

By Representatives Atwater, Garcia, Diaz-Balart, Mayfield
and Cantens

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 627.351, F.S.; renaming the Residential
4 Property and Casualty Joint Underwriting
5 Association as the Citizens Property Insurance
6 Corporation to provide residential and
7 commercial property insurance; requiring
8 insurers writing property insurance to
9 participate in the corporation; providing for
10 dividing the revenues, assets, liabilities,
11 losses, and expenses of the corporation into
12 three accounts; providing for emergency
13 assessments for policyholders of participating
14 insurers; providing a plan of operation;
15 defining the terms "quota share primary
16 insurance" and "eligible risks"; authorizing
17 the corporation to enter into quota share
18 primary insurance agreements; providing for a
19 board of governors appointed by the Treasurer;
20 requiring the corporation to file quarterly
21 statements of financial condition and submit
22 other reports to the Department of Insurance;
23 providing that the corporation is not required
24 to obtain a certificate of authority from the
25 Department of Insurance; providing that the
26 corporation is not required to be a member of
27 the Florida Insurance Guaranty Association;
28 requiring the corporation to pay assessments
29 pledged by the association to secure bonds to
30 pay covered claims arising from insurer
31 insolvencies caused by hurricane losses;

1 providing for transfer of policies of the
2 association and the Florida Windstorm
3 Underwriting Association to the corporation;
4 providing for a transfer of assets and
5 liabilities; requiring the associations to take
6 actions necessary to further the transfers;
7 providing for the redesignation of certain
8 coverage as the high-risk account of the
9 corporation; providing that such account be
10 treated as if it were a separate participating
11 insurer for certain purposes; providing that
12 the personal lines and commercial lines
13 accounts be treated as a single participating
14 insurer for certain purposes; providing that
15 the department may postpone the July 1, 2002,
16 effective date of transfer under the act;
17 providing legislative intent not to interfere
18 with the rights of creditors, to preserve the
19 obligation of the association, and to assure
20 that outstanding financing agreements pass
21 unchanged to the corporation; creating s.
22 627.3517, F.S.; preserving the right of a
23 residual-market policyholder to select and
24 maintain an agent of his or her own choice;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (6) of section 627.351, Florida
30 Statutes, as amended by section 4 of chapter 2001-372, Laws of
31 Florida, is amended to read:

1 627.351 Insurance risk apportionment plans.--
2 (6) CITIZENS RESIDENTIAL PROPERTY INSURANCE
3 CORPORATION AND CASUALTY JOINT UNDERWRITING ASSOCIATION.--
4 (a)1. The Legislature finds that actual and threatened
5 catastrophic losses to property in this state from hurricanes
6 have caused insurers to be unwilling or unable to provide
7 property insurance coverage to the extent sought and needed.
8 It is in the public interest and a public purpose to assist in
9 assuring that property in the state is insured so as to
10 facilitate the remediation, reconstruction, and replacement of
11 damaged or destroyed property in order to reduce or avoid the
12 negative effects otherwise resulting to the public health,
13 safety, and welfare; to the economy of the state; and to the
14 revenues of the state and local governments needed to provide
15 for the public welfare. It is necessary, therefore, to provide
16 property insurance to applicants who are in good faith
17 entitled to procure insurance through the voluntary market but
18 are unable to do so. The Legislature intends by this
19 subsection that property insurance be provided and that it
20 continues, as long as necessary, through an entity organized
21 to achieve efficiencies and economies, all toward the
22 achievement of the foregoing public purposes. Because it is
23 essential for the corporation to have the maximum financial
24 responses to pay claims following a catastrophic hurricane, it
25 is the intent of the Legislature that the income of the
26 corporation be exempt from federal income taxation and that
27 interest on the debt obligations issued by the corporation be
28 exempt from federal income taxation.
29 2. The Residential Property and Casualty Joint
30 Underwriting Association originally created by this statute
31 shall be known, as of July 1, 2002, as the Citizens Property

1 Insurance Corporation. The corporation shall provide insurance
2 for residential and commercial
3 ~~(a) There is created a joint underwriting association~~
4 ~~for equitable apportionment or sharing among insurers of~~
5 ~~property and casualty insurance covering residential property,~~
6 for applicants who are in good faith entitled, but are unable,
7 to procure insurance through the voluntary market. The
8 corporation association shall operate pursuant to a plan of
9 operation approved by order of the department. The plan is
10 subject to continuous review by the department. The department
11 may, by order, withdraw approval of all or part of a plan if
12 the department determines that conditions have changed since
13 approval was granted and that the purposes of the plan require
14 changes in the plan. For the purposes of this subsection,
15 residential coverage includes both personal lines residential
16 coverage, which consists of the type of coverage provided by
17 homeowner's, mobile home owner's, dwelling, tenant's,
18 condominium unit owner's, and similar policies, and commercial
19 lines residential coverage, which consists of the type of
20 coverage provided by condominium association, apartment
21 building, and similar policies.
22 (b)1. All insurers authorized to write one or more
23 subject lines of business in this state are subject to
24 assessment by the corporation and, for the purposes of this
25 subsection, are referred to collectively as "assessable
26 insurers." Insurers writing one or more subject lines of
27 business in this state pursuant to part VIII of chapter 626
28 are not assessable insurers, but insureds who procure one or
29 more subject lines of business in this state pursuant to part
30 VIII of chapter 626 are subject to assessment by the
31 corporation and are referred to collectively as "assessable

1 insureds." An authorized insurer's assessment liability, ~~other~~
2 ~~than underwriting associations or other entities created under~~
3 ~~this section, must participate in and be members of the~~
4 ~~Residential Property and Casualty Joint Underwriting~~
5 ~~Association. A member's participation~~ shall begin on the first
6 day of the calendar year following the year in which the
7 insurer member was issued a certificate of authority to
8 transact insurance for subject lines of business in this state
9 and shall terminate 1 year after the end of the first calendar
10 year during which the insurer member no longer holds a
11 certificate of authority to transact insurance for subject
12 lines of business in this state.

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

16 (I) A personal lines account for personal residential
17 policies issued by the corporation or issued by the
18 Residential Property and Casualty Joint Underwriting
19 Association and renewed by the corporation on risks that are
20 not located in areas eligible for coverage in the Florida
21 Windstorm Underwriting Association as those areas were defined
22 on January 1, 2002;

23 (II) A commercial lines account for commercial
24 residential policies issued by the corporation or issued by
25 the Residential Property and Casualty Joint Underwriting
26 Association and renewed by the corporation on risks that are
27 not located in areas eligible for coverage in the Florida
28 Windstorm Underwriting Association as those areas were defined
29 on January 1, 2002; and

30 (III) A high-risk account for personal residential
31 policies and commercial residential and commercial

1 nonresidential property policies issued by the corporation or
2 transferred to the corporation on risks that are located in
3 areas eligible for coverage in the Florida Windstorm
4 Underwriting Association as those areas were defined on
5 January 1, 2002. The high-risk account must also include quota
6 share primary insurance under subparagraph (c)2.

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

19 c. Revenues, assets, liabilities, losses, and expenses
20 not attributable to particular accounts coverages shall be
21 prorated among between the accounts.

