

By Representative Ryan

1 A bill to be entitled
2 An act relating to windstorm property
3 insurance; amending s. 627.351, F.S.;
4 specifying membership of the boards of the
5 Florida Windstorm Underwriting Association and
6 the Residential Property and Casualty Joint
7 Underwriting Association; revising criteria for
8 limited apportionment; providing rate
9 standards; specifying duties with respect to
10 pursuit of federal tax exemptions and tax-free
11 bond status; providing premium tax exemption;
12 providing for appropriation of funds for
13 hurricane loss mitigation purposes; providing
14 standards for certain payments to agents of
15 record of Florida Windstorm Underwriting
16 Association and Residential Property and
17 Casualty Joint Underwriting Association
18 policies; amending s. 627.3511, F.S.; revising
19 agent compensation in connection with take-out
20 plans; amending s. 627.7013, F.S.; delaying the
21 repeal date of the moratorium on
22 hurricane-related cancellation or nonrenewal of
23 property insurance policies; amending s.
24 624.4072, F.S.; increasing a period of
25 exemption from certain taxes and assessments
26 for certain minority businesses; extending a
27 future repeal; providing effective dates.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Effective July 1, 2002, paragraph (b) of
2 subsection (2) and paragraph (c) of subsection (6) of section
3 627.351, Florida Statutes, are amended, and paragraph (f) is
4 added to subsection (2) of said section, to read:

5 627.351 Insurance risk apportionment plans.--

6 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

29 1. For the purpose of this section, properties
30 eligible for such windstorm coverage are defined as dwellings,
31 buildings, and other structures, including mobile homes which

1 are used as dwellings and which are tied down in compliance
2 with mobile home tie-down requirements prescribed by the
3 Department of Highway Safety and Motor Vehicles pursuant to s.
4 320.8325, and the contents of all such properties. An
5 applicant or policyholder is eligible for coverage only if an
6 offer of coverage cannot be obtained by or for the applicant
7 or policyholder from an admitted insurer at approved rates.
8 2.a.(I) All insurers required to be members of such
9 association shall participate in its writings, expenses, and
10 losses. Surplus of the association shall be retained for the
11 payment of claims and shall not be distributed to the member
12 insurers. Such participation by member insurers shall be in
13 the proportion that the net direct premiums of each member
14 insurer written for property insurance in this state during
15 the preceding calendar year bear to the aggregate net direct
16 premiums for property insurance of all member insurers, as
17 reduced by any credits for voluntary writings, in this state
18 during the preceding calendar year. For the purposes of this
19 subsection, the term "net direct premiums" means direct
20 written premiums for property insurance, reduced by premium
21 for liability coverage and for the following if included in
22 allied lines: rain and hail on growing crops; livestock;
23 association direct premiums booked; National Flood Insurance
24 Program direct premiums; and similar deductions specifically
25 authorized by the plan of operation and approved by the
26 department. A member's participation shall begin on the first
27 day of the calendar year following the year in which it is
28 issued a certificate of authority to transact property
29 insurance in the state and shall terminate 1 year after the
30 end of the calendar year during which it no longer holds a
31 certificate of authority to transact property insurance in the

1 state. The commissioner, after review of annual statements,
2 other reports, and any other statistics that the commissioner
3 deems necessary, shall certify to the association the
4 aggregate direct premiums written for property insurance in
5 this state by all member insurers.

6 (II) The plan of operation shall provide for a board
7 of directors consisting of the members of the State Board of
8 Administration, which shall oversee the operations of the
9 association and shall carry out any other duties provided by
10 law. The board shall appoint an advisory council consisting
11 of an actuary, a meteorologist, an engineer, a representative
12 of insurers, a representative of insurance agents, and three
13 consumers who shall also be representatives of other
14 professions and industries, to provide the board with
15 information and advice in connection with its duties under
16 this section. Members of the advisory council shall be
17 eligible for per diem and travel expenses under s. 112.061.
18 The association shall not be considered a state agency and its
19 obligations shall not be considered obligations of the state
20 ~~Insurance Consumer Advocate appointed under s. 627.0613, 1~~
21 ~~consumer representative appointed by the Insurance~~
22 ~~Commissioner, 1 consumer representative appointed by the~~
23 ~~Governor, and 12 additional members appointed as specified in~~
24 ~~the plan of operation. One of the 12 additional members shall~~
25 ~~be elected by the domestic companies of this state on the~~
26 ~~basis of cumulative weighted voting based on the net direct~~
27 ~~premiums of domestic companies in this state. Nothing in the~~
28 ~~1997 amendments to this paragraph terminates the existing~~
29 ~~board or the terms of any members of the board.~~

