 for any policy issued by the corporation ~~association~~. If the
26 risk accepts an offer of coverage through the market
27 assistance plan or an offer of coverage through a mechanism
28 established by the corporation ~~association~~ before a policy is
29 issued to the risk by the corporation ~~association~~ or during
30 the first 30 days of coverage by the corporation ~~association~~,
31 and the producing agent who submitted the application to the

1 plan or to the corporation ~~association~~ is not currently
2 appointed by the insurer, the insurer shall either appoint the
3 agent to service the risk or, if the insurer places the
4 coverage through a new agent, require the new agent who then
5 writes the policy to pay not less than 50 percent of the first
6 year's commission to the producing agent who submitted the
7 application to the plan or the corporation ~~association~~, except
8 that if the new agent is an employee or exclusive agent of the
9 insurer, the new agent shall pay a policy fee of \$50 to the
10 producing agent in lieu of splitting the commission. If the
11 risk is not able to obtain any such offer, the risk is
12 eligible for either a standard policy ~~including wind coverage~~
13 or a basic policy ~~including wind coverage~~ issued by the
14 corporation ~~association~~; however, if the risk could not be
15 insured under a standard policy ~~including wind coverage~~
16 regardless of market conditions, the risk shall be eligible
17 for a basic policy ~~including wind coverage~~ unless rejected
18 under subparagraph 7.8. The corporation ~~association~~ shall
19 determine the type of policy to be provided on the basis of
20 objective standards specified in the underwriting manual and
21 based on generally accepted underwriting practices.

22 b. With respect to commercial ~~lines residential~~ risks,
23 if the risk is offered coverage under a policy ~~including wind~~
24 ~~coverage~~ from an authorized insurer at its approved rate, the
25 risk is not eligible for any policy issued by the corporation
26 ~~association~~. If the risk accepts an offer of coverage through
27 the market assistance plan or an offer of coverage through a
28 mechanism established by the corporation ~~association~~ before a
29 policy is issued to the risk by the corporation ~~association~~,
30 and the producing agent who submitted the application to the
31 plan or the corporation ~~association~~ is not currently appointed

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

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

16 ~~5.6.~~ Must include rules for classifications of risks
17 and rates therefor.

18 ~~6.7.~~ Must provide that if premium and investment
19 income attributable to a particular calendar plan year are in
20 excess of projected losses and expenses for an account of the
21 plan attributable to that year, such excess shall be held in
22 surplus in the account. Such surplus shall be available to
23 defray deficits as to future years and shall be used for that
24 purpose prior to assessing participating member insurers as to
25 any calendar plan year.

26 ~~7.8.~~ Must provide objective criteria and procedures to
27 be uniformly applied for all applicants in determining whether
28 an individual risk is so hazardous as to be uninsurable. In
29 making this determination and in establishing the criteria and
30 procedures, the following shall be considered:

31

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

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

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

11 ~~8.9.~~ Must provide that the corporation ~~association~~
12 shall make its best efforts to procure catastrophe reinsurance
13 at reasonable rates, as determined by the board of governors.

14 ~~9.10.~~ Must provide that in the event of regular
15 deficit assessments under sub-subparagraph (b)3.a. or
16 sub-subparagraph (b)3.b., in the personal lines account, the
17 commercial lines residential account, or the high-risk account
18 ~~or by the Florida Windstorm Underwriting Association under~~
19 ~~sub-sub-subparagraph (2)(b)2.d.(I) or sub-sub-subparagraph~~
20 ~~(2)(b)2.d.(II)~~, the corporation ~~association~~ shall levy upon
21 corporation ~~association~~ policyholders in such amount in its
22 next rate filing, or by a separate rate filing solely for this
23 purpose, a market equalization surcharge in a percentage equal
24 to the total amount of such regular assessments divided by the
25 aggregate statewide direct written premium for subject lines
26 of business for participating ~~member~~ insurers for the prior
27 calendar year. Market equalization surcharges under this
28 subparagraph are not considered premium and are not subject to
29 commissions, fees, or premium taxes; however, failure to pay a
30 market equalization surcharge shall be treated as failure to
31 pay premium.

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

19 ~~10.12.~~ Corporation Association policies and
20 applications must include a notice that the corporation
21 association policy could, under this section ~~or s. 627.3511~~,
22 be replaced with a policy issued by an authorized admitted
23 insurer that does not provide coverage identical to the
24 coverage provided by the corporation association. The notice
25 shall also specify that acceptance of corporation association
26 coverage creates a conclusive presumption that the applicant
27 or policyholder is aware of this potential.

28 ~~11.13.~~ May establish, subject to approval by the
29 department, different eligibility requirements and operational
30 procedures for any line or type of coverage for any specified
31 county or area if the board determines that such changes to

1 the eligibility requirements and operational procedures are
2 justified due to the voluntary market being sufficiently
3 stable and competitive in such area or for such line or type
4 of coverage and that consumers who, in good faith, are unable
5 to obtain insurance through the voluntary market through
6 ordinary methods would continue to have access to coverage
7 from the ~~corporation association~~. When coverage is sought in
8 connection with a real property transfer, such requirements
9 and procedures shall not provide for an effective date of
10 coverage later than the date of the closing of the transfer as
11 established by the transferor, the transferee, and, if
12 applicable, the lender.

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

1 limitation or deferment of an emergency assessment to be
2 collected from policyholders under sub-subparagraph (b)3.d.

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

29 3. Rates for commercial ~~residential~~ coverage shall not
30 be subject to the requirements of subparagraph 2., but shall
31

1 be subject to all other requirements of this paragraph and s.
2 627.062.

3 4. Nothing in this paragraph shall require or allow
4 the corporation ~~association~~ to adopt a rate that is inadequate
5 under s. 627.062 ~~or to reduce rates approved under s. 627.062.~~

6 5. ~~The association may require arbitration of a filing~~
7 ~~pursuant to s. 627.062(6). Rate filings of the association~~
8 ~~under this paragraph shall be made on a use and file basis~~
9 ~~under s. 627.062(2)(a)2.~~ The corporation ~~association~~ shall
10 make a rate filing at least once a year, but no more often
11 than quarterly.

12 (e) If coverage in an account ~~through the association~~
13 ~~is hereby activated effective upon approval of the plan, and~~
14 ~~shall remain activated until coverage~~ is deactivated pursuant
15 to paragraph (f) ~~Thereafter, coverage through the~~
16 corporation ~~association~~ shall be reactivated by order of the
17 department only under one of the following circumstances:

18 1. If the market assistance plan receives a minimum of
19 100 applications for coverage within a 3-month period, or 200
20 applications for coverage within a 1-year period or less for
21 residential coverage, unless the market assistance plan
22 provides a quotation from admitted carriers at their filed
23 rates for at least 90 percent of such applicants. Any market
24 assistance plan application that is rejected because an
25 individual risk is so hazardous as to be uninsurable using the
26 criteria specified in subparagraph (c)8. shall not be included
27 in the minimum percentage calculation provided herein. In the
28 event that there is a legal or administrative challenge to a
29 determination by the department that the conditions of this
30 subparagraph have been met for eligibility for coverage in the
31

1 corporation association, any eligible risk may obtain coverage
2 during the pendency of such challenge.

