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Bill No. HB 457, 1st Eng.

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

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

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10  
11 Representative(s) Brown offered the following:

12  
13 **Amendment (with title amendment)**

14 On page 2, line 11, of the bill

15  
16 insert:

17 Section 2. Paragraph (b) of subsection (2) of section  
18 627.351, Florida Statutes, is amended to read:

19 627.351 Insurance risk apportionment plans.--

20 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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1 in this subsection, the term "property insurance" means  
2 insurance on real or personal property, as defined in s.  
3 624.604, including insurance for fire, industrial fire, allied  
4 lines, farmowners multiperil, homeowners' multiperil,  
5 commercial multiperil, and mobile homes, and including  
6 liability coverages on all such insurance, but excluding  
7 inland marine as defined in s. 624.607(3) and excluding  
8 vehicle insurance as defined in s. 624.605(1)(a) other than  
9 insurance on mobile homes used as permanent dwellings. The  
10 department shall adopt rules that provide a formula for the  
11 recovery and repayment of any deferred assessments.

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

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

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

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

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1           (III) The plan of operation shall provide a formula  
2 whereby a company voluntarily providing windstorm coverage in  
3 affected areas will be relieved wholly or partially from  
4 apportionment of a regular assessment pursuant to  
5 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).  
6           (IV) A company which is a member of a group of  
7 companies under common management may elect to have its  
8 credits applied on a group basis, and any company or group may  
9 elect to have its credits applied to any other company or  
10 group.  
11           (V) There shall be no credits or relief from  
12 apportionment to a company for emergency assessments collected  
13 from its policyholders under sub-sub-subparagraph d.(III).  
14           (VI) The plan of operation may also provide for the  
15 award of credits, for a period not to exceed 3 years, from a  
16 regular assessment pursuant to sub-sub-subparagraph d.(I) or  
17 sub-sub-subparagraph d.(II) as an incentive for taking  
18 policies out of the Residential Property and Casualty Joint  
19 Underwriting Association. In order to qualify for the  
20 exemption under this sub-sub-subparagraph, the take-out plan  
21 must provide that at least 40 percent of the policies removed  
22 from the Residential Property and Casualty Joint Underwriting  
23 Association cover risks located in Dade, Broward, and Palm  
24 Beach Counties or at least 30 percent of the policies so  
25 removed cover risks located in Dade, Broward, and Palm Beach  
26 Counties and an additional 50 percent of the policies so  
27 removed cover risks located in other coastal counties, and  
28 must also provide that no more than 15 percent of the policies  
29 so removed may exclude windstorm coverage. With the approval  
30 of the department, the association may waive these geographic  
31 criteria for a take-out plan that removes at least the lesser

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1 of 100,000 Residential Property and Casualty Joint  
2 Underwriting Association policies or 15 percent of the total  
3 number of Residential Property and Casualty Joint Underwriting  
4 Association policies, provided the governing board of the  
5 Residential Property and Casualty Joint Underwriting  
6 Association certifies that the take-out plan will materially  
7 reduce the Residential Property and Casualty Joint  
8 Underwriting Association's 100-year probable maximum loss from  
9 hurricanes. With the approval of the department, the board  
10 may extend such credits for an additional year if the insurer  
11 guarantees an additional year of renewability for all policies  
12 removed from the Residential Property and Casualty Joint  
13 Underwriting Association, or for 2 additional years if the  
14 insurer guarantees 2 additional years of renewability for all  
15 policies removed from the Residential Property and Casualty  
16 Joint Underwriting Association.

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

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

31         d.(I) When the deficit incurred in a particular

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1 calendar year is 10 percent or less of the aggregate statewide  
2 direct written premium for property insurance for the prior  
3 calendar year for all member insurers, the association shall  
4 levy an assessment on member insurers in an amount equal to  
5 the deficit.

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

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

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

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1 pursuant to the document governing such bonds or other  
2 indebtedness. Emergency assessments collected under this  
3 sub-sub-subparagraph are not part of an insurer's rates, are  
4 not premium, and are not subject to premium tax, fees, or  
5 commissions; however, failure to pay the emergency assessment  
6 shall be treated as failure to pay premium.

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

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

31 e. The governing body of any unit of local government,



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

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

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

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1 impairment of the surplus of a limited apportionment company,  
2 the department may direct that all or part of such assessment  
3 be deferred. However, there shall be no limitation or  
4 deferment of an emergency assessment to be collected from  
5 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

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

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1 January 1, 1999, the rates charged by the association for each  
2 line of business are reflective of approved rates in the  
3 voluntary market for hurricane coverage for each line of  
4 business in the various areas eligible for association  
5 coverage.

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

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

28 (I) Whether the likelihood of a loss for the  
29 individual risk is substantially higher than for other risks  
30 of the same class; and

31 (II) Whether the uncertainty associated with the

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1 individual risk is such that an appropriate premium cannot be  
2 determined.

