

By Senator Garcia

39-1236-01

1                                   A bill to be entitled  
2           An act relating to insurance; amending s.  
3           627.351, F.S.; renaming the Residential  
4           Property and Casualty Joint Underwriting  
5           Association as the Citizens Property Insurance  
6           Corporation to provide residential and  
7           commercial property insurance through a public  
8           benefits corporation; requiring insurers  
9           writing property insurance to participate in  
10          the corporation; providing for dividing the  
11          revenues, assets, liabilities, losses, and  
12          expenses of the corporation into three  
13          accounts; providing for emergency assessments  
14          for policyholders of participating insurers;  
15          providing a plan of operation; providing for a  
16          board of governors; providing that the  
17          corporation is not required to obtain a  
18          certificate of authority from the Department of  
19          Insurance; providing that the corporation is  
20          not required to be a member of the Florida  
21          Insurance Guaranty Association; requiring the  
22          corporation to pay assessments pledged by the  
23          association to secure bonds to pay covered  
24          claims arising from insurer insolvencies caused  
25          by hurricane losses; providing for transfer of  
26          policies of the association and the Florida  
27          Windstorm Underwriting Association to the  
28          corporation; providing for a transfer of assets  
29          and liabilities; requiring the associations to  
30          take actions necessary to further such  
31          transfers; providing that such transfers do not

1 affect the coverage of "covered policies;"  
2 providing for the redesignation of certain  
3 coverage as the high-risk account of the  
4 corporation; providing that such account be  
5 treated as if it were a separate participating  
6 insurer for certain purposes; providing that  
7 the personal lines and commercial lines  
8 accounts be treated as a single participating  
9 insurer for certain purposes; providing that  
10 the department may postpone the October 1,  
11 2001, effective date of transfer under the act;  
12 providing legislative intent not to interfere  
13 with the rights of creditors, to preserve the  
14 obligation of the association, and to assure  
15 that outstanding financing agreements pass  
16 unchanged to the corporation; providing an  
17 effective date.

18

19 Be It Enacted by the Legislature of the State of Florida:

20

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

23 627.351 Insurance risk apportionment plans.--

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

26 (a)1. The Legislature finds that actual and threatened  
27 catastrophic losses to property in this state from hurricanes  
28 have caused insurers to be unwilling or unable to provide  
29 property insurance coverage to the extent sought and needed.  
30 It is in the public interest and a public purpose to assist in  
31 assuring that property in the state is insured so as to

1 facilitate the remediation, reconstruction, and replacement of  
2 damaged or destroyed property in order to reduce or avoid the  
3 negative effects otherwise resulting to the public health,  
4 safety, and welfare; to the economy of the state; and to the  
5 revenues of the state and local governments needed to provide  
6 for the public welfare. It is necessary, therefore, to provide  
7 property insurance to applicants who are in good faith  
8 entitled to procure insurance through the voluntary market but  
9 are unable to do so. The Legislature intends by this  
10 subsection that such insurance be provided and continues, as  
11 long as necessary, through a public-benefits corporation which  
12 is organized to achieve efficiencies and economies, all toward  
13 the achievement of the foregoing public purposes.

14 2. The Residential Property and Casualty Joint  
15 Underwriting Association originally created by this statute  
16 shall be known, as of October 1, 2001, as the Citizens  
17 Property Insurance Corporation. The Corporation shall operate  
18 as

19 ~~(a) There is created a public benefits corporation~~  
20 ~~joint underwriting association for insuring residential and~~  
21 ~~commercial equitable apportionment or sharing among insurers~~  
22 ~~of property and casualty insurance covering residential~~  
23 ~~property, for applicants who are in good faith entitled, but~~  
24 ~~are unable, to procure insurance through the voluntary market.~~  
25 ~~The corporation association~~ shall operate pursuant to a plan  
26 of operation approved by order of the department. The plan is  
27 subject to continuous review by the department. The department  
28 may, by order, withdraw approval of all or part of a plan if  
29 the department determines that conditions have changed since  
30 approval was granted and that the purposes of the plan require  
31 changes in the plan. For the purposes of this subsection,

1 residential coverage includes both personal lines residential  
2 coverage, which consists of the type of coverage provided by  
3 homeowner's, mobile home owner's, dwelling, tenant's,  
4 condominium unit owner's, and similar policies, and commercial  
5 lines residential coverage, which consists of the type of  
6 coverage provided by condominium association, apartment  
7 building, and similar policies.

