

By the Committee on Banking and Insurance; and Senators Garcia and Campbell

311-2075-02

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 amending s. 215.555, F.S.; redefining the term
26 "losses"; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (6) of section 627.351, Florida
2 Statutes, as amended by section 4 of chapter 2001-372, Laws of
3 Florida, is amended to read:

4 627.351 Insurance risk apportionment plans.--

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

7 (a)1. The Legislature finds that actual and threatened
8 catastrophic losses to property in this state from hurricanes
9 have caused insurers to be unwilling or unable to provide
10 property insurance coverage to the extent sought and needed.
11 It is in the public interest and a public purpose to assist in
12 assuring that property in the state is insured so as to
13 facilitate the remediation, reconstruction, and replacement of
14 damaged or destroyed property in order to reduce or avoid the
15 negative effects otherwise resulting to the public health,
16 safety, and welfare; to the economy of the state; and to the
17 revenues of the state and local governments needed to provide
18 for the public welfare. It is necessary, therefore, to provide
19 property insurance to applicants who are in good faith
20 entitled to procure insurance through the voluntary market but
21 are unable to do so. The Legislature intends by this
22 subsection that property insurance be provided and that it
23 continues, as long as necessary, through an entity organized
24 to achieve efficiencies and economies, all toward the
25 achievement of the foregoing public purposes. Because it is
26 essential for the corporation to have the maximum financial
27 resources to pay claims following a catastrophic hurricane, it
28 is the intent of the Legislature that the income of the
29 corporation be exempt from federal income taxation and that
30 interest on the debt obligations issued by the corporation be
31 exempt from federal income taxation.

1 2. The Residential Property and Casualty Joint
2 Underwriting Association originally created by this statute
3 shall be known, as of July 1, 2002, as the Citizens Property
4 Insurance Corporation. The corporation shall provide insurance
5 for residential and commercial

6 ~~(a) There is created a joint underwriting association~~
7 ~~for equitable apportionment or sharing among insurers of~~
8 ~~property and casualty insurance covering residential property,~~
9 ~~for applicants who are in good faith entitled, but are unable,~~
10 ~~to procure insurance through the voluntary market. The~~
11 ~~corporation association shall operate pursuant to a plan of~~
12 ~~operation approved by order of the department. The plan is~~
13 ~~subject to continuous review by the department. The department~~
14 ~~may, by order, withdraw approval of all or part of a plan if~~
15 ~~the department determines that conditions have changed since~~
16 ~~approval was granted and that the purposes of the plan require~~
17 ~~changes in the plan. For the purposes of this subsection,~~
18 ~~residential coverage includes both personal lines residential~~
19 ~~coverage, which consists of the type of coverage provided by~~
20 ~~homeowner's, mobile home owner's, dwelling, tenant's,~~
21 ~~condominium unit owner's, and similar policies, and commercial~~
22 ~~lines residential coverage, which consists of the type of~~
23 ~~coverage provided by condominium association, apartment~~
24 ~~building, and similar policies.~~

25 (b)1. All insurers authorized to write one or more
26 subject lines of business in this state are subject to
27 assessment by the corporation and, for the purposes of this
28 subsection, are referred to collectively as "assessable
29 insurers." Insurers writing one or more subject lines of
30 business in this state pursuant to part VIII of chapter 626
31 are not assessable insurers, but insureds who procure one or

1 more subject lines of business in this state pursuant to part
2 VIII of chapter 626 are subject to assessment by the
3 corporation and are referred to collectively as "assessable
4 insureds." ~~An authorized insurer's assessment liability, other~~
5 ~~than underwriting associations or other entities created under~~
6 ~~this section, must participate in and be members of the~~
7 ~~Residential Property and Casualty Joint Underwriting~~
8 ~~Association. A member's participation shall begin on the first~~
9 ~~day of the calendar year following the year in which the~~
10 ~~insurer member was issued a certificate of authority to~~
11 ~~transact insurance for subject lines of business in this state~~
12 ~~and shall terminate 1 year after the end of the first calendar~~
13 ~~year during which the insurer member no longer holds a~~
14 ~~certificate of authority to transact insurance for subject~~
15 ~~lines of business in this state.~~

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

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

26 (II) A commercial lines account for commercial
27 residential policies issued by the corporation or issued by
28 the Residential Property and Casualty Joint Underwriting
29 Association and renewed by the corporation on risks that are
30 not located in areas eligible for coverage in the Florida