30 (III) The plan of operation shall provide a formula
31 whereby a company voluntarily providing windstorm coverage in

1 affected areas will be relieved wholly or partially from
2 apportionment of a regular assessment pursuant to
3 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

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

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

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

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

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

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

29 d.(I) When the deficit incurred in a particular
30 calendar year is 10 percent or less of the aggregate statewide
31 direct written premium for property insurance for the prior

1 calendar year for all member insurers, the association shall
2 levy an assessment on member insurers in an amount equal to
3 the deficit.

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

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

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

1 sub-sub-subparagraph are not part of an insurer's rates, are
2 not premium, and are not subject to premium tax, fees, or
3 commissions; however, failure to pay the emergency assessment
4 shall be treated as failure to pay premium.

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

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

29 e. The governing body of any unit of local government,
30 any residents of which are insured under the plan, may issue
31 bonds as defined in s. 125.013 or s. 166.101 to fund an

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

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

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

1 be deferred. However, there shall be no limitation or
2 deferment of an emergency assessment to be collected from
3 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

21 b.(I) Subject to sub-sub-subparagraph (II), all rate
22 filings under this subsection relating to coverage for
23 windstorm losses shall reflect historical insurance data. When
24 using a computer model in making a rate filing under this
25 subsection, the association may use only a computer model
26 which is based upon standards and guidelines developed or
27 established by the Florida Commission on Hurricane Loss
28 Projection Methodology under s. 627.0628. Consideration of
29 historical insurance data and the use of computer models shall
30 be consistent with applicable standards of practice of the
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1 American Academy of Actuaries.The association may require
2 arbitration of a rate filing under s. 627.062(6).
3 ~~(II) It is the intent of the Legislature that the~~
4 Rates for coverage provided by the association shall be
5 actuarially sound and not competitive with approved rates
6 charged in the admitted voluntary market such that the
7 association functions as a residual market mechanism to
8 provide insurance only when the insurance cannot be procured
9 in the voluntary market. The plan of operation shall provide
10 a mechanism to assure that the average base rates for each
11 line of business charged by the association for hurricane
12 coverage for each unmitigated risk in a particular county
13 shall be no lower than the highest department-approved rate
14 within the association's eligible area for hurricane coverage
15 in the voluntary market for each line of business in such
16 county, among the 20 largest insurers actually writing such
17 coverage in such county, beginning no later than January 1,
18 ~~1999, the rates charged by the association for each line of~~
19 ~~business are reflective of approved rates in the voluntary~~
20 ~~market for hurricane coverage for each line of business in the~~
21 ~~various areas eligible for association coverage.~~
22 c. The association shall provide for windstorm
23 coverage on residential properties in limits up to \$10 million
24 for commercial lines residential risks and up to \$1 million
25 for personal lines residential risks. If coverage with the
26 association is sought for a residential risk valued in excess
27 of these limits, coverage shall be available to the risk up to
28 the replacement cost or actual cash value of the property, at
29 the option of the insured, if coverage for the risk cannot be
30 located in the authorized market. The association must accept
31 a commercial lines residential risk with limits above \$10

1 million or a personal lines residential risk with limits above
2 \$1 million if coverage is not available in the authorized
3 market. The association may write coverage above the limits
4 specified in this subparagraph with or without facultative or
5 other reinsurance coverage, as the association determines
6 appropriate.

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

13 (I) Whether the likelihood of a loss for the
14 individual risk is substantially higher than for other risks
15 of the same class; and

16 (II) Whether the uncertainty associated with the
17 individual risk is such that an appropriate premium cannot be
18 determined.

19
20 The acceptance or rejection of a risk by the association
21 pursuant to such criteria and procedures must be construed as
22 the private placement of insurance, and the provisions of
23 chapter 120 do not apply.