3

4 The acceptance or rejection of a risk by the association  
5 pursuant to such criteria and procedures must be construed as  
6 the private placement of insurance, and the provisions of  
7 chapter 120 do not apply.

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

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

30 6.a. The plan of operation may authorize the formation  
31 of a private nonprofit corporation, a private nonprofit

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1 unincorporated association, a partnership, a trust, a limited  
2 liability company, or a nonprofit mutual company which may be  
3 empowered, among other things, to borrow money by issuing  
4 bonds or by incurring other indebtedness and to accumulate  
5 reserves or funds to be used for the payment of insured  
6 catastrophe losses. The plan may authorize all actions  
7 necessary to facilitate the issuance of bonds, including the  
8 pledging of assessments or other revenues.

9       b. Any entity created under this subsection, or any  
10 entity formed for the purposes of this subsection, may sue and  
11 be sued, may borrow money; issue bonds, notes, or debt  
12 instruments; pledge or sell assessments, market equalization  
13 surcharges and other surcharges, rights, premiums, contractual  
14 rights, projected recoveries from the Florida Hurricane  
15 Catastrophe Fund, other reinsurance recoverables, and other  
16 assets as security for such bonds, notes, or debt instruments;  
17 enter into any contracts or agreements necessary or proper to  
18 accomplish such borrowings; and take other actions necessary  
19 to carry out the purposes of this subsection. The association  
20 may issue bonds or incur other indebtedness, or have bonds  
21 issued on its behalf by a unit of local government pursuant to  
22 subparagraph (g)2., in the absence of a hurricane or other  
23 weather-related event, upon a determination by the association  
24 subject to approval by the department that such action would  
25 enable it to efficiently meet the financial obligations of the  
26 association and that such financings are reasonably necessary  
27 to effectuate the requirements of this subsection. Any such  
28 entity may accumulate reserves and retain surpluses as of the  
29 end of any association year to provide for the payment of  
30 losses incurred by the association during that year or any  
31 future year. The association shall incorporate and continue

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1 the plan of operation and articles of agreement in effect on  
2 the effective date of chapter 76-96, Laws of Florida, to the  
3 extent that it is not inconsistent with chapter 76-96, and as  
4 subsequently modified consistent with chapter 76-96. The board  
5 of directors and officers currently serving shall continue to  
6 serve until their successors are duly qualified as provided  
7 under the plan. The assets and obligations of the plan in  
8 effect immediately prior to the effective date of chapter  
9 76-96 shall be construed to be the assets and obligations of  
10 the successor plan created herein.

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

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

25 8. Subject to approval by the department, the  
26 association may establish different eligibility requirements  
27 and operational procedures for any line or type of coverage  
28 for any specified eligible area or portion of an eligible area  
29 if the board determines that such changes to the eligibility  
30 requirements and operational procedures are justified due to  
31 the voluntary market being sufficiently stable and competitive

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

10 9. Notwithstanding any other provision of law:

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

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

29 c. Each such pledge or sale of, lien upon, and  
30 security interest in, including the priority of such pledge,  
31 lien, or security interest, any such assessments, emergency



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1 assessments, market equalization or renewal surcharges,  
2 projected recoveries from the Florida Hurricane Catastrophe  
3 Fund, reinsurance recoverables, or other rights, revenues, or  
4 other assets which are collected, or levied and collected,  
5 after the commencement of and during the pendency of or after  
6 any such proceeding shall continue unaffected by such  
7 proceeding.

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

19           e. Any such pledge or sale of assessments, revenues,  
20 contract rights or other rights or assets of the association  
21 shall constitute a lien and security interest, or sale, as the  
22 case may be, that is immediately effective and attaches to  
23 such assessments, revenues, contract, or other rights or  
24 assets, whether or not imposed or collected at the time the  
25 pledge or sale is made. Any such pledge or sale is effective,  
26 valid, binding, and enforceable against the association or  
27 other entity making such pledge or sale, and valid and binding  
28 against and superior to any competing claims or obligations  
29 owed to any other person or entity, including policyholders in  
30 this state, asserting rights in any such assessments,  
31 revenues, contract, or other rights or assets to the extent

hbd-02

Bill No. HB 457, 1st Eng.

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

1 set forth in and in accordance with the terms of the pledge or  
2 sale contained in the applicable financing documents, whether  
3 or not any such person or entity has notice of such pledge or  
4 sale and without the need for any physical delivery,  
5 recordation, filing, or other action.

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

15  
16

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

18 And the title is amended as follows:

19 On page 1, line 7,

20

21 insert:

22 amending s. 627.351, F.S., relating to risk  
23 apportionment plans; revising surplus  
24 requirements to qualify as a limited  
25 apportionment company;

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