22 d. The Legislature finds that the revenues of the
23 corporation are revenues that are necessary to meet the
24 requirements set forth in documents authorizing the issuance
25 of bonds under this subsection.

26 e. No part of the income of the corporation may inure
27 to the benefit of any private person.

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

29 a. When the deficit incurred in a particular calendar
30 year is not greater than 10 percent of the aggregate statewide
31 direct written premium for the subject lines of business for

1 the prior calendar year ~~for all member insurers~~, the entire
2 deficit shall be recovered through regular assessments of
3 assessable member insurers under paragraph (g) and assessable
4 insureds.

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

17 c. Each assessable member insurer's share of the
18 amount being assessed ~~total assessment~~ under sub-subparagraph
19 a. or sub-subparagraph b. shall be in the proportion that the
20 assessable member insurer's direct written premium for the
21 subject lines of business for the year preceding the
22 assessment bears to the aggregate statewide direct written
23 premium for the subject lines of business for that year ~~for~~
24 ~~all member insurers~~. The assessment percentage applicable to
25 each assessable insured is the ratio of the amount being
26 assessed under sub-subparagraph a. or sub-subparagraph b. to
27 the aggregate statewide direct written premium for the subject
28 lines of business for the prior year. Assessments levied by
29 the corporation on assessable insurers under sub-subparagraphs
30 a. and b. shall be paid as required by the corporation's plan
31 of operation and paragraph (g). Assessments levied by the

1 corporation on assessable insureds under sub-subparagraphs a.
2 and b. shall be collected by the surplus lines agent at the
3 time the surplus lines agent collects the surplus lines tax
4 required by s. 626.932 and shall be paid to the Florida
5 Surplus Lines Service Office at the time the surplus lines
6 agency pays the surplus lines tax to the Florida Surplus Lines
7 Service Office. Upon receipt of regular assessments from
8 surplus lines agents, the Florida surplus Lines Service Office
9 shall transfer the assessments directly to the corporation as
10 determined by the corporation.

11 d. Upon a determination by the board of governors that
12 a deficit in an account exceeds the amount that will be
13 recovered through regular assessments ~~on member insurers~~ under
14 sub-subparagraph a. or sub-subparagraph b., the board shall
15 levy, after verification by the department, emergency
16 assessments to be collected by assessable member insurers and
17 the corporation and collected from assessable insureds by
18 ~~underwriting associations created under this section which~~
19 ~~write subject lines of business~~ upon issuance or renewal of
20 policies for subject lines of business, excluding National
21 Flood Insurance policies, ~~in the year or years following levy~~
22 ~~of the regular assessments.~~ The amount of the emergency
23 assessment collected in a particular year shall be a uniform
24 percentage of that year's direct written premium for subject
25 lines of business and all accounts of the corporation for all
26 ~~member insurers and underwriting associations,~~ excluding
27 National Flood Insurance Program policy premiums, as annually
28 determined by the board and verified by the department. The
29 department shall verify the arithmetic calculations involved
30 in the board's determination within 30 days after receipt of
31 the information on which the determination was based.

1 Notwithstanding any other provision of law, the corporation
2 and each assessable member insurer that ~~and each underwriting~~
3 ~~association created under this section which~~ writes subject
4 lines of business shall collect emergency assessments from its
5 policyholders without such obligation being affected by any
6 credit, limitation, exemption, or deferment. Emergency
7 assessments levied by the corporation on assessable insureds
8 shall be collected by the surplus lines agent at the time the
9 surplus lines agent collects the surplus lines tax required by
10 s. 626.932 and shall be paid to the Florida Surplus Lines
11 Service Office at the time the surplus lines agent pays the
12 surplus lines tax to the Florida Surplus Lines Service Office.
13 The emergency assessments so collected shall be transferred
14 directly to the corporation ~~association~~ on a periodic basis as
15 determined by the corporation ~~association~~. The aggregate
16 amount of emergency assessments levied under this
17 sub-subparagraph in any calendar year may not exceed the
18 greater of 10 percent of the amount needed to cover the
19 original deficit, plus interest, fees, commissions, required
20 reserves, and other costs associated with financing of the
21 original deficit, or 10 percent of the aggregate statewide
22 direct written premium for subject lines of business and for
23 all accounts of the corporation ~~written by member insurers and~~
24 ~~underwriting associations~~ for the prior year, plus interest,
25 fees, commissions, required reserves, and other costs
26 associated with financing the original deficit.
27 e. The board may pledge the proceeds of assessments,
28 projected recoveries from the Florida Hurricane Catastrophe
29 Fund, other insurance and reinsurance recoverables, market
30 equalization surcharges and other surcharges, and other funds
31 available to the corporation ~~association~~ as the source of

1 revenue for and to secure bonds issued under paragraph (g),
2 bonds or other indebtedness issued under subparagraph (c)3.,
3 or lines of credit or other financing mechanisms issued or
4 created under this subsection, or to retire any other debt
5 incurred as a result of deficits or events giving rise to
6 deficits, or in any other way that the board determines will
7 efficiently recover such deficits. The purpose of the lines of
8 credit or other financing mechanisms is to provide additional
9 resources to assist the corporation ~~association~~ in covering
10 claims and expenses attributable to a catastrophe. As used in
11 this subsection, the term "assessments" includes regular
12 assessments under sub-subparagraph a., sub-subparagraph b., or
13 subparagraph (g)1. and emergency assessments under
14 sub-subparagraph d. Emergency assessments collected under
15 sub-subparagraph d. are not part of an insurer's rates, are
16 not premium, and are not subject to premium tax, fees, or
17 commissions; however, failure to pay the emergency assessment
18 shall be treated as failure to pay premium. The emergency
19 assessments under sub-subparagraph d. shall continue as long
20 as any bonds issued or other indebtedness incurred with
21 respect to a deficit for which the assessment was imposed
22 remain outstanding, unless adequate provision has been made
23 for the payment of such bonds or other indebtedness pursuant
24 to the documents governing such bonds or other indebtedness.

25 f. As used in this subsection, the term "subject lines
26 of business" means insurance written by assessable insurers or
27 procured by assessable insureds on real or personal property,
28 as defined in s. 624.604, including insurance for fire,
29 industrial fire, allied lines, farmowners multiperil,
30 homeowners multiperil, commercial multiperil, and mobile
31 homes, and including liability coverage on all such insurance,

1 but excluding inland marine as defined in s. 624.607(3) and
2 excluding vehicle insurance as defined in s. 624.605(1) other
3 than insurance on mobile homes used as permanent dwellings.

4 g. The Florida Surplus Lines Service Office shall
5 determine annually the aggregate statewide written premium in
6 subject lines of business procured by assessable insureds and
7 shall report that information to the corporation in a form and
8 at a time the corporation specifies to ensure that the
9 corporation can meet the requirements of this subsection and
10 the corporation's financing obligations.