24 e. The policies issued by the association must provide
25 that if the association obtains an offer from an authorized
26 insurer to cover the risk at its approved rates under either a
27 standard policy including wind coverage or, if consistent with
28 the insurer's underwriting rules as filed with the department,
29 a basic policy including wind coverage, the risk is no longer
30 eligible for coverage through the association. Upon
31 termination of eligibility, the association shall provide

1 written notice to the policyholder and agent of record stating
2 that the association policy must be canceled as of 60 days
3 after the date of the notice because of the offer of coverage
4 from an authorized insurer. Other provisions of the insurance
5 code relating to cancellation and notice of cancellation do
6 not apply to actions under this sub-subparagraph.

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

15 g. If the risk accepts an offer of coverage through
16 the market assistance program or through a mechanism
17 established by the association, either before the policy is
18 issued by the association or during the first 30 days of
19 coverage by the association, and the producing agent who
20 submitted the application to the association is not currently
21 appointed by the insurer, the insurer shall:

22 (I) Pay to the producing agent of record of the
23 policy, for the first year, an amount that is the greater of
24 the insurer's usual and customary commission for the type of
25 policy written or a fee equal to the usual and customary
26 commission of the association; or

27 (II) Offer to allow the producing agency of record of
28 the policy to continue servicing the policy for a period of
29 not less than 1 year and offer to pay the agent the greater of
30 the insurer's or the association's usual and customary
31 commission for the type of policy written.

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2 If the new or producing agent is unwilling or unable to accept
3 appointment, the new insurer shall pay the agent in accordance
4 with sub-sub-subparagraph (I).

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

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

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

19
20 If the new or producing agent is unwilling or unable to accept
21 appointment, the new insurer shall pay the agent in accordance
22 with sub-sub-subparagraph (I).

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

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1 necessary to facilitate the issuance of bonds, including the
2 pledging of assessments or other revenues.

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

1 under the plan. The assets and obligations of the plan in
2 effect immediately prior to the effective date of chapter
3 76-96 shall be construed to be the assets and obligations of
4 the successor plan created herein.

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

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

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

1 for an effective date of coverage later than the date of the
2 closing of the transfer as established by the transferor, the
3 transferee, and, if applicable, the lender.

4 9. Notwithstanding any other provision of law:

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

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

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

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

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

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

10 10. It is the intent of the Legislature that the
11 association vigorously pursue an exemption from federal income
12 taxation and tax-free status for bonds issued by or on behalf
13 of the association. In furtherance of this intent:

14 a. The association shall retain such expert tax
15 counsel and bond counsel as necessary and expend such funds as
16 necessary to pursue such negotiations or litigation as may
17 lead to favorable tax rulings.

18 b. The association shall, no later than January 1,
19 2003, provide a report to the Governor, the Insurance
20 Commissioner, the President of the Senate, and the Speaker of
21 the House of Representatives detailing the status of the
22 negotiations or litigation and recommending statutory changes,
23 if any, needed to secure favorable tax rulings.

24 (f)1. In recognition of the fact that the association
25 created under this subsection furthers an essentially
26 governmental purpose, the association is exempt from premium
27 taxes effective July 1, 2003.

28 2. Beginning with the 2003-2004 fiscal year, and
29 except for years in which the association is collecting
30 regular or emergency assessments under this subsection, the
31 association shall annually transfer the sum of \$5 million to

1 the General Revenue Fund, which moneys shall be appropriated
2 for hurricane loss mitigation purposes as specified in s.
3 215.555(7)(c). Such appropriations are in addition to any
4 appropriations required or authorized by s. 215.555(7)(c).

5 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
6 UNDERWRITING ASSOCIATION.--

7 (c) The plan of operation of the association:

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

19 2. Must provide for adoption of residential property
20 and casualty insurance policy forms, which forms must be
21 approved by the department prior to use. The association
22 shall adopt the following policy forms:

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

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

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

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

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

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 3. May provide that the association may employ or
20 otherwise contract with individuals or other entities to
21 provide administrative or professional services that may be
22 appropriate to effectuate the plan. The association shall
23 have the power to borrow funds, by issuing bonds or by
24 incurring other indebtedness, and shall have other powers
25 reasonably necessary to effectuate the requirements of this
26 subsection. The association may issue bonds or incur other
27 indebtedness, or have bonds issued on its behalf by a unit of
28 local government pursuant to subparagraph (g)2., in the
29 absence of a hurricane or other weather-related event, upon a
30 determination by the association, subject to approval by the
31 department, that such action would enable it to efficiently