8 (b)1. All insurers authorized to write one or more  
9 subject lines of business in this state and insurers writing  
10 one or more subject lines of business pursuant to part VIII of  
11 chapter 626, other than underwriting associations or other  
12 entities created under this section, must participate in and  
13 be members of the corporation, collectively referred to as  
14 "participating insurers" Residential Property and Casualty  
15 Joint Underwriting Association. An authorized insurer's A  
16 member's participation shall begin on the first day of the  
17 calendar year following the year in which the insurer member  
18 was issued a certificate of authority to transact insurance  
19 for subject lines of business in this state and shall  
20 terminate 1 year after the end of the first calendar year  
21 during which the insurer member no longer holds a certificate  
22 of authority to transact insurance for subject lines of  
23 business in this state. For insurers transacting insurance for  
24 subject lines of business in this state pursuant to part VIII  
25 of chapter 626, the insurer's participating shall begin on the  
26 first day of the calendar year following the year in which the  
27 insurer began transacting insurance for subject lines of  
28 business in this state and shall terminate 1 year after the  
29 corporation no longer has any liabilities in this state for  
30 the subject lines of business.

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

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

11           (II) A commercial lines account for commercial  
12 residential policies issued by the corporation or issued by  
13 the Residential Property and Casualty Joint Underwriting  
14 Association and renewed by the corporation on risks which are  
15 not located in areas eligible for coverage in the Florida  
16 Windstorm Underwriting Association as those areas were defined  
17 on January 1, 2001; and

18           (III) A high-risk account for personal residential  
19 policies and commercial residential and commercial  
20 nonresidential property policies issued by the corporation or  
21 transferred to the corporation on risks which are located in  
22 areas eligible for coverage in the Florida Windstorm  
23 Underwriting Association as those areas were defined on  
24 January 1, 2001. ~~one of which is for personal lines~~  
25 ~~residential coverages and the other of which is for commercial~~  
26 ~~lines residential coverages.~~

27           b. Revenues, assets, liabilities, losses, and expenses  
28 not attributable to particular coverages shall be prorated  
29 among ~~between~~ the accounts.

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

31

1           a. When the deficit incurred in a particular calendar  
2 year is not greater than 10 percent of the aggregate statewide  
3 direct written premium for the subject lines of business for  
4 the prior calendar year for all participating ~~member~~ insurers,  
5 the entire deficit shall be recovered through assessments of  
6 participating ~~member~~ insurers under paragraph (g).

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

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

26           d. Upon a determination by the board of governors that  
27 a deficit in an account exceeds the amount that will be  
28 recovered through regular assessments on participating ~~member~~  
29 insurers under sub-subparagraph a. or sub-subparagraph b., the  
30 board shall levy, after verification by the department,  
31 emergency assessments to be collected by participating ~~member~~

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

1 all accounts of the corporation ~~underwriting associations~~ for  
2 the prior year, plus interest, fees, commissions, required  
3 reserves, and other costs associated with financing the  
4 original deficit. For participating insurers writing one or  
5 more subject lines of business pursuant to part VIII of  
6 chapter 626, the Florida Surplus Lines Service Office shall  
7 verify and collect emergency assessments for policyholders of  
8 such insurers and remit as instructed by the corporation. The  
9 Florida Surplus Lines Service Office shall also require  
10 insurers transacting business in this state pursuant to part  
11 VIII of chapter 626 to identify those premiums which are  
12 attributable to the subject lines of business.

