

By Senator Posey

15-449-02

See HB

1                                   A bill to be entitled  
2           An act relating to property insurance plans;  
3           creating the Insurance Policy Holder Protection  
4           Act; amending ss. 627.351, 627.3511, F.S.;  
5           revising certain agent commission payment and  
6           policy servicing procedures and requirements;  
7           creating s. 627.3517, F.S.; preserving a  
8           policyholder's right to select and maintain  
9           certain agents; authorizing the Department of  
10          Insurance to adopt rules to preserve such  
11          right; providing application; providing an  
12          effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. This act may be cited as the "Insurance  
17 Policy Holder Protection Act."

18           Section 2. Paragraph (b) of subsection (2) and  
19 paragraph (c) of subsection (6) of section 627.351, Florida  
20 Statutes, are amended to read:

21           627.351 Insurance risk apportionment plans.--

22           (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

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

1 paragraph terminates the existing board or the terms of any  
2 members of the board.

3 (III) The plan of operation shall provide a formula  
4 whereby a company voluntarily providing windstorm coverage in  
5 affected areas will be relieved wholly or partially from  
6 apportionment of a regular assessment pursuant to  
7 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

8 (IV) A company which is a member of a group of  
9 companies under common management may elect to have its  
10 credits applied on a group basis, and any company or group may  
11 elect to have its credits applied to any other company or  
12 group.

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

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

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

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

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

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1 to provide a means by which assessment liabilities may be  
2 amortized over a period of years.

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

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

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

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

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

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

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



1 equalization surcharge shall be treated as failure to pay  
2 premium.

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

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

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

1 emergency assessment imposed under sub-sub-subparagraph  
2 2.d.(III). The plan shall provide that, if the department  
3 determines that any regular assessment will result in an  
4 impairment of the surplus of a limited apportionment company,  
5 the department may direct that all or part of such assessment  
6 be deferred. However, there shall be no limitation or  
7 deferment of an emergency assessment to be collected from  
8 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

26           b. The association may require arbitration of a rate  
27 filing under s. 627.062(6). It is the intent of the  
28 Legislature that the rates for coverage provided by the  
29 association be actuarially sound and not competitive with  
30 approved rates charged in the admitted voluntary market such  
31 that the association functions as a residual market mechanism

1 to provide insurance only when the insurance cannot be  
2 procured in the voluntary market. The plan of operation shall  
3 provide a mechanism to assure that, beginning no later than  
4 January 1, 1999, the rates charged by the association for each  
5 line of business are reflective of approved rates in the  
6 voluntary market for hurricane coverage for each line of  
7 business in the various areas eligible for association  
8 coverage.

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

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

31

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

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

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

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

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

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

29  
30 If the new or producing agent is unwilling or unable to accept  
31 appointment, the new insurer shall pay the agent in accordance

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

16 f. When the association enters into a contractual  
17 agreement for a take-out plan, the producing agent of record  
18 of the association policy is entitled to retain any unearned  
19 commission on the policy, and the insurer shall:

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

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

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1 If the new or producing agent is unwilling or unable to accept  
2 appointment, the new insurer shall pay the agent in accordance  
3 with sub-sub-subparagraph (I).~~Association policies and~~  
4 ~~applications must include a notice that the association policy~~  
5 ~~could, under this section, be replaced with a policy issued by~~  
6 ~~an authorized insurer that does not provide coverage identical~~  
7 ~~to the coverage provided by the association. The notice shall~~  
8 ~~also specify that acceptance of association coverage creates a~~  
9 ~~conclusive presumption that the applicant or policyholder is~~  
10 ~~aware of this potential.~~