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

17 4. Must require that the association operate subject
18 to the supervision and approval of a board of governors
19 consisting of the members of the State Board of
20 Administration.~~13 individuals, including 1 who is elected as~~
21 ~~chair. The board shall consist of:~~

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

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

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

1 ~~the consumer members shall have expertise in the field of~~
2 ~~mortgage lending.~~

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

8
9 ~~Any board member may be disapproved or removed and replaced by~~
10 ~~the commissioner at any time for cause. All board members,~~
11 ~~including the chair, must be appointed to serve for 3-year~~
12 ~~terms beginning annually on a date designated by the plan.~~

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

15 a. With respect to personal lines residential risks,
16 if the risk is offered coverage from an authorized insurer at
17 the insurer's approved rate under either a standard policy
18 including wind coverage or, if consistent with the insurer's
19 underwriting rules as filed with the department, a basic
20 policy including wind coverage, the risk is not eligible for
21 any policy issued by the association.

22 (I) If the risk accepts an offer of coverage through
23 the market assistance program or through a mechanism
24 established by the association, either before the policy is
25 issued by the association or during the first 30 days of
26 coverage by the association, and the producing agent who
27 submitted the application to the association is not currently
28 appointed by the insurer, the insurer shall:

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

1 policy written or a fee equal to the usual and customary
2 commission of the association; or

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

8
9 If the new or producing agent is unwilling or unable to accept
10 appointment, the new insurer shall pay the agent in accordance
11 with sub-sub-sub-subparagraph (A).

12 (II) When the association enters into a contractual
13 agreement for a take-out plan, the producing agent of record
14 of the association policy is entitled to retain any unearned
15 commission on the policy and the insurer shall:

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

21 (B) Offer to allow the producing agent of record of
22 the association policy to continue servicing the policy for a
23 period of not less than 1 year and offer to pay the agent the
24 greater of the insurer's or the association's usual and
25 customary commission for the type of policy written.

26
27 If the new or producing agent is unwilling or unable to accept
28 appointment, the new insurer shall pay the agent in accordance
29 with sub-sub-sub-subparagraph (A).~~If the risk accepts an~~
30 ~~offer of coverage through the market assistance plan or an~~
31 ~~offer of coverage through a mechanism established by the~~

1 ~~association before a policy is issued to the risk by the~~
2 ~~association or during the first 30 days of coverage by the~~
3 ~~association, and the producing agent who submitted the~~
4 ~~application to the plan or to the association is not currently~~
5 ~~appointed by the insurer, the insurer shall either appoint the~~
6 ~~agent to service the risk or, if the insurer places the~~
7 ~~coverage through a new agent, require the new agent who then~~
8 ~~writes the policy to pay not less than 50 percent of the first~~
9 ~~year's commission to the producing agent who submitted the~~
10 ~~application to the plan or the association, except that if the~~
11 ~~new agent is an employee or exclusive agent of the insurer,~~
12 ~~the new agent shall pay a policy fee of \$50 to the producing~~
13 ~~agent in lieu of splitting the commission. If the risk is not~~
14 ~~able to obtain any such offer, the risk is eligible for either~~
15 ~~a standard policy including wind coverage or a basic policy~~
16 ~~including wind coverage issued by the association; however, if~~
17 ~~the risk could not be insured under a standard policy~~
18 ~~including wind coverage regardless of market conditions, the~~
19 ~~risk shall be eligible for a basic policy including wind~~
20 ~~coverage unless rejected under subparagraph 8. The association~~
21 ~~shall determine the type of policy to be provided on the basis~~
22 ~~of objective standards specified in the underwriting manual~~
23 ~~and based on generally accepted underwriting practices.~~

24 b. With respect to commercial lines residential risks,
25 if the risk is offered coverage under a policy including wind
26 coverage from an authorized insurer at its approved rate, the
27 risk is not eligible for any policy issued by the association.