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1 Windstorm Underwriting Association as those areas were defined
2 on January 1, 2002; and
3 (III) A high-risk account for personal residential
4 policies and commercial residential and commercial
5 nonresidential property policies issued by the corporation or
6 transferred to the corporation on risks that are located in
7 areas eligible for coverage in the Florida Windstorm
8 Underwriting Association as those areas were defined on
9 January 1, 2002. The high-risk account must also include quota
10 share primary insurance under subparagraph (c)2.
11 b. The three separate accounts must be maintained as
12 long as financing obligations entered into by the Florida
13 Windstorm Underwriting Association or Residential Property and
14 Casualty Joint Underwriting Association are outstanding, in
15 accordance with the terms of the corresponding financing
16 documents. When the financing obligations are no longer
17 outstanding, in accordance with the terms of the corresponding
18 financing documents, the corporation may use a single account
19 for all revenues, assets, liabilities, losses, and expenses of
20 the corporation., ~~one of which is for personal lines~~
21 ~~residential coverages and the other of which is for commercial~~
22 ~~lines residential coverages.~~
23 c. Revenues, assets, liabilities, losses, and expenses
24 not attributable to particular accounts ~~coverages~~ shall be
25 prorated among ~~between~~ the accounts.
26 d. The Legislature finds that the revenues of the
27 corporation are revenues that are necessary to meet the
28 requirements set forth in documents authorizing the issuance
29 of bonds under this subsection.
30 e. No part of the income of the corporation may inure
31 to the benefit of any private person.

1 3. With respect to a deficit in an account:
2 a. When the deficit incurred in a particular calendar
3 year is not greater than 10 percent of the aggregate statewide
4 direct written premium for the subject lines of business for
5 the prior calendar year ~~for all member insurers~~, the entire
6 deficit shall be recovered through regular assessments of
7 assessable member insurers under paragraph (g) and assessable
8 insureds.
9 b. When the deficit incurred in a particular calendar
10 year exceeds 10 percent of the aggregate statewide direct
11 written premium for the subject lines of business for the
12 prior calendar year ~~for all member insurers~~, the corporation
13 association shall levy regular assessments ~~an assessment~~ on
14 assessable member insurers under paragraph (g) and on
15 assessable insureds in an amount equal to the greater of 10
16 percent of the deficit or 10 percent of the aggregate
17 statewide direct written premium for the subject lines of
18 business for the prior calendar year ~~for all member insurers~~.
19 Any remaining deficit shall be recovered through emergency
20 assessments under sub-subparagraph d.
21 c. Each assessable member insurer's share of the
22 amount being assessed ~~total assessment~~ under sub-subparagraph
23 a. or sub-subparagraph b. shall be in the proportion that the
24 assessable member insurer's direct written premium for the
25 subject lines of business for the year preceding the
26 assessment bears to the aggregate statewide direct written
27 premium for the subject lines of business for that year ~~for~~
28 ~~all member insurers~~. The assessment percentage applicable to
29 each assessable insured is the ratio of the amount being
30 assessed under sub-subparagraph a. or sub-subparagraph b. to
31 the aggregate statewide direct written premium for the subject

1 lines of business for the prior year. Assessments levied by
2 the corporation on assessable insurers under sub-subparagraphs
3 a. and b. shall be paid as required by the corporation's plan
4 of operation and paragraph (g). Assessments levied by the
5 corporation on assessable insureds under sub-subparagraphs a.
6 and b. shall be collected by the surplus lines agent at the
7 time the surplus lines agent collects the surplus lines tax
8 required by s. 626.932 and shall be paid to the Florida
9 Surplus Lines Service Office at the time the surplus lines
10 agent pays the surplus lines tax to the Florida Surplus Lines
11 Service Office. Upon receipt of regular assessments from
12 surplus lines agents, the Florida surplus Lines Service Office
13 shall transfer the assessments directly to the corporation as
14 determined by the corporation.

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

1 determined by the board and verified by the department. The
2 department shall verify the arithmetic calculations involved
3 in the board's determination within 30 days after receipt of
4 the information on which the determination was based.
5 Notwithstanding any other provision of law, the corporation
6 and each assessable member insurer that and each underwriting
7 association created under this section which writes subject
8 lines of business shall collect emergency assessments from its
9 policyholders without such obligation being affected by any
10 credit, limitation, exemption, or deferment. Emergency
11 assessments levied by the corporation on assessable insureds
12 shall be collected by the surplus lines agent at the time the
13 surplus lines agent collects the surplus lines tax required by
14 s. 626.932 and shall be paid to the Florida Surplus Lines
15 Service Office at the time the surplus lines agent pays the
16 surplus lines tax to the Florida Surplus Lines Service Office.
17 The emergency assessments so collected shall be transferred
18 directly to the corporation association on a periodic basis as
19 determined by the corporation association. The aggregate
20 amount of emergency assessments levied under this
21 sub-subparagraph in any calendar year may not exceed the
22 greater of 10 percent of the amount needed to cover the
23 original deficit, plus interest, fees, commissions, required
24 reserves, and other costs associated with financing of the
25 original deficit, or 10 percent of the aggregate statewide
26 direct written premium for subject lines of business and for
27 all accounts of the corporation written by member insurers and
28 underwriting associations for the prior year, plus interest,
29 fees, commissions, required reserves, and other costs
30 associated with financing the original deficit.
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1 e. The board may pledge the proceeds of assessments,
2 projected recoveries from the Florida Hurricane Catastrophe
3 Fund, other insurance and reinsurance recoverables, market
4 equalization surcharges and other surcharges, and other funds
5 available to the corporation ~~association~~ as the source of
6 revenue for and to secure bonds issued under paragraph (g),
7 bonds or other indebtedness issued under subparagraph (c)3.,
8 or lines of credit or other financing mechanisms issued or
9 created under this subsection, or to retire any other debt
10 incurred as a result of deficits or events giving rise to
11 deficits, or in any other way that the board determines will
12 efficiently recover such deficits. The purpose of the lines of
13 credit or other financing mechanisms is to provide additional
14 resources to assist the corporation ~~association~~ in covering
15 claims and expenses attributable to a catastrophe. As used in
16 this subsection, the term "assessments" includes regular
17 assessments under sub-subparagraph a., sub-subparagraph b., or
18 subparagraph (g)1. and emergency assessments under
19 sub-subparagraph d. Emergency assessments collected under
20 sub-subparagraph d. are not part of an insurer's rates, are
21 not premium, and are not subject to premium tax, fees, or
22 commissions; however, failure to pay the emergency assessment
23 shall be treated as failure to pay premium. The emergency
24 assessments under sub-subparagraph d. shall continue as long
25 as any bonds issued or other indebtedness incurred with
26 respect to a deficit for which the assessment was imposed
27 remain outstanding, unless adequate provision has been made
28 for the payment of such bonds or other indebtedness pursuant
29 to the documents governing such bonds or other indebtedness.
30 f. As used in this subsection, the term "subject lines
31 of business" means insurance written by assessable insurers or

