

By the Committee on Banking and Insurance; and Senator Garcia

311-1783-01

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; requiring  
8           insurers writing property insurance to be  
9           assessed by the corporation; providing for  
10          dividing the revenues, assets, liabilities,  
11          losses, and expenses of the corporation into  
12          three accounts; providing for emergency  
13          assessments for policyholders of assessable  
14          insurers; providing a plan of operation;  
15          providing for a board of governors; providing  
16          that the corporation is not required to obtain  
17          a certificate of authority from the Department  
18          of Insurance; providing that the corporation is  
19          not required to be a member of the Florida  
20          Insurance Guaranty Association; requiring the  
21          corporation to pay assessments pledged by the  
22          association to secure bonds to pay covered  
23          claims arising from insurer insolvencies caused  
24          by hurricane losses; providing for transfer of  
25          policies of the association and the Florida  
26          Windstorm Underwriting Association to the  
27          corporation; providing for a transfer of assets  
28          and liabilities; requiring the associations to  
29          take actions necessary to further such  
30          transfers; providing that such transfers do not  
31          affect the coverage of "covered policies";

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

24

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

26

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

29

627.351 Insurance risk apportionment plans.--

30

(6) CITIZENS RESIDENTIAL PROPERTY INSURANCE

31

CORPORATION AND CASUALTY JOINT UNDERWRITING ASSOCIATION.--

1           (a)1. The Legislature finds that actual and threatened  
2 catastrophic losses to property in this state from hurricanes  
3 have caused insurers to be unwilling or unable to provide  
4 property insurance coverage to the extent sought and needed.  
5 It is in the public interest and a public purpose to assist in  
6 assuring that property in the state is insured so as to  
7 facilitate the remediation, reconstruction, and replacement of  
8 damaged or destroyed property in order to reduce or avoid the  
9 negative effects otherwise resulting to the public health,  
10 safety, and welfare; to the economy of the state; and to the  
11 revenues of the state and local governments needed to provide  
12 for the public welfare. It is necessary, therefore, to  
13 provide, and to facilitate the provision of, property  
14 insurance to applicants who are in good faith entitled to  
15 procure insurance through the voluntary market but are unable  
16 to do so. The Legislature intends by this subsection that such  
17 insurance be provided and continued, as long as necessary,  
18 through an entity organized to achieve efficiencies and  
19 economies, all toward the achievement of the foregoing public  
20 purposes.

21           2. The Residential Property and Casualty Joint  
22 Underwriting Association originally created by this statute  
23 shall be known, as of October 1, 2001, as the Citizens  
24 Property Insurance Corporation. The Corporation shall provide  
25 insurance and coinsurance for residential and commercial

26           ~~(a) There is created a joint underwriting association~~  
27 ~~for equitable apportionment or sharing among insurers of~~  
28 ~~property and casualty insurance covering residential property,~~  
29 ~~for applicants who are in good faith entitled, but are unable,~~  
30 ~~to procure insurance through the voluntary market. The~~  
31 corporation association shall operate pursuant to a plan of

1 operation approved by order of the department. The plan is  
2 subject to continuous review by the department. The department  
3 may, by order, withdraw approval of all or part of a plan if  
4 the department determines that conditions have changed since  
5 approval was granted and that the purposes of the plan require  
6 changes in the plan. For the purposes of this subsection,  
7 residential coverage includes both personal lines residential  
8 coverage, which consists of the type of coverage provided by  
9 homeowner's, mobile home owner's, dwelling, tenant's,  
10 condominium unit owner's, and similar policies, and commercial  
11 lines residential coverage, which consists of the type of  
12 coverage provided by condominium association, apartment  
13 building, and similar policies.

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

1 state pursuant to part VIII of chapter 626, the insurer's  
2 assessment liability shall begin on the first day of the  
3 calendar year following the year in which the insurer began  
4 transacting insurance for subject lines of business in this  
5 state and shall terminate 1 year after the corporation no  
6 longer has any liabilities in this state for the subject lines  
7 of business.

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

11       (I) A personal lines account for personal residential  
12 policies issued by the corporation or issued by the  
13 Residential Property and Casualty Joint Underwriting  
14 Association and renewed by the corporation on risks that 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;

18       (II) A commercial lines account for commercial  
19 residential policies issued by the corporation or issued by  
20 the Residential Property and Casualty Joint Underwriting  
21 Association and renewed by the corporation on risks that 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; and

25       (III) A high-risk account for personal residential  
26 policies and commercial residential and commercial  
27 nonresidential property policies issued by the corporation or  
28 transferred to the corporation on risks that are located in  
29 areas eligible for coverage in the Florida Windstorm  
30 Underwriting Association as those areas were defined on

31

1 January 1, 2001. The high-risk account shall also include  
2 coinsurance of eligible risks under subparagraph (c)2.

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

15 c. Revenues, assets, liabilities, losses, and expenses  
16 not attributable to particular accounts ~~coverages~~ shall be  
17 prorated among ~~between~~ the accounts.

18 d. The Legislature finds that the revenues of the  
19 corporation are revenues that are necessary to meet the  
20 requirements set forth in documents authorizing the issuance  
21 of bonds under this subsection. No part of the income of the  
22 corporation may inure to the benefit of any private person.