28 (I) If the risk accepts an offer of coverage through
29 the market assistance program or through a mechanism
30 established by the association, either before the policy is
31 issued by the association or during the first 30 days of

1 coverage by the association, and the producing agent who
2 submitted the application to the association is not currently
3 appointed by the insurer, the insurer shall:

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

9 (B) Offer to allow the producing agent of record of
10 the policy to continue servicing the policy for a period of
11 not less than 1 year and offer to pay the agent the greater of
12 the insurer's or the association's usual and customary
13 commission for the type of policy written.

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

18 (II) When the association enters into a contractual
19 agreement for a take-out plan, the producing agent of record
20 of the association policy is entitled to retain any unearned
21 commission on the policy and the insurer shall:

22 (A) Pay to the producing agent of record of the
23 association policy, for the first year, an amount that is the
24 greater of the insurer's usual and customary commission for
25 the type of policy written or a fee equal to the usual and
26 customary commission of the association; or

27 (B) Offer to allow the producing agent of record of
28 the association policy to continue servicing the policy for a
29 period of not less than 1 year and offer to pay the agent the
30 greater of the insurer's or the association's usual and
31 customary commission for the type of policy written.

1
2 If the new or producing agent is unwilling or unable to accept
3 appointment, the new insurer shall pay the agent in accordance
4 with sub-sub-sub-subparagraph (A).~~If the risk accepts an~~
5 ~~offer of coverage through the market assistance plan or an~~
6 ~~offer of coverage through a mechanism established by the~~
7 ~~association before a policy is issued to the risk by the~~
8 ~~association, and the producing agent who submitted the~~
9 ~~application to the plan or the association is not currently~~
10 ~~appointed by the insurer, the insurer shall either appoint the~~
11 ~~agent to service the risk or, if the insurer places the~~
12 ~~coverage through a new agent, require the new agent who then~~
13 ~~writes the policy to pay not less than 50 percent of the first~~
14 ~~year's commission to the producing agent who submitted the~~
15 ~~application to the plan, except that if the new agent is an~~
16 ~~employee or exclusive agent of the insurer, the new agent~~
17 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
18 ~~of splitting the commission.~~If the risk is not able to obtain
19 any such offer, the risk is eligible for a policy including
20 wind coverage issued by the association.

21 c. This subparagraph does not require the association
22 to provide wind coverage or hurricane coverage in any area in
23 which such coverage is available through the Florida Windstorm
24 Underwriting Association.

25 6. Must include rules for classifications of risks and
26 rates therefor.

27 7. Must provide that if premium and investment income
28 attributable to a particular plan year are in excess of
29 projected losses and expenses of the plan attributable to that
30 year, such excess shall be held in surplus. Such surplus shall
31 be available to defray deficits as to future years and shall

1 be used for that purpose prior to assessing member insurers as
2 to any plan year.

3 8. Must provide objective criteria and procedures to
4 be uniformly applied for all applicants in determining whether
5 an individual risk is so hazardous as to be uninsurable. In
6 making this determination and in establishing the criteria and
7 procedures, the following shall be considered:

8 a. Whether the likelihood of a loss for the individual
9 risk is substantially higher than for other risks of the same
10 class; and

11 b. Whether the uncertainty associated with the
12 individual risk is such that an appropriate premium cannot be
13 determined.

14
15 The acceptance or rejection of a risk by the association shall
16 be construed as the private placement of insurance, and the
17 provisions of chapter 120 shall not apply.

18 9. Must provide that the association shall make its
19 best efforts to procure catastrophe reinsurance at reasonable
20 rates, as determined by the board of governors.

21 10. Must provide that in the event of regular deficit
22 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
23 (b)3.b., or by the Florida Windstorm Underwriting Association
24 under sub-sub-subparagraph (2)(b)2.d.(I) or
25 sub-sub-subparagraph (2)(b)2.d.(II), the association shall
26 levy upon association policyholders in its next rate filing,
27 or by a separate rate filing solely for this purpose, a market
28 equalization surcharge in a percentage equal to the total
29 amount of such regular assessments divided by the aggregate
30 statewide direct written premium for subject lines of business
31 for member insurers for the prior calendar year. Market

1 equalization surcharges under this subparagraph are not
2 considered premium and are not subject to commissions, fees,
3 or premium taxes; however, failure to pay a market
4 equalization surcharge shall be treated as failure to pay
5 premium.