3 2. In response to a state of emergency declared by the
4 Governor under s. 252.36, the department may activate coverage
5 by order for the period of the emergency upon a finding by the
6 department that the emergency significantly affects the
7 availability of residential property insurance.

8 (f) The activities of the corporation association
9 shall be reviewed at least annually by the department to
10 determine whether board and, upon recommendation by the board
11 or petition of any interested party, coverage shall be
12 deactivated in an account on the basis if the department finds
13 that the conditions giving rise to its activation no longer
14 exist.

15 (g)1. The board shall certify to the department its
16 needs for annual assessments as to a particular calendar year,
17 and for any ~~startup or~~ interim assessments that it deems to be
18 necessary to sustain operations as to a particular year
19 pending the receipt of annual assessments. Upon verification,
20 the department shall approve such certification, and the board
21 shall levy such annual, ~~startup,~~ or interim assessments. Such
22 assessments shall be prorated as provided in paragraph (b).
23 The board shall take all reasonable and prudent steps
24 necessary to collect the amount of assessment due from each
25 participating ~~member~~ insurer, including, if prudent, filing
26 suit to collect such assessment. If the board is unable to
27 collect an assessment from any participating member insurer,
28 the uncollected assessments shall be levied as an additional
29 assessment against the participating ~~member~~ insurers and any
30 participating ~~member~~ insurer required to pay an additional
31 assessment as a result of such failure to pay shall have a

1 cause of action against such nonpaying participating member
2 insurer. Assessments shall be included as an appropriate
3 factor in the making of rates.

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

1 carry out this paragraph. Any bonds issued under this
2 subparagraph shall be payable from and secured by moneys
3 received by the corporation ~~association~~ from emergency
4 assessments under sub-subparagraph (b)3.d., and assigned and
5 pledged to or on behalf of the unit of local government for
6 the benefit of the holders of such bonds. The funds, credit,
7 property, and taxing power of the state or of the unit of
8 local government shall not be pledged for the payment of such
9 bonds. If any of the bonds remain unsold 60 days after
10 issuance, the department shall require all insurers subject to
11 assessment to purchase the bonds, which shall be treated as
12 admitted assets; each insurer shall be required to purchase
13 that percentage of the unsold portion of the bond issue that
14 equals the insurer's relative share of assessment liability
15 under this subsection. An insurer shall not be required to
16 purchase the bonds to the extent that the department
17 determines that the purchase would endanger or impair the
18 solvency of the insurer.

19 3.a. ~~In addition to any credits, bonuses, or~~
20 ~~exemptions provided under s. 627.3511,~~The board shall adopt a
21 program for the reduction of both new and renewal writings in
22 the corporation ~~association~~. The board may consider any
23 prudent and not unfairly discriminatory approach to reducing
24 corporation ~~association~~ writings, and may ~~but must~~ adopt at
25 ~~least~~ a credit against assessment liability or other liability
26 that provides an incentive for insurers to take risks out of
27 the corporation ~~association~~ and to keep risks out of the
28 corporation ~~association~~ by maintaining or increasing voluntary
29 writings in counties or areas in which corporation ~~association~~
30 risks are highly concentrated and a program to provide a
31 formula under which an insurer voluntarily taking risks out of

1 the corporation ~~association~~ by maintaining or increasing
2 voluntary writings will be relieved wholly or partially from
3 assessments under sub-subparagraphs (b)3.a. and b.

4 b. When the corporation enters into a contractual
5 agreement for a take-out plan, the producing agent of record
6 of the corporation policy is entitled to retain any unearned
7 commission on such policy, and the insurer shall:

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

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

18 (II) If the new or producing agent is an employee or
19 exclusive agent of the insurer, the new insurer shall pay the
20 agent in accordance with sub-sub-subparagraph (I)(A).

21 c.b. Any credit or exemption from regular assessments
22 adopted under this subparagraph shall last no longer than the
23 3 years following the cancellation or expiration of the policy
24 by the corporation ~~association~~. With the approval of the
25 department, the board may extend such credits for an
26 additional year if the insurer guarantees an additional year
27 of renewability for all policies removed from the corporation
28 ~~association~~, or for 2 additional years if the insurer
29 guarantees 2 additional years of renewability for all policies
30 so removed.

31

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

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

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

18 (i) There shall be no liability on the part of, and no
19 cause of action of any nature shall arise against, any
20 participating member insurer or its agents or employees, the
21 corporation association or its agents or employees, members of
22 the board of governors or their respective designees at a
23 board meeting, corporation association committee members, or
24 the department or its representatives, for any action taken by
25 them in the performance of their duties or responsibilities
26 under this subsection. Such immunity does not apply to:

27 1. Any of the foregoing persons or entities for any
28 willful tort;

29 2. The corporation association or its ~~servicing or~~
30 producing agents for breach of any contract or agreement
31 pertaining to insurance coverage;

1 3. The corporation ~~association~~ with respect to
2 issuance or payment of debt; or

3 4. Any participating member insurer with respect to
4 any action to enforce a participating member insurer's
5 obligations to the corporation ~~association~~ under this
6 subsection.

7 (j) The corporation ~~Residential Property and Casualty~~
8 ~~Joint Underwriting Association~~ is not a state agency, board,
9 or commission but is a legislatively created public benefits
10 corporation serving a public purpose. ~~However,~~ For the
11 purposes of s. 199.183(1), the corporation ~~Residential~~
12 ~~Property and Casualty Joint Underwriting Association~~ shall be
13 considered a political subdivision of the state and shall be
14 exempt from the corporate income tax and the state premium
15 tax. The corporation is not required to obtain or to hold a
16 certificate of authority issued by the department, nor is it
17 required to participate as a member insurer of the Florida
18 Insurance Guaranty Association. However, the corporation
19 shall be required to pay assessments pledged by the Florida
20 Insurance Guaranty Association to secure bonds issued or other
21 indebtedness incurred to pay covered claims arising from
22 insurer insolvencies caused by, or proximately related to,
23 hurricane losses.