11 h. The Florida Surplus Lines Service Office shall
12 verify the proper application by surplus lines agents of
13 assessment percentages for regular assessments and emergency
14 assessments levied under this subparagraph on assessable
15 insureds and shall assist the corporation in ensuring the
16 accurate, timely collection and payment of assessments by
17 surplus lines agents as required by the corporation., with
18 ~~respect to the personal lines account, any personal lines~~
19 ~~policy defined in s. 627.4025, and means, with respect to the~~
20 ~~commercial lines account, all commercial property and~~
21 ~~commercial fire insurance.~~

22 (c) The plan of operation of the corporation
23 association:

24 ~~1. May provide for one or more designated insurers,~~
25 ~~able and willing to provide policy and claims service, to act~~
26 ~~on behalf of the association to provide such service. Each~~
27 ~~licensed agent shall be entitled to indicate the order of~~
28 ~~preference regarding who will service the business placed by~~
29 ~~the agent. The association shall adhere to each agent's~~
30 ~~preferences unless after consideration of other factors in~~
31 ~~assigning agents, including, but not limited to, servicing~~

1 ~~capacity and fee arrangements, the association has reason to~~
2 ~~believe it is in the best interest of the association to make~~
3 ~~a different assignment.~~

4 1.2. Must provide for adoption of residential property
5 and casualty insurance policy forms and commercial residential
6 and nonresidential property insurance forms, which forms must
7 be approved by the department prior to use. The corporation
8 ~~association~~ shall adopt the following policy forms:

9 a. Standard personal lines policy forms that including
10 ~~wind coverage, which are comprehensive~~ multiperil policies
11 providing ~~what is generally considered to be~~ full coverage of
12 a residential property equivalent similar to the coverage
13 provided in the private insurance market under a dwelling fire
14 ~~an HO-2, HO-3, HO-4, or HO-6 policy.~~

15 ~~b. Standard personal lines policy forms without wind~~
16 ~~coverage, which are the same as the policies described in~~
17 ~~sub-subparagraph a. except that they do not include wind~~
18 ~~coverage.~~

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

25 ~~d. Basic personal lines policy forms without wind~~
26 ~~coverage, which are the same as the policies described in~~
27 ~~sub-subparagraph c. except that they do not include wind~~
28 ~~coverage.~~

29 c.e. Commercial lines residential policy forms
30 ~~including wind coverage~~ that are generally similar to the
31

1 basic perils of full coverage obtainable for commercial
2 residential structures in the admitted voluntary market.

3 d. Commercial lines nonresidential property insurance
4 forms that cover the peril of wind only. The form is
5 applicable only to commercial lines nonresidential properties
6 located in areas eligible for coverage in the Florida
7 Windstorm Underwriting Association as those areas were defined
8 on January 1, 2002.

9 2.a. Must provide that the corporation adopt a program
10 in which the corporation and authorized insurers enter into
11 quota share primary insurance agreements for hurricane
12 coverage, as defined in s. 627.4025(2)(a), for eligible risks,
13 and adopt property insurance forms for eligible risks which
14 cover the peril of wind only. As used in this subsection, the
15 term:

16 (I) "Quota share primary insurance" means an
17 arrangement in which the primary hurricane coverage of an
18 eligible risk is provided in specified percentages by the
19 corporation and an authorized insurer. The corporation and
20 authorized insurer are each solely responsible for a specified
21 percentage of hurricane coverage of an eligible risk as set
22 forth in a quota share primary insurance agreement between the
23 corporation and an authorized insurer. The responsibility of
24 the corporation or authorized insurer to pay its specified
25 percentage of hurricane losses of an eligible risk, as set
26 forth in the quota share primary insurance agreement may not
27 be altered by the inability of the other party to the
28 agreement to pay its specified percentage of hurricane losses.
29 Eligible risks that are provided hurricane coverage through a
30 quota share primary insurance arrangement must be provided
31 policy forms that set forth the obligations of the corporation

1 and authorized insurer under the arrangement, and that clearly
2 specify the percentages of quota share primary insurance
3 provided by the corporation and authorized insurer.

4 (II) "Eligible risks" means personal lines residential
5 and commercial lines residential risks that meet the
6 underwriting criteria of the corporation and are located in
7 areas that were eligible for coverage by the Florida Windstorm
8 Underwriting Association on January 1, 2002.

9 b. The corporation may enter into quota share primary
10 insurance agreements with authorized insurers at corporation
11 coverage levels of 90 percent and 50 percent.

12 c. If the corporation determines that additional
13 coverage levels are necessary to maximize participation in
14 quota share primary insurance agreements by authorized
15 insurers, the corporation may establish additional coverage
16 levels. However, the corporation's quota share primary
17 insurance coverage level may not exceed 90 percent.

18 d. Any quota share primary insurance agreement entered
19 into between an authorized insurer and the corporation must
20 provide for a uniform, specified percentage of coverage of
21 hurricane losses, by county or territory as set forth by the
22 corporation board, for all eligible risks of the authorized
23 insurer covered under the quota share primary insurance
24 agreement.

25 e. Any quota share primary insurance agreement entered
26 into between an authorized insurer and the corporation is
27 subject to review and approval by the department.

28 f. For all eligible risks covered under quota share
29 primary insurance agreements, the exposure and coverage levels
30 for both the corporation and authorized insurers shall be
31 reported by the corporation to the Florida Hurricane

1 Catastrophe Fund. For all policies of eligible risks covered
2 under quota share primary insurance agreements, the
3 corporation and the authorized insurer shall maintain complete
4 and accurate records for the purpose of exposure and loss
5 reimbursement audits as required by Florida Hurricane
6 Catastrophe Fund rules. The corporation and the authorized
7 insurer shall each maintain duplicate copies of policy
8 declaration pages and supporting claims documents.

9 g. The rates charged by the corporation for covering
10 eligible personal lines residential risks under quota share
11 primary insurance agreements for the coverage levels in
12 sub-subparagraph b. and c. must be derived from the
13 corporation's wind-only rates.

14 h. The quota share primary insurance agreement between
15 the corporation and an authorized insurer must set forth the
16 specific terms under which coverage is provided, including,
17 but not limited to, the sale and servicing of policies issued
18 under the agreement by the insurance agent of the authorized
19 insurer producing the business, the reporting of information
20 concerning eligible risks, the payment of premium to the
21 corporation, and arrangements for the adjustment and payment
22 of hurricane claims incurred on eligible risks by the claims
23 adjuster and personnel of the authorized insurer.