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

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

30 b. When the deficit incurred in a particular calendar  
31 year exceeds 10 percent of the aggregate statewide direct

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

10 c. Each assessable ~~member~~ insurer's share of the total  
11 assessment under sub-subparagraph a. or sub-subparagraph b.  
12 shall be in the proportion that the assessable ~~member~~  
13 insurer's direct written premium for the subject lines of  
14 business for the year preceding the assessment bears to the  
15 aggregate statewide direct written premium for the subject  
16 lines of business for that year for all assessable ~~member~~  
17 insurers. If the assessable insurer is an authorized insurer,  
18 the assessment levied by the corporation on the insurer  
19 pursuant to sub-subparagraphs a. and b. shall be paid as  
20 required by the corporation's plan of operation and paragraph  
21 (g). If the assessable insurer is an insurer writing one or  
22 more subject lines of business pursuant to part VIII of  
23 chapter 626, the assessment levied by the corporation on the  
24 insurer pursuant to sub-subparagraphs a. and b. shall be  
25 collected by the surplus lines agent at the time the surplus  
26 lines agent collects the surplus lines tax required by s.  
27 626.9320 in accordance with procedures developed by the  
28 corporation and the Florida Surplus Lines Office and set forth  
29 in their respective plans of operation.

30 d. Upon a determination by the board of governors that  
31 a deficit in an account exceeds the amount that will be

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



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

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

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

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

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

31

1 (c) The plan of operation of the corporation  
2 association:

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

14 ~~1.2.~~ Must provide for adoption of residential property  
15 and casualty insurance policy forms and commercial residential  
16 and nonresidential property insurance forms, which forms must  
17 be approved by the department prior to use. The corporation  
18 association shall adopt the following policy forms:

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

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

28 ~~b.c.~~ Basic personal lines policy forms ~~including wind~~  
29 ~~coverage~~, which are policies similar to an HO-8 policy or a  
30 dwelling fire policy that provide coverage meeting the  
31 requirements of the secondary mortgage market, but which

1 coverage is more limited than the coverage under a standard  
2 policy.

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

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

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

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

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

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

29 (II) "Eligible risks" means personal residential and  
30 commercial residential risks that meet the underwriting  
31 criteria of the corporation and are located in areas that were

1 eligible for coverage by the Florida Windstorm Underwriting  
2 Association on January 1, 2001. It is the intent of the  
3 Legislature that the areas in which eligible risks are located  
4 be reduced to the extent practicable. If the corporation  
5 determines after a public hearing that the voluntary market is  
6 stable and competitive in an area in which eligible risks are  
7 located, it may, subject to approval by the department, remove  
8 such areas from the areas in which eligible risks are located;  
9 however, if an area is removed from an area in which eligible  
10 risks are located, the corporation shall continue to offer  
11 coinsurance agreements in such a removed area.

12 b. The corporation shall provide coinsurance levels of  
13 80 percent and 50 percent.

14 c. If the corporation determines that additional  
15 coinsurance levels are necessary to maximize participation in  
16 coinsurance agreements by authorized insurers, the corporation  
17 may establish additional coinsurance levels. However, in no  
18 event shall the corporation's coinsurance percentage exceed 80  
19 percent.

20 d. Any coinsurance agreement entered into between an  
21 authorized insurer and the corporation must provide for a  
22 uniform specified percentage of coverage of hurricane losses  
23 for all eligible coinsured risks of the authorized insurer.

24 e. Any coinsurance agreement entered into between an  
25 authorized insurer and the corporation shall be subject to  
26 review and approval by the department.

27 f. The authorized insurer and the corporation shall  
28 reconcile and separately report their exposures on coinsured  
29 eligible risks to the Florida Hurricane Catastrophe Fund on  
30 forms and in the manner required by the Florida Hurricane  
31 Catastrophe Fund.

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

18           h. The coinsurance agreement between the corporation  
19 and an authorized insurer shall set forth the specific terms  
20 under which such coinsurance is provided, including, but not  
21 limited to, the reporting of information concerning eligible  
22 risks, the payment of coinsurance premium to the corporation,  
23 and the adjustment and payment of hurricane losses incurred on  
24 eligible risks.

25           3. May provide that the corporation ~~association~~ may  
26 employ or otherwise contract with individuals or other  
27 entities to provide administrative or professional services  
28 that may be appropriate to effectuate the plan. The  
29 corporation ~~association~~ shall have the power to borrow funds,  
30 by issuing bonds or by incurring other indebtedness, and shall  
31 have other powers reasonably necessary to effectuate the

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

28 4.a. Must require that the corporation ~~association~~  
29 operate subject to the supervision and approval of a board of  
30 governors consisting of 7 ~~13~~ individuals appointed by the  
31 Insurance Commissioner. The Insurance Commissioner shall