24 (k) Upon a determination by the department ~~board of~~
25 ~~governors~~ that the conditions giving rise to the establishment
26 and activation of the corporation ~~association~~ no longer exist,
27 ~~and upon the consent thereto by order of the department,~~ the
28 corporation ~~association~~ is dissolved. Upon dissolution, the
29 assets of the corporation ~~association~~ shall be applied first
30 to pay all debts, liabilities, and obligations of the
31 corporation ~~association~~, including the establishment of

1 reasonable reserves for any contingent liabilities or
2 obligations, and all remaining assets of the corporation
3 ~~association~~ shall become property of the state and deposited
4 in the Florida Hurricane Catastrophe Fund.

5 (1)1. Effective October 1, 2001, policies of the
6 Residential Property and Casualty Joint Underwriting
7 Association shall become policies of the corporation, and all
8 obligations, rights, assets, and liabilities of the
9 Residential Property and Casualty Joint Underwriting
10 Association, including bonds, notes, and debt obligations, and
11 the financing documents pertaining to them, shall become those
12 of the corporation. The corporation is not required to issue
13 endorsements or certificates of assumption to insureds during
14 the remaining term of in force transferred policies.

15 2. Effective October 1, 2001, policies of the Florida
16 Windstorm Underwriting Association are transferred to the
17 corporation and shall become policies of the corporation, and
18 all obligations, rights, assets, and liabilities of the
19 Florida Windstorm Underwriting Association, including bonds,
20 notes, and debt obligations, and the financing documents
21 pertaining to them, are transferred to and assumed by the
22 corporation. The corporation is not required to issue
23 endorsement or certificates of assumption to insureds during
24 the remaining term of in force transferred policies.

25 3. For policies transferred to the corporation from
26 the Florida Windstorm Underwriting Association with an
27 expiration date on or after January 1, 2002, notices of
28 nonrenewal shall be timely issued in accordance with s.
29 627.4133(2)(b). When the policyholder's wind-only policy is
30 not renewed, the corporation shall offer coverage under an
31 appropriate policy, covering the perils described in paragraph

1 (c), if the policyholder is otherwise eligible for coverage
2 from the corporation.

3 4. The Florida Windstorm Underwriting Association and
4 the Residential Property and Casualty Joint Underwriting
5 Association shall take all actions as may be proper to further
6 evidence such transfers and shall provide such documents and
7 instruments of further assurance as may reasonably be
8 requested by the corporation for such purpose. The
9 corporation shall execute such assumptions and instruments as
10 the trustees or other parties to the financing documents of
11 the Florida Windstorm Underwriting Association or the
12 Residential Property and Casualty Joint Underwriting
13 Association may reasonably request to further evidence such
14 transfers and assumptions, which transfers and assumptions,
15 however, shall be effective as of the date provided under this
16 paragraph whether or not, and regardless of the date on which,
17 such assumptions or instruments are executed by the
18 corporation. Subject to the relevant financing documents
19 pertaining to their outstanding bonds, notes, indebtedness, or
20 other financing obligations, the moneys, investments,
21 receivables, choses in action, and other intangibles of:

22 a. The Florida Windstorm Underwriting Association
23 shall be credited to the high-risk account of the corporation;
24 and

25 b. The personal lines residential coverage account and
26 the commercial lines residential coverage account of the
27 Residential Property and Casualty Joint Underwriting
28 Association shall be credited to the personal lines account
29 and the commercial lines account, respectively, of the
30 corporation.

31

1 5. Effective October 1, 2001, a new applicant for
2 property insurance coverage who would have otherwise been
3 eligible for coverage in the Florida Windstorm Underwriting
4 Association shall be eligible for coverage from the
5 corporation as provided for in this subsection.

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

1 provided by the Florida Hurricane Catastrophe Fund to the
2 corporation shall constitute and operate as a full transfer of
3 coverage from the Florida Windstorm Underwriting Association
4 and Residential Property and Casualty Joint Underwriting
5 Association to the corporation.

6 7. The department may, by order, postpone the October
7 1, 2001, effective dates set forth in this paragraph if the
8 department finds that effectuation of these dates cannot be
9 accomplished due to emergency conditions.~~All obligations,~~
10 ~~rights, assets, and liabilities of the Florida Property and~~
11 ~~Casualty Joint Underwriting Association created by subsection~~
12 ~~(5), which obligations, rights, assets, or liabilities relate~~
13 ~~to the provision of commercial lines residential property~~
14 ~~insurance coverage as described in this section are hereby~~
15 ~~transferred to the Residential Property and Casualty Joint~~
16 ~~Underwriting Association. The Residential Property and~~
17 ~~Casualty Joint Underwriting Association is not required to~~
18 ~~issue endorsements or certificates of assumption to insureds~~
19 ~~during the remaining term of in-force transferred policies.~~

20 (m) Notwithstanding any other provision of law:

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

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

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

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

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

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

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

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

31

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

9 d. Matters reasonably encompassed in privileged
10 attorney-client communications.

11 e. Proprietary information licensed to the corporation
12 ~~association~~ under contract and the contract provides for the
13 confidentiality of such proprietary information.

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

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

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

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

1 2. Portions of meetings of the corporation ~~Residential~~
2 ~~Property and Casualty Joint Underwriting Association~~ are
3 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
4 of the State Constitution wherein confidential underwriting
5 files or confidential open claims files are discussed. All
6 portions of corporation ~~association~~ meetings which are closed
7 to the public shall be recorded by a court reporter. The
8 court reporter shall record the times of commencement and
9 termination of the meeting, all discussion and proceedings,
10 the names of all persons present at any time, and the names of
11 all persons speaking. No portion of any closed meeting shall
12 be off the record. Subject to the provisions hereof and s.
13 119.07(2)(a), the court reporter's notes of any closed meeting
14 shall be retained by the corporation ~~association~~ for a minimum
15 of 5 years. A copy of the transcript, less any exempt matters,
16 of any closed meeting wherein claims are discussed shall
17 become public as to individual claims after settlement of the
18 claim.

19 (7) As used in this section and ss. 215.555 and
20 627.311, the term "collateral protection insurance" means
21 commercial property insurance of which a creditor is the
22 primary beneficiary and policyholder and which protects or
23 covers an interest of the creditor arising out of a credit
24 transaction secured by real or personal property. Initiation
25 of such coverage is triggered by the mortgagor's failure to
26 maintain insurance coverage as required by the mortgage or
27 other lending document. Collateral protection insurance is not
28 residential coverage.