24 ~~f. Commercial lines residential policy forms without~~
25 ~~wind coverage, which are the same as the policies described in~~
26 ~~sub-subparagraph e. except that they do not include wind~~
27 ~~coverage.~~

28 3. May provide that the corporation ~~association~~ may
29 employ or otherwise contract with individuals or other
30 entities to provide administrative or professional services
31 that may be appropriate to effectuate the plan. The

1 corporation ~~association~~ shall have the power to borrow funds,
2 by issuing bonds or by incurring other indebtedness, and shall
3 have other powers reasonably necessary to effectuate the
4 requirements of this subsection. The corporation may, but is
5 not required to, seek judicial validation of its bonds or
6 other indebtedness under chapter 75.The corporation
7 ~~association~~ may issue bonds or incur other indebtedness, or
8 have bonds issued on its behalf by a unit of local government
9 pursuant to subparagraph (g)2., in the absence of a hurricane
10 or other weather-related event, upon a determination by the
11 corporation ~~association~~, subject to approval by the
12 department, that such action would enable it to efficiently
13 meet the financial obligations of the corporation ~~association~~
14 and that such financings are reasonably necessary to
15 effectuate the requirements of this subsection. The
16 corporation ~~association~~ is authorized to take all actions
17 needed to facilitate tax-free status for any such bonds or
18 indebtedness, including formation of trusts or other
19 affiliated entities. The corporation ~~association~~ shall have
20 the authority to pledge assessments, projected recoveries from
21 the Florida Hurricane Catastrophe Fund, other reinsurance
22 recoverables, market equalization and other surcharges, and
23 other funds available to the corporation ~~association~~ as
24 security for bonds or other indebtedness. In recognition of s.
25 10, Art. I of the State Constitution, prohibiting the
26 impairment of obligations of contracts, it is the intent of
27 the Legislature that no action be taken whose purpose is to
28 impair any bond indenture or financing agreement or any
29 revenue source committed by contract to such bond or other
30 indebtedness.
31

1 4.a. Must require that the corporation ~~association~~
2 operate subject to the supervision and approval of a board of
3 governors consisting of 7 ~~13~~ individuals from diverse
4 geographical areas of the state, appointed by the Treasurer.
5 The Treasurer shall designate one of the appointees as chair.
6 All board members serve at the pleasure of the Treasurer.~~7~~
7 ~~including 1 who is elected as chair. The board shall consist~~
8 ~~of:~~
9 a. ~~The insurance consumer advocate appointed under s.~~
10 ~~627.0613.~~
11 b. ~~Five members designated by the insurance industry.~~
12 c. ~~Five consumer representatives appointed by the~~
13 ~~Insurance Commissioner. Two of the consumer representatives~~
14 ~~must, at the time of appointment, be holders of policies~~
15 ~~issued by the association, who are selected with consideration~~
16 ~~given to reflecting the geographic balance of association~~
17 ~~policyholders. Two of the consumer members must be individuals~~
18 ~~who are minority persons as defined in s. 288.703(3). One of~~
19 ~~the consumer members shall have expertise in the field of~~
20 ~~mortgage lending.~~
21 d. ~~Two representatives of the insurance industry~~
22 ~~appointed by the Insurance Commissioner. Of the two insurance~~
23 ~~industry representatives appointed by the Insurance~~
24 ~~Commissioner, at least one must be an individual who is a~~
25 ~~minority person as defined in s. 288.703(3).~~
26
27 ~~Any board member may be disapproved or removed and replaced by~~
28 ~~the commissioner at any time for cause.~~All board members,
29 including the chair, must be appointed to serve for 3-year
30 terms beginning annually on a date designated by the plan. Any
31 board vacancy shall be filled for the unexpired term by the

1 Treasurer. The Treasurer shall appoint a technical advisory
2 group to provide information and advice to the board of
3 governors in connection with the board's duties under this
4 subsection. The executive director and senior managers of the
5 corporation shall be engaged by the Treasurer and serve at the
6 pleasure of the Treasurer. The executive director is
7 responsible for employing other staff as the corporation may
8 require, subject to review and concurrence by the Office of
9 the Treasurer.

10 b. To ensure the effective and efficient
11 implementation of this section, the Treasurer shall appoint
12 the board of governors by July 1, 2002. The board of governors
13 shall work in conjunction with the Residential Property
14 Insurance Market Coordinating Council to address appropriate
15 organizational, operational, and financial matters relating to
16 the corporation. In addition, after consultation with the
17 Residential Property Insurance Market Coordinating Council,
18 the Treasurer may postpone the implementation of the
19 provisions of paragraph (1) and any other provision this
20 section related to the operation of the corporation for a
21 period not to exceed 180 days if the Treasurer determines that
22 phasing-in these provisions is necessary to ensure the
23 effective and efficient implementation of the corporation's
24 operations or financing arrangements. However, the Treasurer
25 may not affect any provision in paragraph (b) or any other
26 provision of this section related to financing arrangements
27 entered into by the Florida Windstorm Underwriting Association
28 or the Florida Residential Property and Casualty Joint
29 Underwriting Association and the ability of those entities or
30 the corporation to service its debts and maintain the capacity
31 to repay funds secured under those arrangements.

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

3 a. With respect to personal lines residential risks,
4 if the risk is offered full coverage from an authorized
5 insurer at the insurer's approved rate under either a standard
6 ~~policy including wind coverage~~ or, if consistent with the
7 insurer's underwriting rules as filed with the department, a
8 basic policy ~~including wind coverage~~, the risk is not eligible
9 for any policy issued by the corporation association. If the
10 risk accepts an offer of coverage through the market
11 assistance plan or an offer of coverage through a mechanism
12 established by the corporation association before a policy is
13 issued to the risk by the corporation association or during
14 the first 30 days of coverage by the corporation association,
15 and the producing agent who submitted the application to the
16 plan or to the corporation association is not currently
17 appointed by the insurer, the insurer shall either:

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

23 (II) Offer to allow the producing agent of record of
24 the policy to continue servicing the policy for a period of
25 not less than 1 year and offer to pay the agent the insurer's
26 usual and customary commission for the type of policy written.
27 If the new or producing agent is unwilling or unable to accept
28 appointment by the new insurer, the new insurer shall pay the
29 agent in accordance with sub-sub-subparagraph (I).~~appoint the~~
30 ~~agent to service the risk or, if the insurer places the~~
31 ~~coverage through a new agent, require the new agent who then~~

1 ~~writes the policy to pay not less than 50 percent of the first~~
2 ~~year's commission to the producing agent who submitted the~~
3 ~~application to the plan or the association, except that if the~~
4 ~~new agent is an employee or exclusive agent of the insurer,~~
5 ~~the new agent shall pay a policy fee of \$50 to the producing~~
6 ~~agent in lieu of splitting the commission.~~

7
8 If the risk is not able to obtain any such offer, the risk is
9 eligible for either a standard policy ~~including wind coverage~~
10 or a basic policy ~~including wind coverage~~ issued by the
11 corporation ~~association~~; however, if the risk could not be
12 insured under a standard policy ~~including wind coverage~~
13 regardless of market conditions, the risk shall be eligible
14 for a basic policy ~~including wind coverage~~ unless rejected
15 under subparagraph 8. The corporation ~~association~~ shall
16 determine the type of policy to be provided on the basis of
17 objective standards specified in the underwriting manual and
18 based on generally accepted underwriting practices.