1 ~~designate one of the appointees, including 1 who is elected as~~  
2 ~~chair. The board shall consist of:~~  
3       ~~a. The insurance consumer advocate appointed under s.~~  
4 ~~627.0613.~~  
5       b. To assure the effective and efficient  
6 implementation of this act, the Insurance Commissioner shall  
7 appoint the board of governors no later than July 1, 2001.  
8 Upon appointment of its members, the board of governors shall  
9 work in conjunction with the Residential Property Insurance  
10 Market Coordinating Council to address appropriate  
11 organizational, operational, and financial matters relating to  
12 the formation of the corporation. In addition, after  
13 consultation with the Residential Property Insurance Market  
14 Coordinating Council, the board of governors may postpone the  
15 October 1, 2001, effective dates set forth in paragraph (1)  
16 and any other provision of the act related to the operation of  
17 the corporation if it determines that phasing in these  
18 provisions is necessary to assure the effective and efficient  
19 implementation of the corporation's operations or financing  
20 arrangements. However, the board of governors may not affect  
21 any provision in paragraph (b) or any other provision of this  
22 act related to financing arrangements entered into by the  
23 Florida Windstorm Underwriting Association or the Florida  
24 Residential Property and Casualty Joint Underwriting  
25 Association and the ability of those entities or the  
26 corporation to service its debts and maintain the capacity to  
27 repay funds secured under these arrangements.  
28       ~~b. Five members designated by the insurance industry.~~  
29       ~~c. Five consumer representatives appointed by the~~  
30 ~~Insurance Commissioner. Two of the consumer representatives~~  
31 ~~must, at the time of appointment, be holders of policies~~



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

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

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

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

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

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

1 conditions, the risk shall be eligible for a basic policy  
2 ~~including wind coverage~~ unless rejected under subparagraph 7.

3 ~~8.~~The corporation association shall determine the type of  
4 policy to be provided on the basis of objective standards  
5 specified in the underwriting manual and based on generally  
6 accepted underwriting practices.

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

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

23 (II) Offer to allow the producing agent of record of  
24 the policy to continue servicing the policy for a period of  
25 not less than one year and offer to pay the agent the greater  
26 of the insurer's or the corporation's usual and customary  
27 commission for the type of policy written.~~appoint the agent~~  
28 ~~to service the risk or, if the insurer places the coverage~~  
29 ~~through a new agent, require the new agent who then writes the~~  
30 ~~policy to pay not less than 50 percent of the first year's~~  
31 ~~commission to the producing agent who submitted the~~

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

5  
6 If the new or producing agent is unwilling or unable to accept  
7 appointment by the new insurer, the new insurer shall pay the  
8 agent in accordance with sub-subparagraph (I). If the risk is  
9 not able to obtain any such offer, the risk is eligible for a  
10 policy ~~including wind coverage~~ issued by the corporation  
11 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 6. Must include rules for classifications of risks and  
17 rates therefor.

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

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

14           10. Must provide that in the event of regular deficit  
15 assessments under sub-subparagraph (b)3.a. or sub-subparagraph  
16 (b)3.b., in the personal lines account, the commercial lines  
17 residential account, or the high-risk account ~~or by the~~  
18 ~~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 account 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 assessable ~~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           12. Corporation ~~Association~~ policies and applications  
20 must include a notice that the corporation ~~association~~ policy  
21 could, under this section or s. 627.3511, be replaced with a  
22 policy issued by an authorized ~~admitted~~ insurer that does not  
23 provide coverage identical to the coverage provided by the  
24 corporation ~~association~~. The notice shall also specify that  
25 acceptance of corporation ~~association~~ coverage creates a  
26 conclusive presumption that the applicant or policyholder is  
27 aware of this potential.

28           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 14. Shall provide that, with respect to the high-risk  
14 account, any assessable 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 15. Must provide that the corporation appoint as its  
4 licensed agents only those agents who also hold an appointment  
5 as defined in s. 626.104 with an insurer who at the time of  
6 the agent's initial appointment by the corporation is  
7 authorized to write and is actually writing personal  
8 residential property coverage, commercial residential property  
9 coverage, or commercial nonresidential property coverage  
10 within the state.

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

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



1 coverages, the average rates of the corporation ~~association~~  
2 shall be no lower than the average rates charged by the  
3 insurer that had the highest average rate in that county among  
4 the 5 insurers with the greatest total written premium for  
5 mobile home owner's policies in the state in the preceding  
6 year.

7 3. Rates for personal lines residential wind-only  
8 policies shall be calculated by multiplying the ratio of the  
9 latest approved Insurance Services Office wind-only loss costs  
10 to the latest approved Insurance Services Office total loss  
11 costs by the rates developed in subparagraph (d)2.

12 ~~4.3.~~ Rates for commercial ~~residential~~ coverage shall  
13 not be subject to the requirements of subparagraph 2., but  
14 shall be subject to all other requirements of this paragraph  
15 and s. 627.062.

16 ~~5.4.~~ Nothing in this paragraph shall require or allow  
17 the corporation ~~association~~ to adopt a rate that is inadequate  
18 under s. 627.062 ~~or to reduce rates approved under s. 627.062.~~

19 6. Notwithstanding the exemption from the premium tax  
20 in paragraph (6)(j), the corporation, in addition to the rates  
21 otherwise determined pursuant to this paragraph, shall impose  
22 and collect an amount equal to the premium tax provided for in  
23 s. 624.509 to augment the financial resources of the  
24 corporation available to carry out its public purposes.

25 ~~7.5.~~ ~~The association may require arbitration of a~~  
26 ~~filing pursuant to s. 627.062(6). Rate filings of the~~  
27 ~~association under this paragraph shall be made on a use and~~  
28 ~~file basis under s. 627.062(2)(a)2.~~ The corporation  
29 association shall make a rate filing at least once a year, but  
30 no more often than quarterly.