29 (o) In enacting the provisions herein, the Legislature
30 recognizes that both the Florida Windstorm Underwriting
31 Association and the Residential Property and Casualty Joint

1 Underwriting Association have entered into financing
2 arrangements which obligate each entity to service its debts
3 and maintain the capacity to repay funds secured under these
4 financing arrangements. It is the intent of the Legislature
5 that nothing herein be construed to compromise, diminish, or
6 interfere with the rights of creditors under such financing
7 arrangements. It is further the intent of the Legislature to
8 preserve the obligations of the Florida Windstorm Underwriting
9 Association and Residential Property and Casualty Joint
10 Underwriting Association with regard to outstanding financing
11 arrangements, with such obligations passing entirely and
12 unchanged to the corporation. So long as any bonds, notes,
13 indebtedness, or other financing obligations of the Florida
14 Windstorm Underwriting Association or the Residential Property
15 and Casualty Joint Underwriting Association are outstanding
16 under the terms of the financing documents pertaining to them,
17 the governing board of the corporation shall have and shall
18 exercise the authority to levy, charge, collect, and receive
19 all premiums, assessments, surcharges, charges, revenues, and
20 receipts that such associations had authority to levy, charge,
21 collect, or receive under the provisions of subsection (2) or
22 subsection (6), respectively, as they existed on January 1,
23 2001, to the extent as may be necessary to provide moneys,
24 together with other available moneys of the corporation
25 without exercise of the authority provided by this sentence,
26 in at least the amounts, and by the times, as would be
27 provided under those former provisions of subsection (2) or
28 subsection (6), respectively, so that the value, amount, and
29 collectability of any assets, revenues, or revenue source
30 pledged or committed to, or any lien thereon securing such
31 outstanding bonds, notes, indebtedness, or other financing

1 obligations will not be diminished, impaired, or adversely
2 affected by the amendments made by this act, and to permit
3 compliance with all provisions of financing documents
4 pertaining to such bonds, notes, indebtedness, or other
5 financing obligations, or the security or credit enhancement
6 for them, and any reference in this subsection to bonds,
7 notes, indebtedness, financing obligations, or similar
8 obligations, of the corporation shall include like instruments
9 or contracts of the Florida Windstorm Underwriting Association
10 and the Residential Property and Casualty Joint Underwriting
11 Association to the extent not inconsistent with the provisions
12 of the financing documents pertaining to them.

13 Section 2. Paragraph (c) of subsection (2) of section
14 215.555, Florida Statutes, is amended to read:

15 215.555 Florida Hurricane Catastrophe Fund.--

16 (2) DEFINITIONS.--As used in this section:

17 (c) "Covered policy" means any insurance policy
18 covering residential property in this state, including, but
19 not limited to, any homeowner's, mobile home owner's, farm
20 owner's, condominium association, condominium unit owner's,
21 tenant's, or apartment building policy, or any other policy
22 covering a residential structure or its contents issued by any
23 authorized insurer, including any joint underwriting
24 association or similar entity created pursuant to law.

25 Additionally, covered policies include policies covering the
26 peril of wind removed from the Citizens Property Insurance
27 Corporation ~~Florida Residential Property and Casualty Joint~~
28 ~~Underwriting Association~~, created pursuant to s. 627.351(6),
29 or from the Florida Windstorm Underwriting Association,
30 created pursuant to s. 627.351(2), by an authorized insurer
31 under the terms and conditions of an executed assumption

1 agreement between the authorized insurer and either such
2 association. Each assumption agreement between either
3 association and such authorized insurer must be approved by
4 the Florida Department of Insurance prior to the effective
5 date of the assumption, and the Department of Insurance must
6 provide written notification to the board within 15 working
7 days after such approval. "Covered policy" does not include
8 any policy that excludes wind coverage or hurricane coverage
9 or any reinsurance agreement and does not include any policy
10 otherwise meeting this definition which is issued by a surplus
11 lines insurer or a reinsurer.

12 Section 3. Subsection (1), paragraph (d) of subsection
13 (2), paragraph (a) of subsection (3), and subsection (5) of
14 section 624.4071, Florida Statutes, are amended to read:

15 624.4071 Special purpose homeowner insurance
16 company.--

17 (1) The department may issue to a qualified applicant
18 a certificate of authority to operate a special purpose
19 homeowner insurance company in order to provide residential
20 coverage to policyholders in this state. The purpose of a
21 special purpose homeowner insurance company is to provide, on
22 a temporary basis, a new, limited authority insurance company
23 in order to accelerate the restoration of the Florida
24 homeowner insurance marketplace, which includes depopulation
25 of the Citizens Property Insurance Corporation Residential
26 ~~Property and Casualty Joint Underwriting Association.~~

27 (2) A special purpose homeowner insurance company must
28 have a parent company, and both companies must meet the
29 requirements of this subsection in order for the subsidiary to
30 qualify for and maintain a certificate of authority under this
31 section.

- 1 (d) The special purpose homeowner insurance company
2 must:
- 3 1. Have and maintain at least \$10 million in surplus
4 and otherwise satisfy the requirements of s. 624.4095.
- 5 2. Be a member of the Florida Insurance Guaranty
6 Association and the Florida Hurricane Catastrophe Fund, and be
7 subject to any of their required assessments and premium
8 charges. However, a special purpose homeowner insurance
9 company may not be a member of the Florida Windstorm
10 Underwriting Association or the Citizens Property Insurance
11 Corporation ~~Florida Residential Property and Casualty Joint~~
12 ~~Underwriting Association~~, and neither the company nor its
13 policyholders are subject to any assessments by these
14 associations except for emergency assessments collected from
15 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and
16 (6)(b)3.d. For the sole purpose of levying and collecting
17 emergency assessments and determining the statewide written
18 premium for property insurance, special purpose homeowner
19 insurance companies shall be considered member insurers of the
20 Florida Windstorm Underwriting Association and the Citizens
21 Property Insurance Corporation ~~Florida Residential Property~~
22 ~~and Casualty Joint Underwriting Association~~.
- 23 3. Offer coverage for all perils, including windstorm,
24 in providing residential coverage as defined in s. 627.4025. A
25 special purpose homeowner insurance company's rates must be
26 filed with the department. After a period of 1 year from the
27 date a company receives a certificate of authority, the
28 company's rates are subject to department approval under s.
29 627.062.
- 30 (3)(a) The special purpose homeowner insurance company
31 may charge a policyholder an initial premium of up to 110

1 percent of the premium charged to that policyholder for
2 substantially similar coverage by the authorized insurer that
3 last insured the policyholder, or the Citizens Property
4 Insurance Corporation Residential Property and Casualty Joint
5 Underwriting Association if the Citizens Property Insurance
6 Corporation Residential Property and Casualty Joint
7 Underwriting Association last insured the policyholder; or the
8 special purpose homeowner insurance company may charge a
9 policyholder the same premium that the policyholder would have
10 been charged for substantially similar coverage upon renewal
11 by the authorized insurer last insuring the policyholder or by
12 the Citizens Property Insurance Corporation Residential
13 Property and Casualty Joint Underwriting Association, if the
14 Citizens Property Insurance Corporation Residential Property
15 and Casualty Joint Underwriting Association last insured the
16 policyholder.