19 b. With respect to commercial lines ~~residential~~ risks,
20 if the risk is offered coverage under a policy ~~including wind~~
21 ~~coverage~~ from an authorized insurer at its approved rate, the
22 risk is not eligible for any policy issued by the corporation
23 ~~association~~. If the risk accepts an offer of coverage through
24 the market assistance plan or an offer of coverage through a
25 mechanism established by the corporation ~~association~~ before a
26 policy is issued to the risk by the corporation ~~association~~,
27 and the producing agent who submitted the application to the
28 plan or the corporation ~~association~~ is not currently appointed
29 by the insurer, the insurer shall either:

30 (I) Pay to the producing agent of record of the
31 policy, for the first year, an amount which is the greater of

1 the insurer's usual and customary commission for the type of
2 policy written or a policy fee equal to the usual and
3 customary commission of the corporation; or
4 (II) Offer to allow the producing agent of record of
5 the policy to continue servicing the policy for a period of
6 not less than 1 year and offer to pay the agent the insurer's
7 usual and customary commission for the type of policy written.
8 If the new or producing agent is unwilling or unable to accept
9 appointment by the new insurer, the new insurer shall pay the
10 agent in accordance with sub-sub-subparagraph (I).~~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.~~
19
20 If the risk is not able to obtain any such offer, the risk is
21 eligible for a policy ~~including wind coverage~~ issued by the
22 corporation association.
23 ~~c. This subparagraph does not require the association~~
24 ~~to provide wind coverage or hurricane coverage in any area in~~
25 ~~which such coverage is available through the Florida Windstorm~~
26 ~~Underwriting Association.~~
27 6. Must include rules for classifications of risks and
28 rates therefor.
29 7. Must provide that if premium and investment income
30 for an account attributable to a particular calendar plan year
31 are in excess of projected losses and expenses for the account

1 ~~of the plan~~ attributable to that year, such excess shall be
2 held in surplus in the account. Such surplus shall be
3 available to defray deficits as to future years and shall be
4 used for that purpose prior to assessing assessable member
5 insurers and assessable insureds as to any calendar plan year.

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

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

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

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

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

24 10. Must provide that in the event of regular deficit
25 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
26 (b)3.b., in the personal lines account, the commercial lines
27 residential account, or the high-risk account ~~or by the~~
28 ~~Florida Windstorm Underwriting Association under~~
29 ~~sub-sub-subparagraph (2)(b)2.d.(I) or sub-sub-subparagraph~~
30 ~~(2)(b)2.d.(II)~~, the corporation association shall levy upon
31 corporation association policyholders in such account in its

1 next rate filing, or by a separate rate filing solely for this
2 purpose, a market equalization surcharge in a percentage equal
3 to the total amount of such regular assessments divided by the
4 aggregate statewide direct written premium for subject lines
5 of business ~~for member insurers~~ for the prior calendar year.
6 Market equalization surcharges under this subparagraph are not
7 considered premium and are not subject to commissions, fees,
8 or premium taxes; however, failure to pay a market
9 equalization surcharge shall be treated as failure to pay
10 premium.

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

29 12. Corporation Association policies and applications
30 must include a notice that the corporation association policy
31 could, under this section ~~or s. 627.3511~~, be replaced with a

1 policy issued by an authorized ~~admitted~~ insurer that does not
2 provide coverage identical to the coverage provided by the
3 corporation ~~association~~. The notice shall also specify that
4 acceptance of corporation ~~association~~ coverage creates a
5 conclusive presumption that the applicant or policyholder is
6 aware of this potential.

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

23 14. Must provide that, with respect to the high-risk
24 account, any assessable insurer with a surplus as to
25 policyholders of \$25 million or less writing 25 percent or
26 more of its total countrywide property insurance premiums in
27 this state may petition the department, within the first 90
28 days of each calendar year, to qualify as a limited
29 apportionment company. In no event shall a limited
30 apportionment company be required to participate in the
31 portion of any assessment, within the high-risk account,

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

13 15. Must provide that the corporation appoint as its
14 licensed agents only those agents who also hold an appointment
15 as defined in s. 626.104 with an insurer who at the time of
16 the agent's initial appointment by the corporation is
17 authorized to write and is actually writing personal lines
18 residential property coverage, commercial residential property
19 coverage, or commercial nonresidential property coverage
20 within the state.

21 (d)1. It is the intent of the Legislature that the
22 rates for coverage provided by the corporation ~~association~~ be
23 actuarially sound and not competitive with approved rates
24 charged in the admitted voluntary market, so that the
25 corporation ~~association~~ functions as a residual market
26 mechanism to provide insurance only when the insurance cannot
27 be procured in the voluntary market. Rates shall include an
28 appropriate catastrophe loading factor that reflects the
29 actual catastrophic exposure of the corporation ~~association~~
30 ~~and recognizes that the association has little or no capital~~
31 ~~or surplus; and the association shall carefully review each~~

1 ~~rate filing to assure that provider compensation is not~~
2 ~~excessive.~~

3 2. For each county, the average rates of the
4 corporation ~~association~~ for each line of business for personal
5 lines residential policies excluding rates for wind-only
6 policies shall be no lower than the average rates charged by
7 the insurer that had the highest average rate in that county
8 among the 20 insurers with the greatest total direct written
9 premium in the state for that line of business in the
10 preceding year, except that with respect to mobile home
11 coverages, the average rates of the corporation ~~association~~
12 shall be no lower than the average rates charged by the
13 insurer that had the highest average rate in that county among
14 the 5 insurers with the greatest total written premium for
15 mobile home owner's policies in the state in the preceding
16 year.

17 3. Rates for personal lines residential wind-only
18 policies must be actuarially sound and not competitive with
19 approved rates charged by authorized insurers.

20 ~~4.3.~~ Rates for commercial lines ~~residential~~ coverage
21 shall not be subject to the requirements of subparagraph 2.,
22 but shall be subject to all other requirements of this
23 paragraph and s. 627.062.

24 ~~5.4.~~ Nothing in this paragraph shall require or allow
25 the corporation ~~association~~ to adopt a rate that is inadequate
26 under s. 627.062 ~~or to reduce rates approved under s. 627.062.~~

27 ~~6.5.~~ ~~The association may require arbitration of a~~
28 ~~filing pursuant to s. 627.062(6). Rate filings of the~~
29 ~~association under this paragraph shall be made on a use and~~
30 ~~file basis under s. 627.062(2)(a)2.~~ The corporation

31

1 ~~association~~ shall make a rate filing at least once a year, but
2 no more often than quarterly.

3 7. In addition to the rates otherwise determined
4 pursuant to this paragraph, the corporation shall impose and
5 collect an amount equal to the premium tax provided for in s.
6 624.509 to augment the financial resources of the corporation.

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

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

28 2. In response to a state of emergency declared by the
29 Governor under s. 252.36, the department may activate coverage
30 by order for the period of the emergency upon a finding by the
31

1 department that the emergency significantly affects the
2 availability of residential property insurance.

3 (f)1. The corporation shall file with the department
4 quarterly statements of financial condition, an annual
5 statement of financial condition, and audited financial
6 statements in the manner prescribed by law. In addition, the
7 corporation shall report to the department monthly on the
8 types, premium, exposure, and distribution by county of its
9 policies in force, and shall submit other reports as the
10 department requires to carry out its oversight of the
11 corporation.

12 2. The activities of the corporation ~~association~~ shall
13 be reviewed at least annually by the department to determine
14 whether board and, upon recommendation by the board or
15 petition of any interested party, coverage shall be
16 deactivated in an account on the basis if the department finds
17 that the conditions giving rise to its activation no longer
18 exist.