13 e. The board may pledge the proceeds of assessments,  
14 projected recoveries from the Florida Hurricane Catastrophe  
15 Fund, other insurance and reinsurance recoverables, market  
16 equalization surcharges and other surcharges, and other funds  
17 available to the corporation ~~association~~ as the source of  
18 revenue for and to secure bonds issued under paragraph (g),  
19 bonds or other indebtedness issued under subparagraph(c)2.  
20 ~~(c)3.~~, or lines of credit or other financing mechanisms issued  
21 or created under this subsection, or to retire any other debt  
22 incurred as a result of deficits or events giving rise to  
23 deficits, or in any other way that the board determines will  
24 efficiently recover such deficits. The purpose of the lines of  
25 credit or other financing mechanisms is to provide additional  
26 resources to assist the corporation ~~association~~ in covering  
27 claims and expenses attributable to a catastrophe. As used in  
28 this subsection, the term "assessments" includes regular  
29 assessments under sub-subparagraph a., sub-subparagraph b., or  
30 subparagraph (g)1. and emergency assessments under  
31 sub-subparagraph d. Emergency assessments collected under



1 sub-subparagraph d. are not part of an insurer's rates, are  
2 not premium, and are not subject to premium tax, fees, or  
3 commissions; however, failure to pay the emergency assessment  
4 shall be treated as failure to pay premium. The emergency  
5 assessments under sub-subparagraph d. shall continue as long  
6 as any bonds issued or other indebtedness incurred with  
7 respect to a deficit for which the assessment was imposed  
8 remain outstanding, unless adequate provision has been made  
9 for the payment of such bonds or other indebtedness pursuant  
10 to the documents governing such bonds or other indebtedness.

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

20 g. The procedures to be used by the corporation to  
21 determine the statewide direct written premium for the subject  
22 lines of business shall be included in the plan of operation,  
23 with respect to the personal lines account, any personal lines  
24 policy defined in s. 627.4025, and means, with respect to the  
25 commercial lines account, all commercial property and  
26 commercial fire insurance.

27 (c) The plan of operation of the corporation  
28 association:

29 1. ~~May provide for one or more designated insurers,~~  
30 ~~able and willing to provide policy and claims service, to act~~  
31 ~~on behalf of the association to provide such service. Each~~

1 ~~licensed agent shall be entitled to indicate the order of~~  
2 ~~preference regarding who will service the business placed by~~  
3 ~~the agent. The association shall adhere to each agent's~~  
4 ~~preferences unless after consideration of other factors in~~  
5 ~~assigning agents, including, but not limited to, servicing~~  
6 ~~capacity and fee arrangements, the association has reason to~~  
7 ~~believe it is in the best interest of the association to make~~  
8 ~~a different assignment.~~

9 1.2. Must provide for adoption of residential property  
10 and casualty insurance policy forms and commercial residential  
11 and nonresidential property insurance forms, which forms must  
12 be approved by the department prior to use. The corporation  
13 ~~association~~ shall adopt the following policy forms:

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

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

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

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

1           ~~c.e.~~ Commercial lines residential policy forms  
2 ~~including wind coverage~~ that are generally similar to the  
3 basic perils of full coverage obtainable for commercial  
4 residential structures in the admitted voluntary market.

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

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

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

1 reasonably necessary to effectuate the requirements of this  
2 subsection. The corporation ~~association~~ is authorized to take  
3 all actions needed to facilitate tax-free status for any such  
4 bonds or indebtedness, including formation of trusts or other  
5 affiliated entities. The corporation ~~association~~ shall have  
6 the authority to pledge assessments, projected recoveries from  
7 the Florida Hurricane Catastrophe Fund, other reinsurance  
8 recoverables, market equalization and other surcharges, and  
9 other funds available to the corporation ~~association~~ as  
10 security for bonds or other indebtedness. In recognition of s.  
11 10, Art. I of the State Constitution, prohibiting the  
12 impairment of obligations of contracts, it is the intent of  
13 the Legislature that no action be taken whose purpose is to  
14 impair any bond indenture or financing agreement or any  
15 revenue source committed by contract to such bond or other  
16 indebtedness.