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

24 12. Association policies and applications must include
25 a notice that the association policy could, under this section
26 or s. 627.3511, be replaced with a policy issued by an
27 admitted insurer that does not provide coverage identical to
28 the coverage provided by the association. The notice shall
29 also specify that acceptance of association coverage creates a
30 conclusive presumption that the applicant or policyholder is
31 aware of this potential.

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

17 Section 2. Subsection (4) of section 627.3511, Florida
18 Statutes, is amended to read:

19 627.3511 Depopulation of Residential Property and
20 Casualty Joint Underwriting Association.--

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

27 (a) Pay to the producing agent of record of the
28 association policy, for the first year, an amount that is the
29 greater of the insurer's usual and customary commission for
30 the type of policy written or a fee equal to the usual and
31 customary commission of the association ~~an amount equal to the~~

1 ~~insurer's usual and customary commission for the type of~~
2 ~~policy written if the term of the association policy was in~~
3 ~~excess of 6 months, or one-half of such usual and customary~~
4 ~~commission if the term of the association policy was 6 months~~
5 ~~or less; or~~

6 (b) Offer to allow the producing agent of record of
7 the association policy to continue servicing the policy for a
8 period of not less than 1 year and offer to pay the agent the
9 greater of the insurer's or the association's usual and
10 customary commission for the type of policy written.

11
12 If the new or producing agent is unwilling or unable to accept
13 appointment, the new insurer shall pay the agent in accordance
14 with paragraph (a).The insurer need not take any further
15 action if the offer is rejected. This subsection does not
16 apply to any reciprocal interinsurance exchange, nonprofit
17 federation, or any subsidiary or affiliate of such
18 organization. This subsection does not apply if the agent is
19 also the agent of record on the new coverage. The requirement
20 of this subsection that the producing agent of record is
21 entitled to retain the unearned commission on an association
22 policy does not apply to a policy for which coverage has been
23 provided in the association for 30 days or less or for which a
24 cancellation notice has been issued pursuant to s.
25 627.351(6)(c)11. during the first 30 days of coverage.

26 Section 3. Subsection (2) of section 627.7013, Florida
27 Statutes, is amended to read:

28 627.7013 Orderly markets for personal lines
29 residential property insurance.--

30 (2) MORATORIUM COMPLETION.--

31

1 (a) As used in this subsection, the term "total number
2 of policies" means the number of an insurer's policies of a
3 specified type that were in force on June 1, 1996, or the date
4 on which this section became law, whichever was later.

5 (b) The following restrictions apply only to
6 cancellation or nonrenewal of personal lines residential
7 property insurance policies that were in force on June 1,
8 1996, or the date on which this section became law, whichever
9 was later.

10 1. In any 12-month period, an insurer may not cancel
11 or nonrenew more than 5 percent of such insurer's total number
12 of homeowner's policies, 5 percent of such insurer's total
13 number of mobile home owner's policies, or 5 percent of such
14 insurer's total number of personal lines residential policies
15 of all types and classes in the state for the purpose of
16 reducing the insurer's exposure to hurricane claims and may
17 not, with respect to any county, cancel or nonrenew more than
18 10 percent of its total number of homeowner's policies, 10
19 percent of its total number of mobile home owner's policies,
20 or 10 percent of its total number of personal lines
21 residential policies of all types and classes in the county
22 for the purpose of reducing the insurer's exposure to
23 hurricane claims. This subparagraph does not prohibit any
24 cancellations or nonrenewals of such policies for any other
25 lawful reason unrelated to the risk of loss from hurricane
26 exposure.

27 2.a. If, for any 12-month period, an insurer proposes
28 to cancel or nonrenew personal lines residential policies to
29 an extent not authorized by subparagraph 1. for the purpose of
30 reducing exposure to hurricane claims, the insurer must file a
31 phaseout plan with the department at least 90 days prior to

1 the effective date of the plan. In the plan, the insurer must
2 demonstrate to the department that the insurer is protecting
3 market stability and the interests of its policyholders. The
4 plan may not be implemented unless it is approved by the
5 department. In developing the plan, the insurer must consider
6 policyholder longevity, the use of voluntary incentives to
7 accomplish the reduction, and geographic distribution. The
8 insurer must demonstrate that under the plan the insurer will
9 not cancel or nonrenew more policies in the 12-month period
10 than the largest number of similar policies the insurer
11 canceled or nonrenewed for any reason in any 12-month period
12 between August 24, 1989, and August 24, 1992.