19 (g)1. The corporation ~~board~~ shall certify to the
20 department its needs for annual assessments as to a particular
21 calendar year, and for any ~~startup or~~ interim assessments that
22 it deems to be necessary to sustain operations as to a
23 particular year pending the receipt of annual assessments.
24 Upon verification, the department shall approve such
25 certification, and the corporation ~~board~~ shall levy such
26 annual, ~~startup,~~ or interim assessments. Such assessments
27 shall be prorated as provided in paragraph (b). The
28 corporation ~~board~~ shall take all reasonable and prudent steps
29 necessary to collect the amount of assessment due from each
30 assessable participating member insurer, including, if
31 prudent, filing suit to collect such assessment. If the

1 corporation board is unable to collect an assessment from any
2 assessable member insurer, the uncollected assessments shall
3 be levied as an additional assessment against the assessable
4 ~~participating member~~ insurers and any assessable participating
5 ~~member~~ insurer required to pay an additional assessment as a
6 result of such failure to pay shall have a cause of action
7 against such nonpaying assessable member insurer. Assessments
8 shall be included as an appropriate factor in the making of
9 rates. The failure of a surplus lines agent to collect and
10 remit any regular or emergency assessment levied by the
11 corporation is considered to be a violation of s. 626.936 and
12 subjects the surplus lines agent to the penalties provided in
13 that section.

14 2. The governing body of any unit of local government,
15 any residents of which are insured by the corporation
16 ~~association~~, may issue bonds as defined in s. 125.013 or s.
17 166.101 from time to time to fund an assistance program, in
18 conjunction with the corporation association, for the purpose
19 of defraying deficits of the corporation association. In order
20 to avoid needless and indiscriminate proliferation,
21 duplication, and fragmentation of such assistance programs,
22 any unit of local government, any residents of which are
23 insured by the corporation association, may provide for the
24 payment of losses, regardless of whether or not the losses
25 occurred within or outside of the territorial jurisdiction of
26 the local government. Revenue bonds may not be issued until
27 validated pursuant to chapter 75, unless a state of emergency
28 is declared by executive order or proclamation of the Governor
29 pursuant to s. 252.36 making such findings as are necessary to
30 determine that it is in the best interests of, and necessary
31 for, the protection of the public health, safety, and general

1 welfare of residents of this state ~~and the protection and~~
2 ~~preservation of the economic stability of insurers operating~~
3 ~~in this state,~~ and declaring it an essential public purpose to
4 permit certain municipalities or counties to issue such bonds
5 as will permit relief to claimants and policyholders of the
6 corporation ~~joint underwriting association and insurers~~
7 ~~responsible for apportionment of association losses.~~ Any such
8 unit of local government may enter into such contracts with
9 the corporation ~~association~~ and with any other entity created
10 pursuant to this subsection as are necessary to carry out this
11 paragraph. Any bonds issued under this subparagraph shall be
12 payable from and secured by moneys received by the corporation
13 ~~association~~ from emergency assessments under sub-subparagraph
14 (b)3.d., and assigned and pledged to or on behalf of the unit
15 of local government for the benefit of the holders of such
16 bonds. The funds, credit, property, and taxing power of the
17 state or of the unit of local government shall not be pledged
18 for the payment of such bonds. If any of the bonds remain
19 unsold 60 days after issuance, the department shall require
20 all insurers subject to assessment to purchase the bonds,
21 which shall be treated as admitted assets; each insurer shall
22 be required to purchase that percentage of the unsold portion
23 of the bond issue that equals the insurer's relative share of
24 assessment liability under this subsection. An insurer shall
25 not be required to purchase the bonds to the extent that the
26 department determines that the purchase would endanger or
27 impair the solvency of the insurer.

28 3.a. ~~In addition to any credits, bonuses, or~~
29 ~~exemptions provided under s. 627.3511,~~ The corporation ~~board~~
30 shall adopt one or more programs ~~a program~~ subject to approval
31 by the department for the reduction of both new and renewal

1 writings in the corporation ~~association~~. The corporation ~~board~~
2 may consider any prudent and not unfairly discriminatory
3 approach to reducing corporation ~~association~~ writings, and may
4 ~~but must~~ adopt ~~at least~~ a credit against assessment liability
5 or other liability that provides an incentive for insurers to
6 take risks out of the corporation ~~association~~ and to keep
7 risks out of the corporation ~~association~~ by maintaining or
8 increasing voluntary writings in counties or areas in which
9 corporation ~~association~~ risks are highly concentrated and a
10 program to provide a formula under which an insurer
11 voluntarily taking risks out of the corporation ~~association~~ by
12 maintaining or increasing voluntary writings will be relieved
13 wholly or partially from assessments under sub-subparagraphs
14 (b)3.a. and b. When the corporation enters into a contractual
15 agreement for a take-out plan, the producing agent of record
16 of the corporation policy is entitled to retain any unearned
17 commission on such policy, and the insurer shall either:
18 (I) Pay to the producing agent of record of the
19 policy, for the first year, an amount which is the greater of
20 the insurer's usual and customary commission for the type of
21 policy written or a policy fee equal to the usual and
22 customary commission of the corporation; or
23 (II) Offer to allow the producing agent of record of
24 the policy to continue servicing the policy for a period of
25 not less than 1 year and offer to pay the agent the insurer's
26 usual and customary commission for the type of policy written.
27 If the new or producing agent is unwilling or unable to accept
28 appointment by the new insurer, the new insurer shall pay the
29 agent in accordance with sub-sub-subparagraph (I).
30 b. Any credit or exemption from regular assessments
31 adopted under this subparagraph shall last no longer than the

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

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

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

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

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

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

- 4 1. Any of the foregoing persons or entities for any
5 willful tort;
- 6 2. The corporation ~~association~~ or its ~~servicing or~~
7 producing agents for breach of any contract or agreement
8 pertaining to insurance coverage;
- 9 3. The corporation ~~association~~ with respect to
10 issuance or payment of debt; or
- 11 4. Any assessable ~~member~~ insurer with respect to any
12 action to enforce an assessable ~~a member~~ insurer's obligations
13 to the corporation ~~association~~ under this subsection.