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

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

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

26 ~~c. Five consumer representatives appointed by the~~  
27 ~~Insurance Commissioner. Two of the consumer representatives~~  
28 ~~must, at the time of appointment, be holders of policies~~  
29 ~~issued by the association, who are selected with consideration~~  
30 ~~given to reflecting the geographic balance of association~~  
31 ~~policyholders. Two of the consumer members must be individuals~~

1 ~~who are minority persons as defined in s. 288.703(3). One of~~  
2 ~~the consumer members shall have expertise in the field of~~  
3 ~~mortgage lending.~~

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

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

16 ~~4.5.~~ Must provide a procedure for determining the  
17 eligibility of a risk for coverage, as follows:

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

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

1 under subparagraph ~~7.8~~. The corporation ~~association~~ shall  
2 determine the type of policy to be provided on the basis of  
3 objective standards specified in the underwriting manual and  
4 based on generally accepted underwriting practices.

5       b. With respect to commercial ~~lines residential~~ risks,  
6 if the risk is offered coverage under a policy ~~including wind~~  
7 ~~coverage~~ from an authorized insurer at its approved rate, the  
8 risk is not eligible for any policy issued by the corporation  
9 ~~association~~. If the risk accepts an offer of coverage through  
10 the market assistance plan or an offer of coverage through a  
11 mechanism established by the corporation ~~association~~ before a  
12 policy is issued to the risk by the corporation ~~association~~,  
13 and the producing agent who submitted the application to the  
14 plan or the corporation ~~association~~ is not currently appointed  
15 by the insurer, the insurer shall: ~~either~~

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

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

26       (III) If the new or producing agent is an employee or  
27 exclusive agent of the insurer, the new insurer shall pay the  
28 agent in accordance with sub-sub-subparagraph (I). ~~appoint the~~  
29 ~~agent to service the risk or, if the insurer places the~~  
30 ~~coverage through a new agent, require the new agent who then~~  
31 ~~writes the policy to pay not less than 50 percent of the first~~

1 ~~year's commission to the producing agent who submitted the~~  
2 ~~application to the plan, except that if the new agent is an~~  
3 ~~employee or exclusive agent of the insurer, the new agent~~  
4 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~  
5 ~~of splitting the commission.~~

6  
7 If the risk is not able to obtain any such offer, the risk is  
8 eligible for a policy including wind coverage issued by the  
9 corporation association.

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

14 ~~5.6.~~ Must include rules for classifications of risks  
15 and rates therefor.

16 ~~6.7.~~ Must provide that if premium and investment  
17 income attributable to a particular calendar plan year are in  
18 excess of projected losses and expenses for an account of the  
19 plan attributable to that year, such excess shall be held in  
20 surplus in the account. Such surplus shall be available to  
21 defray deficits as to future years and shall be used for that  
22 purpose prior to assessing participating member insurers as to  
23 any calendar plan year.

24 ~~7.8.~~ Must provide objective criteria and procedures to  
25 be uniformly applied for all applicants in determining whether  
26 an individual risk is so hazardous as to be uninsurable. In  
27 making this determination and in establishing the criteria and  
28 procedures, the following shall be considered:

29 a. Whether the likelihood of a loss for the individual  
30 risk is substantially higher than for other risks of the same  
31 class; and



1           b. Whether the uncertainty associated with the  
2 individual risk is such that an appropriate premium cannot be  
3 determined.

4  
5 The acceptance or rejection of a risk by the corporation  
6 ~~association~~ shall be construed as the private placement of  
7 insurance, and the provisions of chapter 120 shall not apply.

8           ~~8.9.~~ Must provide that the corporation ~~association~~  
9 shall make its best efforts to procure catastrophe reinsurance  
10 at reasonable rates, as determined by the board of governors.