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

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

1 may issue bonds or incur other indebtedness, or have bonds  
2 issued on its behalf by a unit of local government pursuant to  
3 subparagraph(6)(g)2., in the absence of a hurricane or other  
4 weather-related event, upon a determination by the association  
5 subject to approval by the department that such action would  
6 enable it to efficiently meet the financial obligations of the  
7 association and that such financings are reasonably necessary  
8 to effectuate the requirements of this subsection. Any such  
9 entity may accumulate reserves and retain surpluses as of the  
10 end of any association year to provide for the payment of  
11 losses incurred by the association during that year or any  
12 future year. The association shall incorporate and continue  
13 the plan of operation and articles of agreement in effect on  
14 the effective date of chapter 76-96, Laws of Florida, to the  
15 extent that it is not inconsistent with chapter 76-96, and as  
16 subsequently modified consistent with chapter 76-96. The board  
17 of directors and officers currently serving shall continue to  
18 serve until their successors are duly qualified as provided  
19 under the plan. The assets and obligations of the plan in  
20 effect immediately prior to the effective date of chapter  
21 76-96 shall be construed to be the assets and obligations of  
22 the successor plan created herein.

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

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1           7. On such coverage, an agent's remuneration shall be  
2 that amount of money payable to the agent by the terms of his  
3 or her contract with the company with which the business is  
4 placed. However, no commission will be paid on that portion of  
5 the premium which is in excess of the standard premium of that  
6 company.

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

23           9. Notwithstanding any other provision of law:

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

1 conservatorship, reorganization, or similar proceeding against  
2 the association under the laws of this state or any other  
3 applicable laws.

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

11         c. Each such pledge or sale of, lien upon, and  
12 security interest in, including the priority of such pledge,  
13 lien, or security interest, any such assessments, emergency  
14 assessments, market equalization or renewal surcharges,  
15 projected recoveries from the Florida Hurricane Catastrophe  
16 Fund, reinsurance recoverables, or other rights, revenues, or  
17 other assets which are collected, or levied and collected,  
18 after the commencement of and during the pendency of or after  
19 any such proceeding shall continue unaffected by such  
20 proceeding.

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

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

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

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

30 (c) The plan of operation of the association:  
31

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

12           2. Must provide for adoption of residential property  
13 and casualty insurance policy forms, which forms must be  
14 approved by the department prior to use. The association  
15 shall adopt the following policy forms:

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

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

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

31

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

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

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

13           3. May provide that the association may employ or  
14 otherwise contract with individuals or other entities to  
15 provide administrative or professional services that may be  
16 appropriate to effectuate the plan. The association shall  
17 have the power to borrow funds, by issuing bonds or by  
18 incurring other indebtedness, and shall have other powers  
19 reasonably necessary to effectuate the requirements of this  
20 subsection. The association may issue bonds or incur other  
21 indebtedness, or have bonds issued on its behalf by a unit of  
22 local government pursuant to subparagraph (g)2., in the  
23 absence of a hurricane or other weather-related event, upon a  
24 determination by the association, subject to approval by the  
25 department, that such action would enable it to efficiently  
26 meet the financial obligations of the association and that  
27 such financings are reasonably necessary to effectuate the  
28 requirements of this subsection. The association is  
29 authorized to take all actions needed to facilitate tax-free  
30 status for any such bonds or indebtedness, including formation  
31 of trusts or other affiliated entities. The association shall

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

11 4. Must require that the association operate subject  
12 to the supervision and approval of a board of governors  
13 consisting of 13 individuals, including 1 who is elected as  
14 chair. The board shall consist of:

15 a. The insurance consumer advocate appointed under s.  
16 627.0613.

17 b. Five members designated by the insurance industry.

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

27 d. Two representatives of the insurance industry  
28 appointed by the Insurance Commissioner. Of the two insurance  
29 industry representatives appointed by the Insurance  
30 Commissioner, at least one must be an individual who is a  
31 minority person as defined in s. 288.703(3).

1  
2 Any board member may be disapproved or removed and replaced by  
3 the commissioner at any time for cause. All board members,  
4 including the chair, must be appointed to serve for 3-year  
5 terms beginning annually on a date designated by the plan.