31

1           (e) If coverage in an account ~~through the association~~  
2 ~~is hereby activated effective upon approval of the plan, and~~  
3 ~~shall remain activated until coverage is deactivated pursuant~~  
4 ~~to paragraph (f). Thereafter,~~ coverage through the corporation  
5 ~~association~~ shall be reactivated by order of the department  
6 only under one of the following circumstances:

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

22           2. In response to a state of emergency declared by the  
23 Governor under s. 252.36, the department may activate coverage  
24 by order for the period of the emergency upon a finding by the  
25 department that the emergency significantly affects the  
26 availability of residential property insurance.

27           (f)1. The corporation shall file with the department  
28 quarterly statements of financial condition, an annual  
29 statement of financial condition, and audited financial  
30 statements in the manner prescribed by law. In addition, the  
31 corporation shall report to the department monthly on the

1 types, premium, exposure, and distribution by county of its  
2 policies in force, and shall submit such other reports as the  
3 department requires to carry out its oversight of the  
4 corporation.

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

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

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

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

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

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

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

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

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

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

30 c.b. Any credit or exemption from regular assessments  
31 adopted under this subparagraph shall last no longer than the

1 3 years following the cancellation or expiration of the policy  
2 by the corporation ~~association~~. With the approval of the  
3 department, the board may extend such credits for an  
4 additional year if the insurer guarantees an additional year  
5 of renewability for all policies removed from the corporation  
6 ~~association~~, or for 2 additional years if the insurer  
7 guarantees 2 additional years of renewability for all policies  
8 so removed.

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

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

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

26 (i) There shall be no liability on the part of, and no  
27 cause of action of any nature shall arise against, any  
28 assessable ~~member~~ insurer or its agents or employees, the  
29 corporation ~~association~~ or its agents or employees, members of  
30 the board of governors or their respective designees at a  
31 board meeting, corporation ~~association~~ committee members, or

1 the department or its representatives, for any action taken by  
2 them in the performance of their duties or responsibilities  
3 under this subsection. Such immunity does not apply to:

4 1. Any of the foregoing persons or entities for any  
5 willful tort;

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

9 3. The corporation ~~association~~ with respect to  
10 issuance or payment of debt; or

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

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

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

31



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

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

24           (1)1. Effective October 1, 2001, policies of the  
25 Residential Property and Casualty Joint Underwriting  
26 Association shall become policies of the corporation. All  
27 obligations, rights, assets, and liabilities of the  
28 Residential Property and Casualty Joint Underwriting  
29 Association, including bonds, note and debt obligations, and  
30 the financing documents pertaining to them, become those of  
31 the corporation as of October 1, 2001, without the need for

1 any further action. The corporation is not required to issue  
2 endorsements or certificates of assumption to insureds during  
3 the remaining term of such in-force policies.

4 2. Effective October 1, 2001, policies of the Florida  
5 Windstorm Underwriting Association are transferred to the  
6 corporation and shall become policies of the corporation. All  
7 obligations, rights, assets and liabilities of the Florida  
8 Windstorm Underwriting Association, including bonds, notes,  
9 and debt obligations, and the financing documents pertaining  
10 to them, are transferred to and assumed by the corporation on  
11 October 1, 2001, without the need for any further action. The  
12 corporation is not required to issue endorsement or  
13 certificates of assumption to insureds during the remaining  
14 term of in-force transferred policies.

15 3. For policies transferred to the corporation from  
16 the Florida Windstorm Underwriting Association with an  
17 expiration date on or after January 1, 2002, notices of  
18 nonrenewal shall be timely issued by the corporation in  
19 accordance with s. 627.4133(2)(b). When the policyholder's  
20 wind-only policy is nonrenewed, the corporation shall offer  
21 coverage under an appropriate policy, covering the perils  
22 described in paragraph (c), if the policyholder is otherwise  
23 eligible for coverage from the corporation.

24 4. The Florida Windstorm Underwriting Association and  
25 the Residential Property and Casualty Joint Underwriting  
26 Association shall take all actions as may be proper to further  
27 evidence such transfers and shall provide such documents and  
28 instruments of further assurance as may reasonably be  
29 requested by the corporation for such purpose. The corporation  
30 shall execute such assumptions and instruments as the trustees  
31 or other parties to the financing documents of the Florida

1 Windstorm Underwriting Association or the Residential Property  
2 and Casualty Joint Underwriting Association may reasonably  
3 request to further evidence such transfers and assumptions,  
4 which transfers and assumptions, however, shall be effective  
5 as of the date provided under this paragraph whether or not,  
6 and regardless of the date on which, such assumptions or  
7 instruments are executed by the corporation. Subject to the  
8 relevant financing documents pertaining to their outstanding  
9 bonds, notes, indebtedness, or other financing obligations,  
10 the moneys, investments, receivables, choses in action, and  
11 other intangibles of the Florida Windstorm Underwriting  
12 Association shall be credited to the high-risk account of the  
13 corporation, and the personal lines residential coverage  
14 account and the commercial lines residential coverage account  
15 of the Residential Property and Casualty Joint Underwriting  
16 Association shall be credited to the personal lines account  
17 and the commercial lines account, respectively, of the  
18 corporation.

19 5. Effective October 1, 2001, a new applicant for  
20 property insurance coverage who would otherwise have been  
21 eligible for coverage in the Florida Windstorm Underwriting  
22 Association shall be eligible for coverage from the  
23 corporation as provided in this paragraph.