17 (5) The special purpose homeowner insurance company
18 may write only policies that are directly taken from the
19 Citizens Property Insurance Corporation Residential Property
20 and Casualty Joint Underwriting Association or from an
21 unaffiliated authorized insurer; may assume such policies
22 either during the policy period or at the time of renewal; and
23 must offer to renew such policies for two additional policy
24 periods of 12 months each in accordance with subsection (3).

25 (a) If the policy is to be nonrenewed by the Citizens
26 Property Insurance Corporation Residential Property and
27 Casualty Joint Underwriting Association or by an unaffiliated
28 authorized insurer, the policyholder must be given 45 days'
29 notice of nonrenewal along with a concurrent offer of coverage
30 from the special purpose homeowner insurance company. If the
31 policyholder declines coverage by nonpayment of premium or by

1 notice given prior to the effective date of the new policy,
2 the policyholder is ineligible for coverage by the Citizens
3 Property Insurance Corporation ~~Residential Property and~~
4 ~~Casualty Joint Underwriting Association~~, and the offer made by
5 the special purpose homeowner insurance company terminates.

6 (b) If the policy is to be nonrenewed by the Citizens
7 Property Insurance Corporation ~~Residential Property and~~
8 ~~Casualty Joint Underwriting Association~~ or by an unaffiliated
9 authorized insurer as the result of an assumption by a special
10 purpose homeowner insurance company, the policyholder must be
11 given 45 days' notice of assumption. If the policyholder
12 declines coverage by nonpayment of premium or by notice given
13 prior to the effective date of the new policy, the
14 policyholder is ineligible for coverage with the ceding
15 insurer or the Citizens Property Insurance Corporation
16 ~~Residential Property and Casualty Joint Underwriting~~
17 ~~Association~~, and the policy will not be assumed by the special
18 purpose homeowner insurance company.

19 (c) If a special purpose homeowner insurance company
20 assumes a policy other than at nonrenewal, the authorized
21 insurer last insuring the policyholder or the Citizens
22 Property Insurance Corporation ~~Residential Property and~~
23 ~~Casualty Joint Underwriting Association~~ must pay any rate
24 charge in excess of the current policy rate until the date the
25 policy would have been renewed, at which time the policyholder
26 is responsible for the entire rate at the time the policy is
27 renewed with the special purpose homeowner company.

28 (d) If a policy is assumed at any time other than at
29 its renewal, the coverage and terms provided by the assumed
30 policy continue in force until the original policy would have
31 been renewed.

1 (e) A policyholder who, at time of assumption, is
2 covered for wind damage by the Florida Windstorm Underwriting
3 Association shall have that peril assumed by the special
4 purpose homeowner insurance company at the normal expiration
5 of the Florida Windstorm Underwriting Association policy.

6 Section 4. Paragraph (b) of subsection (1) of section
7 624.4072, Florida Statutes, is amended to read:

8 624.4072 Minority-owned property and casualty
9 insurers; limited exemption for taxation and assessments.--

10 (1) A minority business that is at least 51 percent
11 owned by minority persons, as defined in s. 288.703(3),
12 initially issued a certificate of authority in this state as
13 an authorized insurer after May 1, 1998, to write property and
14 casualty insurance shall be exempt, for a period not to exceed
15 5 years from the date of receiving its certificate of
16 authority, from the following taxes and assessments:

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

1 ~~Association~~, the aggregate statewide direct written premium
2 for the subject lines of business for all member insurers.
3 Section 5. Subsection (5) of section 626.752, Florida
4 Statutes, is amended to read:
5 626.752 Exchange of business.--
6 (5) Within 15 days after the last day of each month,
7 any insurer accepting business under this section shall report
8 to the department the name, address, telephone number, and
9 social security number of each agent from which the insurer
10 received more than 24 personal lines risks during the calendar
11 year, except for risks being removed from the Citizens
12 Property Insurance Corporation ~~Residential Property and~~
13 ~~Casualty Joint Underwriting Association~~ and placed with that
14 insurer by a brokering agent. Once the insurer has reported
15 pursuant to this subsection an agent's name to the department,
16 additional reports on the same agent shall not be required.
17 However, the fee set forth in s. 624.501 shall be paid for the
18 agent by the insurer for each year until the insurer notifies
19 the department that the insurer is no longer accepting
20 business from the agent pursuant to this section. The insurer
21 may require that the agent reimburse the insurer for the fee.
22 Section 6. Paragraph (b) of subsection (2) of section
23 627.0628, Florida Statutes, is amended to read:
24 627.0628 Florida Commission on Hurricane Loss
25 Projection Methodology.--
26 (2) COMMISSION CREATED.--
27 (b) The commission shall consist of the following 11
28 members:
29 1. The insurance consumer advocate.
30 2. The Chief Operating Officer of the Florida
31 Hurricane Catastrophe Fund.

1 3. The Executive Director of the Citizens Property
2 Insurance Corporation ~~Residential Property and Casualty Joint~~
3 ~~Underwriting Association.~~

4 4. The Director of the Division of Emergency
5 Management of the Department of Community Affairs.

6 5. The actuary member of the Florida Hurricane
7 Catastrophe Fund Advisory Council.

8 6. Six members appointed by the Insurance
9 Commissioner, as follows:

10 a. An employee of the Department of Insurance who is
11 an actuary responsible for property insurance rate filings.

12 b. An actuary who is employed full time by a property
13 and casualty insurer which was responsible for at least 1
14 percent of the aggregate statewide direct written premium for
15 homeowner's insurance in the calendar year preceding the
16 member's appointment to the commission.

17 c. An expert in insurance finance who is a full time
18 member of the faculty of the State University System and who
19 has a background in actuarial science.

20 d. An expert in statistics who is a full time member
21 of the faculty of the State University System and who has a
22 background in insurance.

23 e. An expert in computer system design who is a full
24 time member of the faculty of the State University System.

25 f. An expert in meteorology who is a full time member
26 of the faculty of the State University System and who
27 specializes in hurricanes.