11           ~~9.10.~~ Must provide that in the event of regular  
12 deficit assessments under sub-subparagraph (b)3.a. or  
13 sub-subparagraph (b)3.b., in the personal lines account, the  
14 commercial lines residential account, or the high-risk account  
15 ~~or by the Florida Windstorm Underwriting Association under~~  
16 ~~sub-sub-subparagraph (2)(b)2.d.(I) or sub-sub-subparagraph~~  
17 ~~(2)(b)2.d.(II)~~, the corporation ~~association~~ shall levy upon  
18 corporation ~~association~~ policyholders in such account in its  
19 next rate filing, or by a separate rate filing solely for this  
20 purpose, a market equalization surcharge in a percentage equal  
21 to the total amount of such regular assessments divided by the  
22 aggregate statewide direct written premium for subject lines  
23 of business for participating ~~member~~ insurers for the prior  
24 calendar year. Market equalization surcharges under this  
25 subparagraph are not considered premium and are not subject to  
26 commissions, fees, or premium taxes; however, failure to pay a  
27 market equalization surcharge shall be treated as failure to  
28 pay premium.

29           ~~10.11.~~ The policies issued by the corporation  
30 ~~association~~ must provide that, if the corporation ~~association~~  
31 or the market assistance plan obtains an offer from an

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

17 11.12. Corporation Association policies and  
18 applications must include a notice that the corporation  
19 ~~association~~ policy could, under this section ~~or s. 627.3511,~~  
20 be replaced with a policy issued by an authorized ~~admitted~~  
21 insurer that does not provide coverage identical to the  
22 coverage provided by the corporation ~~association~~. The notice  
23 shall also specify that acceptance of corporation ~~association~~  
24 coverage creates a conclusive presumption that the applicant  
25 or policyholder is aware of this potential.

26 12.13. May establish, subject to approval by the  
27 department, different eligibility requirements and operational  
28 procedures for any line or type of coverage for any specified  
29 county or area if the board determines that such changes to  
30 the eligibility requirements and operational procedures are  
31 justified due to the voluntary market being sufficiently

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

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

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

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

27           3. Rates for commercial ~~residential~~ coverage shall not  
28 be subject to the requirements of subparagraph 2., but shall  
29 be subject to all other requirements of this paragraph and s.  
30 627.062.

31

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

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

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

16           1. If the market assistance plan receives a minimum of  
17 100 applications for coverage within a 3-month period, or 200  
18 applications for coverage within a 1-year period or less for  
19 residential coverage, unless the market assistance plan  
20 provides a quotation from admitted carriers at their filed  
21 rates for at least 90 percent of such applicants. Any market  
22 assistance plan application that is rejected because an  
23 individual risk is so hazardous as to be uninsurable using the  
24 criteria specified in subparagraph (c)8. shall not be included  
25 in the minimum percentage calculation provided herein. In the  
26 event that there is a legal or administrative challenge to a  
27 determination by the department that the conditions of this  
28 subparagraph have been met for eligibility for coverage in the  
29 corporation association, any eligible risk may obtain coverage  
30 during the pendency of such challenge.

31

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

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

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

1 insurer. Assessments shall be included as an appropriate  
2 factor in the making of rates.

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

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

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



1 corporation ~~association~~ by maintaining or increasing voluntary  
2 writings will be relieved wholly or partially from assessments  
3 under sub-subparagraphs (b)3.a. and b. When the corporation  
4 enters into a contractual agreement for a take-out plan, the  
5 producing agent of record of the corporation policy is  
6 entitled to retain any unearned commission on such policy, and  
7 the insurer shall:

8 (I) 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;

13 (II) 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 one year and offer to pay the agent the  
16 insurer's usual and customary commission for the type of  
17 policy written; or

18 (III) 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).

21 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 c. There shall be no credit, limitation, exemption, or  
2 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 shall  
19 pay assessments pledged by the Florida Insurance Guaranty  
20 Association to secure bonds issued or other indebtedness  
21 incurred to pay covered claims arising from insurer  
22 insolvencies caused by, or proximately related to, hurricane  
23 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 association shall be applied first to pay all  
30 debts, liabilities, and obligations of the corporation  
31 ~~association~~, including the establishment of reasonable