14 (j) ~~The Residential Property and Casualty Joint~~
15 ~~Underwriting Association is not a state agency, board, or~~
16 ~~commission. However, For the purposes of s. 199.183(1), the~~
17 corporation Residential Property and Casualty Joint
18 ~~Underwriting Association~~ shall be considered a political
19 subdivision of the state and shall be exempt from the
20 corporate income tax. The premiums, assessments, investment
21 income, and other revenue of the corporation are funds
22 received for providing property insurance coverage as required
23 by this subsection, paying claims for Florida citizens insured
24 by the corporation, securing and repaying debt obligations
25 issued by the corporation, and conducting all other activities
26 of the corporation, and shall not be considered taxes, fees,
27 licenses, or charges for services imposed by the Legislature
28 on individuals, businesses, or agencies outside state
29 government. Bonds and other debt obligations issued by or on
30 behalf of the corporation are not to be considered "State
31 bonds" within the meaning of s. 215.58(10). The corporation is

1 not subject to the procurement provisions of chapter 287, and
2 policies and decisions of the corporation relating to
3 incurring debt, levying of assessments and the sale, issuance,
4 continuation, terms and claims under corporation policies, and
5 all services relating thereto, are not subject to the
6 provisions of chapter 120. The corporation is not required to
7 obtain or to hold a certificate of authority issued by the
8 department, nor is it required to participate as a member
9 insurer of the Florida Insurance Guaranty Association.
10 However, the corporation is required to pay, in the same
11 manner as an authorized insurer, assessments pledged by the
12 Florida Insurance Guaranty Association to secure bonds issued
13 or other indebtedness incurred to pay covered claims arising
14 from insurer insolvencies caused by, or proximately related
15 to, hurricane losses. It is the intent of the Legislature that
16 the tax exemptions provided in this paragraph will augment the
17 financial resources of the corporation to better enable the
18 corporation to fulfill its public purposes. Any bonds issued
19 by the corporation, their transfer, and the income therefrom,
20 including any profit made on the sale thereof, shall at all
21 times be free from taxation of every kind by the state and any
22 political subdivision or local unit or other instrumentality
23 thereof; however, this exemption does not apply to any tax
24 imposed by chapter 200 on interest, income, or profits on debt
25 obligations owned by corporations other than the corporation.

26 (k) Upon a determination by the department ~~board of~~
27 ~~governors~~ that the conditions giving rise to the establishment
28 and activation of the corporation ~~association~~ no longer exist,
29 ~~and upon the consent thereto by order of the department,~~ the
30 corporation ~~association~~ is dissolved. Upon dissolution, the
31 assets of the association shall be applied first to pay all

1 debts, liabilities, and obligations of the corporation
2 ~~association~~, including the establishment of reasonable
3 reserves for any contingent liabilities or obligations, and
4 all remaining assets of the corporation ~~association~~ shall
5 become property of the state and deposited in the Florida
6 Hurricane Catastrophe Fund.

7 (1)1. Effective July 1, 2002, policies of the
8 Residential Property and Casualty Joint Underwriting
9 Association shall become policies of the corporation. All
10 obligations, rights, assets and liabilities of the Residential
11 Property and Casualty Joint Underwriting Association,
12 including bonds, note and debt obligations, and the financing
13 documents pertaining to them become those of the corporation
14 as of July 1, 2002. The corporation is not required to issue
15 endorsements or certificates of assumption to insureds during
16 the remaining term of in-force transferred policies.

17 2. Effective July 1, 2002, policies of the Florida
18 Windstorm Underwriting Association are transferred to the
19 corporation and shall become policies of the corporation. All
20 obligations, rights, assets, and liabilities of the Florida
21 Windstorm Underwriting Association, including bonds, note, and
22 debt obligations, and the financing documents pertaining to
23 them are transferred to and assumed by the corporation on July
24 1, 2002. The corporation is not required to issue endorsement
25 or certificates of assumption to insureds during the remaining
26 term of in-force transferred policies.

27 3. The Florida Windstorm Underwriting Association and
28 the Residential Property and Casualty Joint Underwriting
29 Association shall take all actions as may be proper to further
30 evidence the transfers and shall provide the documents and
31 instruments of further assurance as may reasonably be

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

22 4. Effective July 1, 2002, a new applicant for
23 property insurance coverage who would otherwise have been
24 eligible for coverage in the Florida Windstorm Underwriting
25 Association is eligible for coverage from the corporation as
26 provided in this subsection.

27 5. The transfer of all policies, obligations, rights,
28 assets, and liabilities from the Florida Windstorm
29 Underwriting Association to the corporation and the renaming
30 of the Residential Property and Casualty Joint Underwriting
31 Association as the corporation shall in no way affect the

1 coverage with respect to covered policies as defined in s.
2 215.555(2)(c) provided to these entities by the Florida
3 Hurricane Catastrophe Fund. The coverage provided by the
4 Florida Hurricane Catastrophe Fund to the Florida Windstorm
5 Underwriting Association based on its exposures as of June 30,
6 2002, and each June 30 thereafter shall be redesignated as
7 coverage for the high-risk account of the corporation. The
8 coverage provided by the Florida Hurricane Catastrophe Fund to
9 the Residential Property and Casualty Joint Underwriting
10 Association based on its exposures as of June 30, 2002, and
11 each June 30 thereafter shall be transferred to the personal
12 lines account and the commercial lines account of the
13 corporation. The high-risk account shall be treated, for all
14 Florida Hurricane Catastrophe Fund purposes, as if it were a
15 separate participating insurer with its own exposures,
16 reimbursement premium, and loss reimbursement. Likewise, the
17 personal lines and commercial lines accounts shall be viewed
18 together, for all Florida Hurricane Catastrophe Fund purposes,
19 as if the two accounts were one and represent a single,
20 separate participating insurer with its own exposures,
21 reimbursement premium, and loss reimbursement. The coverage
22 provided by the Florida Hurricane Catastrophe Fund to the
23 corporation shall constitute and operate as a full transfer of
24 coverage from the Florida Windstorm Underwriting Association
25 and Residential Property and Casualty Joint Underwriting to
26 the corporation.

27 6. The department may, by order, postpone the July 1,
28 2002, effective dates set forth in this paragraph if the
29 department finds that effectuation of these dates cannot be
30 accomplished due to emergency conditions.~~All obligations,~~
31 ~~rights, assets, and liabilities of the Florida Property and~~

1 ~~Casualty Joint Underwriting Association created by subsection~~
2 ~~(5), which obligations, rights, assets, or liabilities relate~~
3 ~~to the provision of commercial lines residential property~~
4 ~~insurance coverage as described in this section are hereby~~
5 ~~transferred to the Residential Property and Casualty Joint~~
6 ~~Underwriting Association. The Residential Property and~~
7 ~~Casualty Joint Underwriting Association is not required to~~
8 ~~issue endorsements or certificates of assumption to insureds~~
9 ~~during the remaining term of in-force transferred policies.~~

10 (m) Notwithstanding any other provision of law:

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

22 2. No such proceeding shall relieve the corporation
23 ~~association~~ of its obligation, or otherwise affect its ability
24 to perform its obligation, to continue to collect, or levy and
25 collect, assessments, market equalization or other surcharges
26 under subparagraph (c)10., or any other rights, revenues, or
27 other assets of the corporation ~~association~~ pledged pursuant
28 to any financing documents.

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

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

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

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

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

10 a. Underwriting files, except that a policyholder or
11 an applicant shall have access to his or her own underwriting
12 files.

13 b. Claims files, until termination of all litigation
14 and settlement of all claims arising out of the same incident,
15 although portions of the claims files may remain exempt, as
16 otherwise provided by law. Confidential and exempt claims file
17 records may be released to other governmental agencies upon
18 written request and demonstration of need; such records held
19 by the receiving agency remain confidential and exempt as
20 provided for herein.

21 c. Records obtained or generated by an internal
22 auditor pursuant to a routine audit, until the audit is
23 completed, or if the audit is conducted as part of an
24 investigation, until the investigation is closed or ceases to
25 be active. An investigation is considered "active" while the
26 investigation is being conducted with a reasonable, good faith
27 belief that it could lead to the filing of administrative,
28 civil, or criminal proceedings.