13 b. If the insurer considers the number of
14 cancellations and nonrenewals under sub-subparagraph a. to be
15 insufficient, the insurer may apply for approval of additional
16 cancellations or nonrenewals on the basis of an unreasonable
17 risk of insolvency. In evaluating a request under this
18 sub-subparagraph, the department shall consider and shall
19 require the insurer to provide information relevant to: the
20 insurer's size, market concentration, and general financial
21 condition; the portion of the insurer's business in this state
22 represented by personal lines residential property insurance;
23 the reasonableness of assumptions with respect to size,
24 frequency, severity, and path of hurricanes; the reinsurance
25 available to the insurer and potential recoveries from the
26 Florida Hurricane Catastrophe Fund; and the extent to which
27 the insurer's assets have been voluntarily transferred by
28 dividend or otherwise from the insurer to its stockholders,
29 parent companies, or affiliated companies since June 1, 1996,
30 or the date on which this section became law, whichever was
31 later. In the implementation of exposure reductions under this

1 sub-subparagraph, the department and the insurer shall
2 consider such factors as policyholder longevity, the use of
3 voluntary incentives to accomplish the exposure reduction, and
4 geographic distribution.

5 c. A policy shall not be counted as having been
6 canceled or nonrenewed for purposes of this subsection if any
7 of the following apply:

8 (I) The policy was canceled or nonrenewed for an
9 underwriting reason unrelated to the risk of loss from
10 hurricane exposure, nonpayment of premium, or any other lawful
11 reason that is unrelated to the risk of loss from hurricane
12 exposure. The department shall consider the reason specified
13 in the notice of cancellation or nonrenewal to be the reason
14 for the cancellation or nonrenewal unless the department finds
15 by a preponderance of the evidence that the stated reason was
16 not the insurer's actual reason for the cancellation or
17 nonrenewal.

18 (II) The cancellation or nonrenewal was initiated by
19 the insured.

20 (III) The insurer has offered the policyholder
21 replacement or alternative coverage at approved rates, which
22 coverage meets the requirements of the secondary mortgage
23 market.

24 d. In addition to any other cancellations or
25 nonrenewals subject to the limitations in this subsection, a
26 policy shall be considered as having been canceled or
27 nonrenewed for purposes of this subsection if:

28 (I) The insurer implements a rate increase under the
29 use-and-file provisions of s. 627.062(2)(a)2., which rate
30 increase exceeds 150 percent of the increase ultimately
31 approved by the department, and, while the rate filing was

1 pending, the policyholder voluntarily canceled or nonrenewed
2 the policy and obtained replacement coverage from another
3 insurer, including the Residential Property and Casualty Joint
4 Underwriting Association; or
5 (II) The insurer reduces the commission to an agent by
6 more than 25 percent and the agent thereafter places the risk
7 with another insurer, including the Residential Property and
8 Casualty Joint Underwriting Association, or the Florida
9 Windstorm Underwriting Association.
10 e. The department must approve or disapprove an
11 application for a waiver within 90 days after the department
12 receives the application for waiver.
13 3. In addition to the cancellations or nonrenewals
14 authorized under this section, an insurer may cancel or
15 nonrenew policies to the extent authorized by an exemption
16 from or waiver of either the moratorium created by chapter
17 93-401, Laws of Florida, or the moratorium phaseout under
18 former s. 627.7013(2).
19 4. Notwithstanding any provisions of this section to
20 the contrary, this section does not apply to any insurer that,
21 prior to August 24, 1992, filed notice of such insurer's
22 intent to discontinue writing insurance in this state under s.
23 624.430, and for which a finding has been made by the
24 department, the Division of Administrative Hearings of the
25 Department of Management Services, or a court that such notice
26 satisfied all requirements of s. 624.430. Nothing in this
27 section shall be construed to authorize an insurer to withdraw
28 from any line of property insurance business for the purpose
29 of reducing exposure to risk of hurricane loss if such
30 withdrawal commenced at any time that the moratorium under
31

1 chapter 93-401, Laws of Florida, or the moratorium phaseout
2 under this section is in effect.

3 5. The following actions by an insurer do not
4 constitute cancellations or nonrenewals for purposes of this
5 subsection:

6 a. The transfer of a risk from one admitted insurer to
7 another admitted insurer, unless the terms of the new or
8 replacement policy place the policyholder in default of a
9 mortgage obligation.