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

8 a. With respect to personal lines residential risks,  
9 if the risk is offered coverage from an authorized insurer at  
10 the insurer's approved rate under either a standard policy  
11 including wind coverage or, if consistent with the insurer's  
12 underwriting rules as filed with the department, a basic  
13 policy including wind coverage, the risk is not eligible for  
14 any policy issued by the association. If the risk is not able  
15 to obtain any such offer, the risk is eligible for either a  
16 standard policy including wind coverage or a basic policy  
17 including wind coverage issued by the association; however, if  
18 the risk could not be insured under a standard policy  
19 including wind coverage regardless of market conditions, the  
20 risk shall be eligible for a basic policy including wind  
21 coverage unless rejected under subparagraph 8. The association  
22 shall determine the type of policy to be provided on the basis  
23 of objective standards specified in the underwriting manual  
24 and based on generally accepted underwriting practices.

25 (I) If the risk accepts an offer of coverage through  
26 the market assistance plan or an offer of coverage through a  
27 mechanism established by the association before a policy is  
28 issued to the risk by the association or during the first 30  
29 days of coverage by the association, and the producing agent  
30 who submitted the application to the plan or to the

31

1 association is not currently appointed by the insurer, the  
2 insurer shall:

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

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

13  
14 If the new or producing agent is unwilling or unable to accept  
15 appointment, the new insurer shall pay the agent in accordance  
16 with sub-sub-sub-subparagraph (A).

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

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

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

31



1 If the new or producing agent is unwilling or unable to accept  
2 appointment, the new insurer shall pay the agent in accordance  
3 with sub-sub-sub-subparagraph (A).~~either appoint the agent to~~  
4 ~~service the risk or, if the insurer places the coverage~~  
5 ~~through a new agent, require the new agent who then writes the~~  
6 ~~policy to pay not less than 50 percent of the first year's~~  
7 ~~commission to the producing agent who submitted the~~  
8 ~~application to the plan or the association, except that if the~~  
9 ~~new agent is an employee or exclusive agent of the insurer,~~  
10 ~~the new agent shall pay a policy fee of \$50 to the producing~~  
11 ~~agent in lieu of splitting the commission.~~

12  
13 ~~If the risk is not able to obtain any such offer, the risk is~~  
14 ~~eligible for either a standard policy including wind coverage~~  
15 ~~or a basic policy including wind coverage issued by the~~  
16 ~~association; however, if the risk could not be insured under a~~  
17 ~~standard policy including wind coverage regardless of market~~  
18 ~~conditions, the risk shall be eligible for a basic policy~~  
19 ~~including wind coverage unless rejected under subparagraph 8.~~  
20 ~~The association shall determine the type of policy to be~~  
21 ~~provided on the basis of objective standards specified in the~~  
22 ~~underwriting manual and based on generally accepted~~  
23 ~~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 If the risk is not able to obtain any such offer, the risk is  
29 eligible for a policy including wind coverage issued by the  
30 association.

31

1           (I) If the risk accepts an offer of coverage through  
2 the market assistance plan or an offer of coverage through a  
3 mechanism established by the association before a policy is  
4 issued to the risk by the association ~~or during the first 30~~  
5 days of coverage by the association, and the producing agent  
6 who submitted the application to the ~~plan or the~~ association  
7 is not currently appointed by the insurer, the insurer shall:

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

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

18  
19 If the new or producing agent is unwilling or unable to accept  
20 appointment, the new insurer shall pay the agent in accordance  
21 with sub-sub-sub-subparagraph (A).