29 d. Matters reasonably encompassed in privileged
30 attorney-client communications.

31

1 e. Proprietary information licensed to the corporation
2 ~~association~~ under contract and the contract provides for the
3 confidentiality of such proprietary information.

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

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

19 h. Information relating to negotiations for financing,
20 reinsurance, depopulation, or contractual services, until the
21 conclusion of the negotiations.

22 i. Minutes of closed meetings regarding underwriting
23 files, and minutes of closed meetings regarding an open claims
24 file until termination of all litigation and settlement of all
25 claims with regard to that claim, except that information
26 otherwise confidential or exempt by law will be redacted.

27
28 When an authorized insurer is considering underwriting a risk
29 insured by the corporation ~~association~~, relevant underwriting
30 files and confidential claims files may be released to the
31 insurer provided the insurer agrees in writing, notarized and

1 under oath, to maintain the confidentiality of such files.
2 When a file is transferred to an insurer that file is no
3 longer a public record because it is not held by an agency
4 subject to the provisions of the public records law.
5 Underwriting files and confidential claims files may also be
6 released to staff of and the board of governors of the market
7 assistance plan established pursuant to s. 627.3515, who must
8 retain the confidentiality of such files, except such files
9 may be released to authorized insurers that are considering
10 assuming the risks to which the files apply, provided the
11 insurer agrees in writing, notarized and under oath, to
12 maintain the confidentiality of such files. Finally, the
13 corporation ~~association~~ or the board or staff of the market
14 assistance plan may make the following information obtained
15 from underwriting files and confidential claims files
16 available to licensed general lines insurance agents: name,
17 address, and telephone number of the residential property
18 owner or insured; location of the risk; rating information;
19 loss history; and policy type. The receiving licensed general
20 lines insurance agent must retain the confidentiality of the
21 information received.

22 2. Portions of meetings of the corporation ~~Residential~~
23 ~~Property and Casualty Joint Underwriting Association~~ are
24 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
25 of the State Constitution wherein confidential underwriting
26 files or confidential open claims files are discussed. All
27 portions of corporation ~~association~~ meetings which are closed
28 to the public shall be recorded by a court reporter. The
29 court reporter shall record the times of commencement and
30 termination of the meeting, all discussion and proceedings,
31 the names of all persons present at any time, and the names of

1 all persons speaking. No portion of any closed meeting shall
2 be off the record. Subject to the provisions hereof and s.
3 119.07(2)(a), the court reporter's notes of any closed meeting
4 shall be retained by the corporation ~~association~~ for a minimum
5 of 5 years. A copy of the transcript, less any exempt matters,
6 of any closed meeting wherein claims are discussed shall
7 become public as to individual claims after settlement of the
8 claim.

9 (o) In enacting the provisions of this section, the
10 Legislature recognizes that both the Florida Windstorm
11 Underwriting Association and the Residential Property and
12 Casualty Joint Underwriting Association have entered into
13 financing arrangements that obligate each entity to service
14 its debts and maintain the capacity to repay funds secured
15 under these financing arrangements. It is the intent of the
16 Legislature that nothing in this section be construed to
17 compromise, diminish, or interfere with the rights of
18 creditors under such financing arrangements. It is further the
19 intent of the Legislature to preserve the obligations of the
20 Florida Windstorm Underwriting Association and Residential
21 Property and Casualty Joint Underwriting Association with
22 regard to outstanding financing arrangements, with such
23 obligations passing entirely and unchanged to the corporation.
24 So long as any bonds, notes, indebtedness, or other financing
25 obligations of the Florida Windstorm Underwriting Association
26 or the Residential Property and Casualty Joint Underwriting
27 Association are outstanding, under the terms of the financing
28 documents pertaining to them, the governing board of the
29 corporation shall have and shall exercise the authority to
30 levy, charge, collect, and receive all premiums, assessments,
31 surcharges, charges, revenues and receipts that the

1 associations had authority to levy, charge, collect, or
2 receive under the provisions of subsection (2) and subsection
3 (6), respectively, as they existed on January 1, 2002, to the
4 extent necessary to provide moneys, together with other
5 available moneys of the corporation without exercise of the
6 authority provided by this paragraph, in at least the amounts,
7 and by the times, as would be provided under those former
8 provisions of subsection (2) or subsection (6), respectively,
9 so that the value, amount, and collectability of any assets,
10 revenues, or revenue source pledged or committed to, or any
11 lien thereon securing such outstanding bonds, notes,
12 indebtedness, or other financing obligations will not be
13 diminished, impaired, or adversely affected by the amendments
14 made by this act and to permit compliance with all provisions
15 of financing documents pertaining to such bonds, notes,
16 indebtedness, or other financing obligations, or the security
17 or credit enhancement for them, and any reference in this
18 subsection to bonds, notes, indebtedness, financing
19 obligations, or similar obligations, of the corporation shall
20 include like instruments or contracts of the Florida Windstorm
21 Underwriting Association and the Residential Property and
22 Casualty Joint Underwriting Association to the extent not
23 inconsistent with the provisions of the financing documents
24 pertaining to them.

25 Section 2. Section 627.3517, Florida Statutes, is
26 created to read:

27 627.3517 Consumer choice.--A provision of this part
28 may not be construed to impair the right of any residual
29 market policyholder to select and maintain an agent of his or
30 her own choosing. This right may not be cancelled, 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 ss. 627.351,
5 627.3511, and 627.3515. The department shall adopt any rules
6 necessary to cause any Insurance Risk Apportionment Plan or
7 Market Assistance Plan under this part to demonstrate that its
8 operations do not interfere with, promote, or allow
9 interference with the rights created under this section. If
10 the policyholder chooses an agent who is either unable or
11 unwilling to be appointed with a particular carrier, the
12 policyholder is not 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
15 depopulation plan, through keepout, takeout, midterm
16 assumption, or any other means, of any Insurance Risk
17 Apportionment plan is subject to ss. 627.351(2)(b) and
18 627.3511(4)(a).

19 Section 3. This act shall take effect July 1, 2002.
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SENATE SUMMARY

Renames the Residential Property and Casualty Joint Underwriting Association as the Citizens Property Insurance Corporation to provide residential and commercial property insurance. Requires insurers selling property insurance in this state to participate in the corporation. Provides a plan of operation and a board of governors. Divides the revenues, assets, liabilities, losses, and expenses of the corporation into three accounts and provides for emergency assessments for policyholders of participating insurers. Provides for the corporation to enter into quota share primary insurance agreements with authorized insurers. Provides that the corporation need not obtain a certificate of authority from the Department of Insurance or be a member of the Florida Insurance Guaranty Association. Requires the corporation to pay assessments pledged to secure bonds to pay covered claims arising from insurer insolvencies caused by hurricane losses. Provides for the transfer of policies, assets, and liabilities of the association and the Florida Windstorm Underwriting Association to the corporation. Preserves the right of a residual market policyholder to select and maintain an agent of his or her own choice. See bill for details.