10 b. An increase in the hurricane deductible applicable
11 to the policy, unless the new deductible places the
12 policyholder in default of a mortgage obligation or the
13 deductible exceeds the limits specified in s. 627.701.

14 c. Any other lawful change in coverage that does not
15 place the policyholder in default of a mortgage obligation.

16 d. A cancellation or nonrenewal that is part of the
17 same action as the removal of a policy including windstorm or
18 hurricane coverage from the Residential Property and Casualty
19 Joint Underwriting Association.

20 6. In order to assure fair and effective enforcement
21 of this subsection, each insurer shall, no later than October
22 1, 1996, report to the department the policy number of each
23 policy subject to this subsection, arranged by county. The
24 report shall include the policy number for each personal lines
25 residential policy that was in force on June 1, 1996, or the
26 date this section became law, whichever was later. Beginning
27 October 1, 1996, each insurer shall also report, on a monthly
28 basis, all cancellations and nonrenewals of policies included
29 in such policy list and the reasons for the cancellations and
30 nonrenewals.

31

1 (c) The department may adopt rules to implement this
2 subsection.

3 (d) This section shall cease to operate at such time
4 as the department determines that the insured value of all
5 residential properties insured by the Florida Windstorm
6 Underwriting Association and all properties insured by the
7 Residential Property and Casualty Joint Underwriting
8 Association under policies providing wind coverage, combined,
9 has remained below \$25 billion for 3 consecutive months, based
10 on exposure data reported to the department by the
11 associations.

12 (e) This subsection is repealed on June 1, 2005 ~~2001~~.
13 Section 4. Subsections (1) and (4) of section
14 624.4072, Florida Statutes, are amended to read:

15 624.4072 Minority-owned property and casualty
16 insurers; limited exemption for taxation and assessments.--

17 (1) A minority business that is at least 51 percent
18 owned by minority persons, as defined in s. 288.703(3),
19 initially issued a certificate of authority in this state as
20 an authorized insurer after May 1, 1998, to write property and
21 casualty insurance shall be exempt, for a period not to exceed
22 10 5 years from the date of receiving its certificate of
23 authority, from the following taxes and assessments:

24 (a) Taxes imposed under ss. 175.101, 185.08, and
25 624.509;

26 (b) Assessments by the Florida Residential Property
27 and Casualty Joint Underwriting Association or by the Florida
28 Windstorm Underwriting Association, as provided under s.
29 627.351, except for emergency assessments collected from
30 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and
31 (6)(b)3.d. Any such insurer shall be a member insurer of the

1 Florida Windstorm Underwriting Association and the Florida
2 Residential Property and Casualty Joint Underwriting
3 Association. The premiums of such insurer shall be included in
4 determining, for the Florida Windstorm Underwriting
5 Association, the aggregate statewide direct written premium
6 for property insurance and in determining, for the Florida
7 Residential Property and Casualty Joint Underwriting
8 Association, the aggregate statewide direct written premium
9 for the subject lines of business for all member insurers.

10 (4) This section is repealed effective December 31,
11 2011 ~~July 1, 2003~~, and the tax and assessment exemptions
12 authorized by this section shall terminate on such date.

13 Section 5. Except as otherwise provided herein, this
14 act shall take effect upon becoming a law.

15 *****

16
17 HOUSE SUMMARY

18 Specifies membership of the boards of the Florida
19 Windstorm Underwriting Association and the Residential
20 Property and Casualty Joint Underwriting Association.
21 Revises criteria for limited apportionment, provides rate
22 standards, specifies duties with respect to pursuit of
23 federal tax exemptions and tax-free bond status, provides
24 a premium tax exemption, provides for appropriation of
25 funds for hurricane loss mitigation purposes, and
26 provides standards for payments to agents of record of
27 Florida Windstorm Underwriting Association and
28 Residential Property and Casualty Joint Underwriting
29 Association policies. Revises agent compensation in
30 connection with take-out plans. Delays the repeal date of
31 the moratorium on hurricane-related cancellation or
nonrenewal of property insurance policies. Increases a
period of exemption from taxes and assessments for
minority businesses and extends a future repeal. See bill
for details.