1 reserves for any contingent liabilities or obligations, and  
2 all remaining assets of the corporation ~~association~~ shall  
3 become property of the state and deposited in the Florida  
4 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. All  
8 obligations, rights, assets and liabilities of the Residential  
9 Property and Casualty Joint Underwriting Association,  
10 including bonds, note and debt obligations, and the financing  
11 documents pertaining to them become those of the corporation  
12 as of October 1, 2001. The corporation is not required to  
13 issue endorsements or certificates of assumption to insureds  
14 during 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. All  
18 obligations, rights, assets and liabilities of the Florida  
19 Windstorm Underwriting Association, including bonds, note, and  
20 debt obligations, and the financing documents pertaining to  
21 them are transferred to and assumed by the corporation on  
22 October 1, 2001. 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 nonrenewed, 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 corporation  
9 shall execute such assumptions and instruments as the trustees  
10 or other parties to the financing documents of the Florida  
11 Windstorm Underwriting Association or the Residential Property  
12 and Casualty Joint Underwriting Association may reasonably  
13 request to further evidence such transfers and assumptions,  
14 which transfers and assumptions, however, shall be effective  
15 as of the date provided under this paragraph whether or not,  
16 and regardless of the date on which, such assumptions or  
17 instruments are executed by the corporation. Subject to the  
18 relevant financing documents pertaining to their outstanding  
19 bonds, notes, indebtedness, or other financing obligations,  
20 the moneys, investments, receivables, choses in action, and  
21 other intangibles of the Florida Windstorm Underwriting  
22 Association shall be credited to the high-risk account of the  
23 corporation, and the personal lines residential coverage  
24 account and the commercial lines residential coverage account  
25 of the Residential Property and Casualty Joint Underwriting  
26 Association shall be credited to the personal lines account  
27 and the commercial lines account, respectively, of the  
28 corporation.

29 5. Effective October 1, 2001, a new applicant for  
30 property insurance coverage who would have otherwise been  
31 eligible for coverage in the Florida Windstorm Underwriting

1 Association shall be eligible for coverage from the  
2 corporation as provided in this paragraph.

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

1 and Residential Property and Casualty Joint Underwriting to  
2 the corporation.

3 7. The department may, by order, postpone the October  
4 1, 2001, effective dates set forth in this paragraph if the  
5 department finds that effectuation of these dates cannot be  
6 accomplished due to emergency conditions.~~All obligations,~~  
7 ~~rights, assets, and liabilities of the Florida Property and~~  
8 ~~Casualty Joint Underwriting Association created by subsection~~  
9 ~~(5), which obligations, rights, assets, or liabilities relate~~  
10 ~~to the provision of commercial lines residential property~~  
11 ~~insurance coverage as described in this section are hereby~~  
12 ~~transferred to the Residential Property and Casualty Joint~~  
13 ~~Underwriting Association. The Residential Property and~~  
14 ~~Casualty Joint Underwriting Association is not required to~~  
15 ~~issue endorsements or certificates of assumption to insureds~~  
16 ~~during the remaining term of in-force transferred policies.~~

17 (m) Notwithstanding any other provision of law:

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

29 2. No such proceeding shall relieve the corporation  
30 ~~association~~ of its obligation, or otherwise affect its ability  
31 to perform its obligation, to continue to collect, or levy and

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

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

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



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

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

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

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

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

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

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

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

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

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

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

28 i. Minutes of closed meetings regarding underwriting  
29 files, and minutes of closed meetings regarding an open claims  
30 file until termination of all litigation and settlement of all  
31

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

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

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

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

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Section 2. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Renames the Residential Property and Casualty Joint Underwriting Association as the Citizens Property Insurance Corporation to provide residential and commercial property insurance through a public benefits corporation. Requires insurers selling property insurance in this state to participate in the corporation. Provides a plan of operation and a board of governors. Divides the revenues, assets, liabilities, losses, and expenses of the corporation into three accounts and provides for emergency assessments for policyholders of participating insurers. Provides that the corporation need not obtain a certificate of authority from the Department of Insurance or be a member of the Florida Insurance Guaranty Association. Requires the corporation to pay assessments pledged to secure bonds to pay covered claims arising from insurer insolvencies caused by hurricane losses. Provides for the transfer of policies, assets, and liabilities of the association and the Florida Windstorm Underwriting Association to the corporation. (See bill for details.)