24 6. The transfer of all policies, obligations, rights,  
25 assets, and liabilities from the Florida Windstorm  
26 Underwriting Association to the corporation and the renaming  
27 of the Residential Property and Casualty Joint Underwriting  
28 Association as the corporation shall in no way affect the  
29 coverage with respect to covered policies as defined in s.  
30 215.555(2)(c) provided to these entities by the Florida  
31 Hurricane Catastrophe Fund. The coverage provided by the

1 Florida Hurricane Catastrophe Fund to the Florida Windstorm  
2 Underwriting Association based on its exposures as of June 30,  
3 2001, and each June 30 thereafter shall be redesignated as  
4 coverage for the high-risk account of the corporation. The  
5 coverage provided by the Florida Hurricane Catastrophe Fund to  
6 the Residential Property and Casualty Joint Underwriting  
7 Association based on its exposures as of June 30, 2001, and  
8 each June 30 thereafter shall be transferred to the personal  
9 lines account and the commercial lines account of the  
10 corporation. The high-risk account shall be treated, for all  
11 Florida Hurricane Catastrophe Fund purposes, as if it were a  
12 separate insurer with its own exposures, reimbursement  
13 premium, and loss reimbursement. Likewise, the personal lines  
14 and commercial lines accounts shall be treated, for all  
15 Florida Hurricane Catastrophe Fund purposes, as if the two  
16 accounts were a single insurer with its own exposures,  
17 reimbursement premium, and loss reimbursement. All  
18 ~~obligations, rights, assets, and liabilities of the Florida~~  
19 ~~Property and Casualty Joint Underwriting Association created~~  
20 ~~by subsection (5), which obligations, rights, assets, or~~  
21 ~~liabilities relate to the provision of commercial lines~~  
22 ~~residential property insurance coverage as described in this~~  
23 ~~section are hereby transferred to the Residential Property and~~  
24 ~~Casualty Joint Underwriting Association. The Residential~~  
25 ~~Property and Casualty Joint Underwriting Association is not~~  
26 ~~required to issue endorsements or certificates of assumption~~  
27 ~~to insureds during the remaining term of in-force transferred~~  
28 ~~policies.~~

29 (m) Notwithstanding any other provision of law:  
30 1. The pledge or sale of, the lien upon, and the  
31 security interest in any rights, revenues, or other assets of

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

10 2. No such proceeding shall relieve the corporation  
11 ~~association~~ of its obligation, or otherwise affect its ability  
12 to perform its obligation, to continue to collect, or levy and  
13 collect, assessments, market equalization or other surcharges  
14 under subparagraph (c)9.~~(c)10.~~, or any other rights,  
15 revenues, or other assets of the corporation ~~association~~  
16 pledged pursuant to any financing documents.

17 3. Each such pledge or sale of, lien upon, and  
18 security interest in, including the priority of such pledge,  
19 lien, or security interest, any such assessments, market  
20 equalization or other surcharges, or other rights, revenues,  
21 or other assets which are collected, or levied and collected,  
22 after the commencement of and during the pendency of, or  
23 after, any such proceeding shall continue unaffected by such  
24 proceeding. As used in this subsection, the term "financing  
25 documents" means any agreement or agreements, instrument or  
26 instruments, or other document or documents now existing or  
27 hereafter created evidencing any bonds or other indebtedness  
28 of the corporation ~~association~~ or pursuant to which any such  
29 bonds or other indebtedness has been or may be issued and  
30 pursuant to which any rights, revenues, or other assets of the  
31 corporation ~~association~~ are pledged or sold to secure the

1 repayment of such bonds or indebtedness, together with the  
2 payment of interest on such bonds or such indebtedness, or the  
3 payment of any other obligation or financial product, as  
4 defined in the plan of operation of the corporation  
5 ~~association~~ related to such bonds or indebtedness.

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

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

29 a. Underwriting files, except that a policyholder or  
30 an applicant shall have access to his or her own underwriting  
31 files.

1           b. Claims files, until termination of all litigation  
2 and settlement of all claims arising out of the same incident,  
3 although portions of the claims files may remain exempt, as  
4 otherwise provided by law. Confidential and exempt claims file  
5 records may be released to other governmental agencies upon  
6 written request and demonstration of need; such records held  
7 by the receiving agency remain confidential and exempt as  
8 provided for herein.

9           c. Records obtained or generated by an internal  
10 auditor pursuant to a routine audit, until the audit is  
11 completed, or if the audit is conducted as part of an  
12 investigation, until the investigation is closed or ceases to  
13 be active. An investigation is considered "active" while the  
14 investigation is being conducted with a reasonable, good faith  
15 belief that it could lead to the filing of administrative,  
16 civil, or criminal proceedings.

17           d. Matters reasonably encompassed in privileged  
18 attorney-client communications.

19           e. Proprietary information licensed to the corporation  
20 ~~association~~ under contract and the contract provides for the  
21 confidentiality of such proprietary information.

22           f. All information relating to the medical condition  
23 or medical status of a corporation ~~an association~~ employee  
24 which is not relevant to the employee's capacity to perform  
25 his or her duties, except as otherwise provided in this  
26 paragraph. Information which is exempt shall include, but is  
27 not limited to, information relating to workers' compensation,  
28 insurance benefits, and retirement or disability benefits.