28 Section 7. Section 627.3511, Florida Statutes, is
29 amended to read:

30
31

1 627.3511 Depopulation of Citizens Property Insurance
2 Corporation Residential Property and Casualty Joint
3 Underwriting Association.--
4 (1) LEGISLATIVE INTENT.--The Legislature finds that
5 the public policy of this state requires the maintenance of a
6 residual market for residential property insurance. It is the
7 intent of the Legislature to provide a variety of financial
8 incentives to encourage the replacement of the highest
9 possible number of Citizens Property Insurance Corporation
10 Residential Property and Casualty Joint Underwriting
11 Association policies with policies written by admitted
12 insurers at approved rates.
13 (2) TAKE-OUT BONUS.--The Citizens Property Insurance
14 Corporation Residential Property and Casualty Joint
15 Underwriting Association shall pay the sum of up to \$100 to an
16 insurer for each risk that the insurer removes from the
17 association, either by issuance of a policy upon expiration or
18 cancellation of the association policy or by assumption of the
19 association's obligations with respect to an in-force policy.
20 Such payment is subject to approval of the association board.
21 In order to qualify for the bonus under this subsection, the
22 take-out plan must include a minimum of 25,000 policies.
23 Within 30 days after approval by the board, the department may
24 reject the insurer's take-out plan and disqualify the insurer
25 from the bonus, based on the following criteria:
26 (a) The capacity of the insurer to absorb the policies
27 proposed to be taken out of the association and the
28 concentration of risks of those policies.
29 (b) Whether the geographic and risk characteristics of
30 policies in the proposed take-out plan serve to reduce the
31 exposure of the association sufficiently to justify the bonus.

1 (c) Whether coverage for risks to be taken out
2 otherwise exists in the admitted voluntary market.

3 (d) The degree to which the take-out bonus is
4 promoting new capital being allocated by the insurer to
5 Florida residential property coverage.

6 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

7 (a) The calculation of an insurer's assessment
8 liability under s. 627.351(6)(b)3.a. or b. shall, for an
9 insurer that in any calendar year removes 50,000 or more risks
10 from the Citizens Property Insurance Corporation Residential
11 ~~Property and Casualty Joint Underwriting Association~~, either
12 by issuance of a policy upon expiration or cancellation of the
13 association policy or by assumption of the association's
14 obligations with respect to in-force policies, exclude such
15 removed policies for the succeeding 3 years, as follows:

16 1. In the first year following removal of the risks,
17 the risks are excluded from the calculation to the extent of
18 100 percent.

19 2. In the second year following removal of the risks,
20 the risks are excluded from the calculation to the extent of
21 75 percent.

22 3. In the third year following removal of the risks,
23 the risks are excluded from the calculation to the extent of
24 50 percent.

25
26 If the removal of risks is accomplished through assumption of
27 obligations with respect to in-force policies, the association
28 shall pay to the assuming insurer all unearned premium with
29 respect to such policies less any policy acquisition costs
30 agreed to by the association and assuming insurer. The term
31 "policy acquisition costs" is defined as costs of issuance of

1 the policy by the association which includes agent
2 commissions, servicing company fees, and premium tax. This
3 paragraph does not apply to an insurer that, at any time
4 within 5 years before removing the risks, had a market share
5 in excess of 0.1 percent of the statewide aggregate gross
6 direct written premium for any line of property insurance, or
7 to an affiliate of such an insurer. This paragraph does not
8 apply unless either at least 40 percent of the risks removed
9 from the association are located in Dade, Broward, and Palm
10 Beach Counties, or at least 30 percent of the risks removed
11 from the association are located in such counties and an
12 additional 50 percent of the risks removed from the
13 association are located in other coastal counties.

14 (b) An insurer that first wrote personal lines
15 residential property coverage in this state on or after July
16 1, 1994, is exempt from regular deficit assessments imposed
17 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency
18 assessments collected from policyholders pursuant to s.
19 627.351(6)(b)3.d., of the Citizens Property Insurance
20 Corporation ~~Residential Property and Casualty Joint~~
21 ~~Underwriting Association~~ until the earlier of the following:

22 1. The end of the calendar year in which it first
23 wrote 0.5 percent or more of the statewide aggregate direct
24 written premium for any line of residential property coverage;
25 or

26 2. December 31, 1997, or December 31 of the third year
27 in which it wrote such coverage in this state, whichever is
28 later.

29 (c) Other than an insurer that is exempt under
30 paragraph (b), an insurer that in any calendar year increases
31 its total structure exposure subject to wind coverage by 25

1 percent or more over its exposure for the preceding calendar
2 year is, with respect to that year, exempt from deficit
3 assessments imposed pursuant to s. 627.351(6)(b)3.a. and b.,
4 but not emergency assessments collected from policyholders
5 pursuant to s. 627.351(6)(b)3.d., of the Citizens Property
6 Insurance Corporation ~~Residential Property and Casualty Joint~~
7 ~~Underwriting Association~~ attributable to such increase in
8 exposure.

9 (d) Any exemption or credit from regular assessments
10 authorized by this section shall last no longer than 3 years
11 following the cancellation or expiration of the policy by the
12 association. With the approval of the department, the board
13 may extend such credits for an additional year if the insurer
14 guarantees an additional year of renewability for all policies
15 removed from the association, or for 2 additional years if the
16 insurer guarantees 2 additional years of renewability for all
17 policies so removed.

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

25 (a) Pay to the producing agent of record of the
26 association policy an amount equal to the insurer's usual and
27 customary commission for the type of policy written if the
28 term of the association policy was in excess of 6 months, or
29 one-half of such usual and customary commission if the term of
30 the association policy was 6 months or less; or
31

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

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

19 (5) APPLICABILITY.--

20 (a) The take-out bonus provided by subsection (2) and
21 the exemption from assessment provided by paragraph (3)(a)
22 apply only if the association policy is replaced by either a
23 standard policy including wind coverage or, if consistent with
24 the insurer's underwriting rules as filed with the department,
25 a basic policy including wind coverage; however, with respect
26 to risks located in areas where coverage through the Florida
27 Windstorm Underwriting Association is available, the
28 replacement policy need not provide wind coverage. The insurer
29 must renew the replacement policy at approved rates on
30 substantially similar terms for two additional 1-year terms,
31 unless canceled by the insurer for a lawful reason other than

1 reduction of hurricane exposure. If an insurer assumes the
2 association's obligations for a policy, it must issue a
3 replacement policy for a 1-year term upon expiration of the
4 association policy and must renew the replacement policy at
5 approved rates on substantially similar terms for two
6 additional 1-year terms, unless canceled by the insurer for a
7 lawful reason other than reduction of hurricane exposure. For
8 each replacement policy canceled or nonrenewed by the insurer
9 for any reason during the 3-year coverage period required by
10 this paragraph, the insurer must remove from the association
11 one additional policy covering a risk similar to the risk
12 covered by the canceled or nonrenewed policy. In addition to
13 these requirements, the association must place the bonus
14 moneys in escrow for a period of 3 years; such moneys may be
15 released from escrow only to pay claims. A take-out bonus
16 provided by subsection (2) or subsection (6) shall not be
17 considered premium income for purposes of taxes and
18 assessments under the Florida Insurance Code and shall remain
19 the property of the Citizens Property Insurance Corporation
20 ~~Residential Property and Casualty Joint Underwriting~~
21 ~~Association~~, subject to the prior security interest of the
22 insurer under the escrow agreement until it is released from
23 escrow, and after it is released from escrow it shall be
24 considered an asset of the insurer and credited to the
25 insurer's capital and surplus.