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

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

31

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

6  
7 If the new or producing agent is unwilling or unable to accept  
8 appointment, the new insurer shall pay the agent in accordance  
9 with sub-sub-sub-subparagraph (A).~~either appoint the agent to~~  
10 ~~service the risk or, if the insurer places the coverage~~  
11 ~~through a new agent, require the new agent who then writes the~~  
12 ~~policy to pay not less than 50 percent of the first year's~~  
13 ~~commission to the producing agent who submitted the~~  
14 ~~application to the plan, except that if the new agent is an~~  
15 ~~employee or exclusive agent of the insurer, the new agent~~  
16 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~  
17 ~~of splitting the commission.~~

18  
19 ~~If the risk is not able to obtain any such offer, the risk is~~  
20 ~~eligible for a policy including wind coverage issued by the~~  
21 ~~association.~~

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

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

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

1 be available to defray deficits as to future years and shall  
2 be used for that purpose prior to assessing member insurers as  
3 to any plan year.

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

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

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

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

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

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

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

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

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

1 conclusive presumption that the applicant or policyholder is  
2 aware of this potential.

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

19           Section 3. Subsection (4) of section 627.3511, Florida  
20 Statutes, is amended to read:

21           627.3511 Depopulation of Residential Property and  
22 Casualty Joint Underwriting Association.--

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

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

1 commission for the type of policy written or a fee equal to  
2 the ~~if the term of the association policy was in excess of 6~~  
3 ~~months, or one-half of such~~ usual and customary commission if  
4 ~~the term of the association policy was 6 months or less;~~ or

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

10  
11 If the new or producing agent is unwilling or unable to accept  
12 appointment, the new insurer shall pay the agent in accordance  
13 with paragraph (a). ~~The insurer need not take any further~~  
14 ~~action if the offer is rejected. This subsection does not~~  
15 ~~apply to any reciprocal interinsurance exchange, nonprofit~~  
16 ~~federation, or any subsidiary or affiliate of such~~  
17 ~~organization. This subsection does not apply if the agent is~~  
18 ~~also the agent of record on the new coverage.~~ The requirement  
19 of this subsection that the producing agent of record is  
20 entitled to retain the unearned commission on an association  
21 policy does not apply to a policy for which coverage has been  
22 provided in the association for 30 days or less or for which a  
23 cancellation notice has been issued pursuant to s.  
24 627.351(6)(c)11. during the first 30 days of coverage.

25 Section 4. Section 627.3517, Florida Statutes, is  
26 created to read:

27 627.3517 Consumer choice.--No provision of this part  
28 shall be construed to impair the right of any residual market  
29 policyholder to select and maintain an agent of his or her own  
30 choosing. This right shall not be canceled, suspended,  
31 impeded, abridged, or otherwise compromised by any rule, plan

1 of operation, or depopulation plan, whether through keepout,  
2 takeout, midterm assumption, or any other means, of any  
3 insurance risk apportionment plan or depopulation plan,  
4 including, but not limited to, those described in s. 627.351,  
5 s. 627.3511, or s. 627.3515. The department shall adopt any  
6 rules necessary to cause any insurance risk apportionment plan  
7 or market assistance plan under this part to demonstrate that  
8 the operations of the plan do not interfere with, or promote  
9 or allow interference with, the rights created under this  
10 section. If the policyholder chooses an agent who is unable  
11 or unwilling to be appointed with a particular carrier, the  
12 policyholder may not be disqualified from participation in the  
13 appropriate residual market because of an offer of coverage in  
14 the voluntary market. Any rule, plan of operation, or plan of  
15 depopulation, through keepout, takeout, midterm assumption, or  
16 any other means, of any insurance risk apportionment plan is  
17 subject to ss. 627.351(2)(b) and 627.3511(4).

18 Section 5. This act shall take effect upon becoming a  
19 law.

20  
21 \*\*\*\*\*

22 LEGISLATIVE SUMMARY

23  
24 Revises agent commission payment and policy servicing  
25 procedures and requirements for agents securing coverage  
26 for risks under a market assistance program or plan of  
27 the Florida Windstorm Underwriting Association or the  
28 Residential Property and Casualty Joint Underwriting  
29 Association. Preserves a policyholder's right to select  
30 and maintain an agent. (See bill for details.)  
31