29           g. Upon an employee's entrance into the employee  
30 assistance program, a program to assist any employee who has a  
31 behavioral or medical disorder, substance abuse problem, or

1 emotional difficulty which affects the employee's job  
2 performance, all records relative to that participation shall  
3 be confidential and exempt from the provisions of s. 119.07(1)  
4 and s. 24(a), Art. I of the State Constitution, except as  
5 otherwise provided in s. 112.0455(11).

6 h. Information relating to negotiations for financing,  
7 reinsurance, depopulation, or contractual services, until the  
8 conclusion of the negotiations.

9 i. Minutes of closed meetings regarding underwriting  
10 files, and minutes of closed meetings regarding an open claims  
11 file until termination of all litigation and settlement of all  
12 claims with regard to that claim, except that information  
13 otherwise confidential or exempt by law will be redacted.

14

15 When an authorized insurer is considering underwriting a risk  
16 insured by the corporation ~~association~~, relevant underwriting  
17 files and confidential claims files may be released to the  
18 insurer provided the insurer agrees in writing, notarized and  
19 under oath, to maintain the confidentiality of such files.

20 When a file is transferred to an insurer that file is no  
21 longer a public record because it is not held by an agency  
22 subject to the provisions of the public records law.

23 Underwriting files and confidential claims files may also be  
24 released to staff of and the board of governors of the market  
25 assistance plan established pursuant to s. 627.3515, who must  
26 retain the confidentiality of such files, except such files  
27 may be released to authorized insurers that are considering  
28 assuming the risks to which the files apply, provided the  
29 insurer agrees in writing, notarized and under oath, to  
30 maintain the confidentiality of such files. Finally, the  
31 corporation ~~association~~ or the board or staff of the market



1 assistance plan may make the following information obtained  
2 from underwriting files and confidential claims files  
3 available to licensed general lines insurance agents: name,  
4 address, and telephone number of the residential property  
5 owner or insured; location of the risk; rating information;  
6 loss history; and policy type. The receiving licensed general  
7 lines insurance agent must retain the confidentiality of the  
8 information received.

9           2. Portions of meetings of the corporation ~~Residential~~  
10 ~~Property and Casualty Joint Underwriting Association~~ are  
11 exempt from the provisions of s. 286.011 and s. 24(b), Art. I  
12 of the State Constitution wherein confidential underwriting  
13 files or confidential open claims files are discussed. All  
14 portions of corporation ~~association~~ meetings which are closed  
15 to the public shall be recorded by a court reporter. The  
16 court reporter shall record the times of commencement and  
17 termination of the meeting, all discussion and proceedings,  
18 the names of all persons present at any time, and the names of  
19 all persons speaking. No portion of any closed meeting shall  
20 be off the record. Subject to the provisions hereof and s.  
21 119.07(2)(a), the court reporter's notes of any closed meeting  
22 shall be retained by the corporation ~~association~~ for a minimum  
23 of 5 years. A copy of the transcript, less any exempt matters,  
24 of any closed meeting wherein claims are discussed shall  
25 become public as to individual claims after settlement of the  
26 claim.

27           (o) In enacting the provisions of this act, the  
28 Legislature recognizes that both the Florida Windstorm  
29 Underwriting Association and the Residential Property and  
30 Casualty Joint Underwriting Association have entered into  
31 financing arrangements that obligate each entity to service

1 its debts and maintain the capacity to repay funds secured  
2 under these financing arrangements. It is the intent of the  
3 Legislature that nothing herein be construed to compromise,  
4 diminish, or interfere with the rights of creditors under such  
5 financing arrangements. It is further the intent of the  
6 Legislature to preserve the obligations of the Florida  
7 Windstorm Underwriting Association and the Residential  
8 Property and Casualty Joint Underwriting Association with  
9 regard to outstanding financing arrangements, with such  
10 obligations passing entirely and unchanged to the corporation.  
11 So long as any bonds, notes, indebtedness, or other financing  
12 obligations of the Florida Windstorm Underwriting Association  
13 or the Residential Property and Casualty Joint Underwriting  
14 Association are outstanding, under the terms of the financing  
15 documents pertaining to them, the governing board of the  
16 corporation shall have and shall exercise the authority to  
17 levy, charge, collect, and receive all premiums, assessments,  
18 surcharges, charges, revenues, and receipts that such  
19 associations had authority to levy, charge, collect, or  
20 receive under the provisions of subsection (2) and subsection  
21 (6), respectively, as they existed on January 1, 2001, to the  
22 extent necessary to provide moneys, together with other  
23 available moneys of the corporation without exercise of the  
24 authority provided by this paragraph, in at least the amounts,  
25 and by the times, as would be provided under those former  
26 provisions of subsection (2) or subsection (6), respectively,  
27 so that the value, amount, and collectability of any assets,  
28 revenues, or revenue source pledged or committed to, or any  
29 lien thereon securing such outstanding bonds, notes,  
30 indebtedness, or other financing obligations will not be  
31 diminished, impaired, or adversely affected by the amendments

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

12 Section 2. Subsection (2) of section 631.55, Florida  
13 Statutes, is amended to read:

14 631.55 Creation of the association.--

15 (2) For the purposes of administration and assessment,  
16 the association shall be divided into four ~~three~~ separate  
17 accounts:

18 (a) The auto liability account;

19 (b) The auto physical damage account;

20 (c) The medical malpractice account; and

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

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

27 627.351 Insurance risk apportionment plans.--

28 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

29 (b) The department shall require all insurers holding  
30 a certificate of authority to transact property insurance on a  
31 direct basis in this state, other than joint underwriting