26 (b) It is the intent of the Legislature that an
27 insurer eligible for the exemption under paragraph (3)(a)
28 establish a preference in appointment of agents for those
29 agents who lose a substantial amount of business as a result
30 of risks being removed from the association.

31 (6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

1 (a) The Citizens Property Insurance Corporation
2 ~~Residential Property and Casualty Joint Underwriting~~
3 ~~Association~~ shall pay a bonus to an insurer for each
4 commercial residential policy that the insurer removes from
5 the association pursuant to an approved take-out plan, either
6 by issuance of a new policy upon expiration of the association
7 policy or by assumption of the association's obligations with
8 respect to an in-force policy. The association board shall
9 determine the amount of the bonus based on such factors as the
10 coverage provided, relative hurricane risk, the length of time
11 that the property has been covered by the association, and the
12 criteria specified in paragraphs (b) and (c). The amount of
13 the bonus with respect to a particular policy may not exceed
14 25 percent of the association's 1-year premium for the policy.
15 Such payment is subject to approval of the association board.
16 In order to qualify for the bonus under this subsection, the
17 take-out plan must include policies reflecting at least \$100
18 million in structure exposure.

19 (b) In order for a plan to qualify for approval:

20 1. At least 40 percent of the policies removed from
21 the association under the plan must be located in Dade,
22 Broward, and Palm Beach Counties, or at least 30 percent of
23 the policies removed from the association under the plan must
24 be located in such counties and an additional 50 percent of
25 the policies removed from the association must be located in
26 other coastal counties.

27 2. The insurer must renew the replacement policy at
28 approved rates on substantially similar terms for two
29 additional 1-year terms, unless canceled or nonrenewed by the
30 insurer for a lawful reason other than reduction of hurricane
31 exposure. If an insurer assumes the association's obligations

1 for a policy, it must issue a replacement policy for a 1-year
2 term upon expiration of the association policy and must renew
3 the replacement policy at approved rates on substantially
4 similar terms for two additional 1-year terms, unless canceled
5 by the insurer for a lawful reason other than reduction of
6 hurricane exposure. For each replacement policy canceled or
7 nonrenewed by the insurer for any reason during the 3-year
8 coverage period required by this subparagraph, the insurer
9 must remove from the association one additional policy
10 covering a risk similar to the risk covered by the canceled or
11 nonrenewed policy.

12 (c) A take-out plan is deemed approved unless the
13 department, within 120 days after the board votes to recommend
14 the plan, disapproves the plan based on:

15 1. The capacity of the insurer to absorb the policies
16 proposed to be taken out of the association and the
17 concentration of risks of those policies.

18 2. Whether the geographic and risk characteristics of
19 policies in the proposed take-out plan serve to reduce the
20 exposure of the association sufficiently to justify the bonus.

21 3. Whether coverage for risks to be taken out
22 otherwise exists in the admitted voluntary market.

23 4. The degree to which the take-out bonus is promoting
24 new capital being allocated by the insurer to residential
25 property coverage in this state.

26 (d) The calculation of an insurer's regular assessment
27 liability under s. 627.351(b)3.a. and b., but not emergency
28 assessments collected from policyholders pursuant to s.
29 627.351(6)(b)3.d., shall, with respect to commercial
30 residential policies removed from the association under an
31

1 approved take-out plan, exclude such removed policies for the
2 succeeding 3 years, as follows:

3 1. In the first year following removal of the
4 policies, the policies are excluded from the calculation to
5 the extent of 100 percent.

6 2. In the second year following removal of the
7 policies, the policies are excluded from the calculation to
8 the extent of 75 percent.

9 3. In the third year following removal of the
10 policies, the policies are excluded from the calculation to
11 the extent of 50 percent.

12 (e) An insurer that first wrote commercial residential
13 property coverage in this state on or after June 1, 1996, is
14 exempt from regular assessments under s. 627.351(6)(b)3.a. and
15 b., but not emergency assessments collected from policyholders
16 pursuant to s. 627.351(6)(b)3.d., with respect to commercial
17 residential policies until the earlier of:

18 1. The end of the calendar year in which such insurer
19 first wrote 0.5 percent or more of the statewide aggregate
20 direct written premium for commercial residential property
21 coverage; or

22 2. December 31 of the third year in which such insurer
23 wrote commercial residential property coverage in this state.

24 (f) An insurer that is not otherwise exempt from
25 regular assessments under s. 627.351(6)(b)3.a. and b. with
26 respect to commercial residential policies is, for any
27 calendar year in which such insurer increased its total
28 commercial residential hurricane exposure by 25 percent or
29 more over its exposure for the preceding calendar year, exempt
30 from regular assessments under s. 627.351(6)(b)3.a. and b.,
31 but not emergency assessments collected from policyholders

1 pursuant to s. 627.351(6)(b)3.d., attributable to such
2 increased exposure.

3 (7) A minority business, which is at least 51 percent
4 owned by minority persons as described in s. 288.703(3),
5 desiring to operate or become licensed as a property and
6 casualty insurer may exempt up to \$50 of the escrow
7 requirements of the take-out bonus, as described in this
8 section. Such minority business, which has applied for a
9 certificate of authority to engage in business as a property
10 and casualty insurer, may simultaneously file the business'
11 proposed take-out plan, as described in this section, to the
12 Citizens Property Insurance Corporation ~~Residential Property~~
13 ~~and Casualty Joint Underwriting Association.~~

14 Section 8. Subsection (1) of section 627.3513, Florida
15 Statutes, is amended to read:

16 627.3513 Standards for sale of bonds by underwriting
17 associations.--

18 (1)(a) The purpose of this section is to provide
19 standards for the sale of bonds pursuant to s. 627.351(2) and
20 (6).

21 (b) "Association" or "associations," for purposes of
22 this section, means the Florida Windstorm Underwriting
23 Association ~~and the Residential Property and Casualty Joint~~
24 ~~Underwriting Association~~ as established pursuant to s.
25 627.351(2) ~~and (6)~~, and any corporation or other entity
26 established pursuant to those subsections.

27 Section 9. Section 627.3515, Florida Statutes, is
28 amended to read:

29 627.3515 Market assistance plan; property and casualty
30 risks.--

31

1 (1) The department shall adopt a market assistance
2 plan to assist in the placement of risks of applicants who are
3 unable to procure property insurance as defined in s. 624.604
4 or casualty insurance as defined in s. 624.605(1)(b), (e),
5 (f), (g), or (h) from authorized insurers when such insurance
6 is otherwise generally available from insurers authorized to
7 transact and actually writing that kind and class of insurance
8 in this state. Through such measures as are found appropriate
9 by the board of governors, the market assistance plan shall
10 take affirmative steps to assist in the removal from the
11 Citizens Property Insurance Corporation Residential Property
12 ~~and Casualty Joint Underwriting Association~~ any risk that can
13 be placed in the voluntary market. All property and casualty
14 insurers licensed in this state shall participate in the plan.

15 (2)(a) Each person serving as a member of the board of
16 governors of the Citizens Property Insurance Corporation
17 ~~Residential Property and Casualty Joint Underwriting~~
18 ~~Association~~ shall also serve as a member of the board of
19 governors of the market assistance plan.

20 (b) The plan shall be funded through payments from the
21 Citizens Property Insurance Corporation Residential Property
22 ~~and Casualty Joint Underwriting Association~~ and annual
23 assessments of residential property insurers in the amount of
24 \$450.

25 (c) The plan is not required to assist in the
26 placement of any workers' compensation, employer's liability,
27 malpractice, or motor vehicle insurance coverage.

28 Section 10. Section 627.3516, Florida Statutes, is
29 amended to read:

30 627.3516 Residential property insurance market
31 coordinating council.--The Florida Windstorm Underwriting

1 Association and the Citizens Property Insurance Corporation
2 ~~Residential Property and Casualty Joint Underwriting~~
3 ~~Association~~ shall create a residual property insurance market
4 coordinating council to assure that each association is
5 informed of the activities and plans of the other. The
6 coordinating council shall consist of the insurance consumer
7 advocate, who shall chair the council, the executive director
8 of each of the associations, and the chair of the governing
9 board of each of the associations. The coordinating council
10 may, from time to time, recommend to the presiding officers of
11 the Legislature proposals to improve coordination between the
12 associations or eliminate unnecessary duplication of efforts;
13 however, any such recommendation must also include an analysis
14 of the impact of the recommendation on the financial
15 arrangements of each association and on the state's efforts to
16 restore the voluntary property insurance market. The
17 coordinating council shall, on March 1 of each year, provide a
18 report of its activities during the preceding year to the
19 presiding officers of the Legislature.

20 Section 11. Paragraphs (b) and (c) of subsection (1)
21 of section 627.7013, Florida Statutes, are amended to read:

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

24 (1) FINDINGS AND PURPOSE.--

25 (b) The Legislature finds, as of the beginning of the
26 1996 Regular Session of the Legislature, that:

27 1. The conditions described in paragraph (a) remain
28 applicable to the property insurance market in this state in
29 1996 and are likely to remain applicable for several years
30 thereafter.

31

1 2. The Citizens Property Insurance Corporation
2 ~~Residential Property and Casualty Joint Underwriting~~
3 ~~Association~~, a residual market mechanism created to alleviate
4 temporary unavailability of property insurance coverage,
5 remains the primary or exclusive source of new property
6 insurance coverage in significant portions of the state.

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

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

26 (c) The Legislature finds, as of January 1, 1998,
27 that:

28 1. The conditions described in paragraphs (a) and (b)
29 remain applicable to the property insurance market in this
30 state in 1998 and are likely to remain applicable for several
31 years thereafter.

1 2. The general instability of the market is reflected
2 by the following facts:

3 a. In spite of depopulation efforts under which
4 approximately 600,000 policies have been transferred from the
5 Citizens Property Insurance Corporation Residential Property
6 ~~and Casualty Joint Underwriting Association~~ to the voluntary
7 market, the joint underwriting association, with approximately
8 500,000 policies in force, remains the primary or exclusive
9 source of new property insurance coverage in significant
10 portions of the state.

11 b. The Florida Windstorm Underwriting Association is
12 growing rapidly, with more than 400,000 policies in force,
13 approximately half of which were initially issued in 1997.

14 3. A further extension of the operation of this
15 section until June 1, 2001, will provide an opportunity for
16 the market to stabilize and for continuation of residual
17 market depopulation efforts.

18 Section 12. Paragraph (a) of subsection (1) of section
19 627.7014, Florida Statutes, is amended to read:

20 627.7014 Orderly markets for condominium association
21 residential property insurance.--

22 (1) FINDINGS AND PURPOSE.--

23 (a) The Legislature finds:

24 1. That residential property insurers providing
25 condominium association coverage, as a condition of doing
26 business in this state, have a responsibility to contribute to
27 an orderly market for condominium association residential
28 property insurance and that there is a compelling state
29 interest in maintaining an orderly market for condominium
30 association residential property insurance.

31

1 2. That Hurricane Andrew, which caused over \$15
2 billion of insured losses in South Florida, has reinforced the
3 need of consumers to have reliable condominium association
4 insurance coverage; however, even more than 3 years after
5 Hurricane Andrew, the hurricane's enormous monetary impact is
6 causing insurers to propose substantial cancellation or
7 nonrenewal of their condominium association insurance
8 policyholders.

9 3. That the massive cancellations and nonrenewals
10 announced, proposed, or contemplated by certain insurers
11 constitute a significant danger to the public health, safety,
12 and welfare and destabilize the insurance market.

13 4. That the Citizens Property Insurance Corporation
14 ~~Residential Property and Casualty Joint Underwriting~~
15 ~~Association~~, a residual market mechanism created to alleviate
16 temporary unavailability of property insurance coverage,
17 remains the primary or exclusive source of new property
18 insurance in significant portions of the state.

19 5. That recent enactments intended to restore a
20 competitive, private sector property insurance market,
21 including creation and enhancement of the Florida Hurricane
22 Catastrophe Fund, incentives for depopulation of the Citizens
23 Property Insurance Corporation ~~Residential Property and~~
24 ~~Casualty Joint Underwriting Association~~, incentives for
25 hurricane loss mitigation and prevention, creation of the
26 Florida Commission on Hurricane Loss Projection Methodology,
27 and revisions of laws relating to rates and coverages, are
28 beginning to have their intended effects; however, the market
29 remains unstable.

30 6. That the moratorium created by this section is the
31 least intrusive method for maintaining an orderly market for

1 condominium association insurance, insofar as it applies only
2 to hurricane-related cancellations and nonrenewals of personal
3 lines residential policies that were in force on the effective
4 date of this section, and insofar as it allows an insurer
5 annually to nonrenew up to 5 percent of the total number of
6 such policies as of the effective date of this section.

7 Section 13. This act shall take effect July 1, 2001.

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10 HOUSE SUMMARY

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Creates the Citizens Property Insurance Corporation in place of the Residential Property and Casualty Joint Underwriting Association. Revises and applies provisions relating to the Residential Property and Casualty Joint Underwriting Association and the association's member insurers to the corporation and the corporation's participating insurers. Requires insurers to participate in the corporation. Provides for application to commercial property as well as residential property. Provides for division of revenues, assets, liabilities, losses, and expenses of the corporation into three accounts, to be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding. See bill for details.