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

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

30         2.a.(I) All insurers required to be members of such  
31 association shall participate in its writings, expenses, and

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

28 (II) The plan of operation shall provide for a board  
29 of directors consisting of the Insurance Consumer Advocate  
30 appointed under s. 627.0613, 1 consumer representative  
31 appointed by the Insurance Commissioner, 1 consumer

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

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

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

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

22 (VI) The plan of operation may also provide for the  
23 award of credits, for a period not to exceed 3 years, from a  
24 regular assessment pursuant to sub-sub-subparagraph d.(I) or  
25 sub-sub-subparagraph d.(II) as an incentive for taking  
26 policies out of the Residential Property and Casualty Joint  
27 Underwriting Association. In order to qualify for the  
28 exemption under this sub-sub-subparagraph, the take-out plan  
29 must provide that at least 40 percent of the policies removed  
30 from the Residential Property and Casualty Joint Underwriting  
31 Association cover risks located in Dade, Broward, and Palm

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

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

28           c. The Legislature finds that the potential for  
29 unlimited deficit assessments under this subparagraph may  
30 induce insurers to attempt to reduce their writings in the  
31 voluntary market, and that such actions would worsen the

1 availability problems that the association was created to  
2 remedy. It is the intent of the Legislature that insurers  
3 remain fully responsible for paying regular assessments and  
4 collecting emergency assessments for any deficits of the  
5 association; however, it is also the intent of the Legislature  
6 to provide a means by which assessment liabilities may be  
7 amortized over a period of years.

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

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

24           (III) Upon a determination by the board of directors  
25 that a deficit exceeds the amount that will be recovered  
26 through regular assessments on member insurers, pursuant to  
27 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the  
28 board shall levy, after verification by the department,  
29 emergency assessments to be collected by member insurers and  
30 by underwriting associations created pursuant to this section  
31 which write property insurance, upon issuance or renewal of



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

1 retire any other debt incurred as a result of the deficit or  
2 events giving rise to the deficit, or in any other way that  
3 the board determines will efficiently recover the deficit. The  
4 emergency assessments under this sub-sub-subparagraph shall  
5 continue as long as any bonds issued or other indebtedness  
6 incurred with respect to a deficit for which the assessment  
7 was imposed remain outstanding, unless adequate provision has  
8 been made for the payment of such bonds or other indebtedness  
9 pursuant to the document governing such bonds or other  
10 indebtedness. Emergency assessments collected under this  
11 sub-sub-subparagraph are not part of an insurer's rates, are  
12 not premium, and are not subject to premium tax, fees, or  
13 commissions; however, failure to pay the emergency assessment  
14 shall be treated as failure to pay premium.

15 (IV) Each member insurer's share of the total regular  
16 assessments under sub-sub-subparagraph (I) or  
17 sub-sub-subparagraph (II) shall be in the proportion that the  
18 insurer's net direct premium for property insurance in this  
19 state, for the year preceding the assessment bears to the  
20 aggregate statewide net direct premium for property insurance  
21 of all member insurers, as reduced by any credits for  
22 voluntary writings for that year.

23 (V) If regular deficit assessments are made under  
24 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by  
25 the Residential Property and Casualty Joint Underwriting  
26 Association under sub-subparagraph (6)(b)3.a. or  
27 sub-subparagraph (6)(b)3.b., the association shall levy upon  
28 the association's policyholders, as part of its next rate  
29 filing, or by a separate rate filing solely for this purpose,  
30 a market equalization surcharge in a percentage equal to the  
31 total amount of such regular assessments divided by the

1 aggregate statewide direct written premium for property  
2 insurance for member insurers for the prior calendar year.  
3 Market equalization surcharges under this sub-sub-subparagraph  
4 are not considered premium and are not subject to commissions,  
5 fees, or premium taxes; however, failure to pay a market  
6 equalization surcharge shall be treated as failure to pay  
7 premium.

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

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

22           3. The plan shall also provide that any member with a  
23 surplus as to policyholders of \$20 million or less writing 25  
24 percent or more of its total countrywide property insurance  
25 premiums in this state may petition the department, within the  
26 first 90 days of each calendar year, to qualify as a limited  
27 apportionment company. The apportionment of such a member  
28 company in any calendar year for which it is qualified shall  
29 not exceed its gross participation, which shall not be  
30 affected by the formula for voluntary writings. In no event  
31 shall a limited apportionment company be required to

1 participate in any apportionment of losses pursuant to  
2 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)  
3 in the aggregate which exceeds \$50 million after payment of  
4 available plan funds in any calendar year. However, a limited  
5 apportionment company shall collect from its policyholders any  
6 emergency assessment imposed under sub-sub-subparagraph  
7 2.d.(III). The plan shall provide that, if the department  
8 determines that any regular assessment will result in an  
9 impairment of the surplus of a limited apportionment company,  
10 the department may direct that all or part of such assessment  
11 be deferred. However, there shall be no limitation or  
12 deferment of an emergency assessment to be collected from  
13 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

31

1           b. The association may require arbitration of a rate  
2 filing under s. 627.062(6). It is the intent of the  
3 Legislature that the rates for coverage provided by the  
4 association be actuarially sound and not competitive with  
5 approved rates charged in the admitted voluntary market such  
6 that the association functions as a residual market mechanism  
7 to provide insurance only when the insurance cannot be  
8 procured in the voluntary market. The plan of operation shall  
9 provide a mechanism to assure that, beginning no later than  
10 January 1, 1999, the rates charged by the association for each  
11 line of business are reflective of approved rates in the  
12 voluntary market for hurricane coverage for each line of  
13 business in the various areas eligible for association  
14 coverage.

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

31

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

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

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

13  
14 The acceptance or rejection of a risk by the association  
15 pursuant to such criteria and procedures must be construed as  
16 the private placement of insurance, and the provisions of  
17 chapter 120 do not apply.

18           ~~e. The policies issued by the association must provide~~  
19 ~~that if the association obtains an offer from an authorized~~  
20 ~~insurer to cover the risk at its approved rates under either a~~  
21 ~~standard policy including wind coverage or, if consistent with~~  
22 ~~the insurer's underwriting rules as filed with the department,~~  
23 ~~a basic policy including wind coverage, the risk is no longer~~  
24 ~~eligible for coverage through the association. Upon~~  
25 ~~termination of eligibility, the association shall provide~~  
26 ~~written notice to the policyholder and agent of record stating~~  
27 ~~that the association policy must be canceled as of 60 days~~  
28 ~~after the date of the notice because of the offer of coverage~~  
29 ~~from an authorized insurer. Other provisions of the insurance~~  
30 ~~code relating to cancellation and notice of cancellation do~~  
31 ~~not apply to actions under this sub-subparagraph.~~

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

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

19           b. Any entity created under this subsection, or any  
20 entity formed for the purposes of this subsection, may sue and  
21 be sued, may borrow money; issue bonds, notes, or debt  
22 instruments; pledge or sell assessments, market equalization  
23 surcharges and other surcharges, rights, premiums, contractual  
24 rights, projected recoveries from the Florida Hurricane  
25 Catastrophe Fund, other reinsurance recoverables, and other  
26 assets as security for such bonds, notes, or debt instruments;  
27 enter into any contracts or agreements necessary or proper to  
28 accomplish such borrowings; and take other actions necessary  
29 to carry out the purposes of this subsection. The association  
30 may issue bonds or incur other indebtedness, or have bonds  
31 issued on its behalf by a unit of local government pursuant to



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

21 c. In recognition of s. 10, Art. I of the State  
22 Constitution, prohibiting the impairment of obligations of  
23 contracts, it is the intent of the Legislature that no action  
24 be taken whose purpose is to impair any bond indenture or  
25 financing agreement or any revenue source committed by  
26 contract to such bond or other indebtedness issued or incurred  
27 by the association or any other entity created under this  
28 subsection.

29 7. On such coverage, an agent's remuneration shall be  
30 that amount of money payable to the agent by the terms of his  
31 or her contract with the company with which the business is

1 placed. However, no commission will be paid on that portion of  
2 the premium which is in excess of the standard premium of that  
3 company.

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

20           9. Notwithstanding any other provision of law:

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

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

8           c. 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, emergency  
11 assessments, market equalization or renewal surcharges,  
12 projected recoveries from the Florida Hurricane Catastrophe  
13 Fund, reinsurance recoverables, or other rights, revenues, or  
14 other assets which are collected, or levied and collected,  
15 after the commencement of and during the pendency of or after  
16 any such proceeding shall continue unaffected by such  
17 proceeding.

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

29           e. Any such pledge or sale of assessments, revenues,  
30 contract rights or other rights or assets of the association  
31 shall constitute a lien and security interest, or sale, as the

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

16 f. There shall be no liability on the part of, and no  
17 cause of action of any nature shall arise against, any member  
18 insurer or its agents or employees, agents or employees of the  
19 association, members of the board of directors of the  
20 association, or the department or its representatives, for any  
21 action taken by them in the performance of their duties or  
22 responsibilities under this subsection. Such immunity does not  
23 apply to actions for breach of any contract or agreement  
24 pertaining to insurance, or any willful tort.

25 Section 4. Except as otherwise provided in this act,  
26 this act shall take effect October 1, 2001, except that this  
27 section and section 627.351(6)(c)4.b. and (g)3.b., Florida  
28 Statutes, as created by this act, shall take effect June 1,  
29 2001.

30  
31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 2234  
4 Provides that the "Citizens Property Insurance Corporation"  
5 (CITIZENS) will offer a coinsurance program with authorized  
6 insurers for hurricane coverage within the current Florida  
7 Windstorm Underwriting Association (FWUA) areas.  
8 Provides that CITIZENS will impose and collect an amount equal  
9 to the premium tax to augment the financial resources of the  
10 corporation available to carry out its public purpose.  
11 Insurance rates for CITIZENS will be calculated by utilizing  
12 specified loss costs approved by the Insurance Service Office.  
13 Provides that the Florida Surplus Lines Service Office will  
14 verify and collect emergency assessments for policyholders and  
15 remit to CITIZENS.  
16 Establishes a new assessment account within the Florida  
17 Insurance Guaranty Association for medical malpractice  
18 insurance.  
19 Repeals the provision that a policyholder is no longer  
20 eligible for coverage in the FWUA if an offer of coverage is  
21 made by an authorized insurer.  
22 Removes the provision which allowed the Department of  
23 Insurance to postpone the effective date should the department  
24 find specified emergency conditions.  
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