1 procured by assessable insureds on real or personal property,
2 as defined in s. 624.604, including insurance for fire,
3 industrial fire, allied lines, farmowners multiperil,
4 homeowners multiperil, commercial multiperil, and mobile
5 homes, and including liability coverage on all such insurance,
6 but excluding inland marine as defined in s. 624.607(3) and
7 excluding vehicle insurance as defined in s. 624.605(1) other
8 than insurance on mobile homes used as permanent dwellings.

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

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

27 (c) The plan of operation of the corporation
28 association:

29 ~~1. May provide for one or more designated insurers,~~
30 ~~able and willing to provide policy and claims service, to act~~
31 ~~on behalf of the association to provide such service. Each~~

1 ~~licensed agent shall be entitled to indicate the order of~~
2 ~~preference regarding who will service the business placed by~~
3 ~~the agent. The association shall adhere to each agent's~~
4 ~~preferences unless after consideration of other factors in~~
5 ~~assigning agents, including, but not limited to, servicing~~
6 ~~capacity and fee arrangements, the association has reason to~~
7 ~~believe it is in the best interest of the association to make~~
8 ~~a different assignment.~~

9 ~~1.2.~~ Must provide for adoption of residential property
10 and casualty insurance policy forms and commercial residential
11 and nonresidential property insurance forms, which forms must
12 be approved by the department prior to use. The corporation
13 ~~association~~ shall adopt the following policy forms:

14 a. Standard personal lines policy forms that including
15 ~~wind coverage, which~~ are comprehensive multiperil policies
16 providing ~~what is generally considered to be~~ full coverage of
17 a residential property equivalent similar to the coverage
18 provided in the private insurance market under an HO-2,
19 HO-3, HO-4, or HO-6 policy.

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

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

30 d. ~~Basic personal lines policy forms without wind~~
31 ~~coverage, which are the same as the policies described in~~

1 ~~sub-subparagraph c. except that they do not include wind~~
2 ~~coverage.~~

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

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

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

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

1 agreement to pay its specified percentage of hurricane losses.
2 Eligible risks that are provided hurricane coverage through a
3 quota share primary insurance arrangement must be provided
4 policy forms that set forth the obligations of the corporation
5 and authorized insurer under the arrangement, and that clearly
6 specify the percentages of quota share primary insurance
7 provided by the corporation and authorized insurer.

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

13 b. The corporation may enter into quota share primary
14 insurance agreements with authorized insurers at corporation
15 coverage levels of 90 percent and 50 percent.

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

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

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

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

13 g. The rates charged by the corporation for covering
14 eligible personal lines residential risks under quota share
15 primary insurance agreements for the coverage levels in
16 sub-subparagraphs b. and c. must be derived from the
17 corporation's wind-only rates.

18 h. The quota share primary insurance agreement between
19 the corporation and an authorized insurer must set forth the
20 specific terms under which coverage is provided, including,
21 but not limited to, the sale and servicing of policies issued
22 under the agreement by the insurance agent of the authorized
23 insurer producing the business, the reporting of information
24 concerning eligible risks, the payment of premium to the
25 corporation, and arrangements for the adjustment and payment
26 of hurricane claims incurred on eligible risks by the claims
27 adjuster and personnel of the authorized insurer. Entering
28 into a quota sharing insurance agreement between the
29 corporation and an authorized insurer shall be voluntary and
30 at the discretion of the authorized insurer.

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1 ~~f. Commercial lines residential policy forms without~~
2 ~~wind coverage, which are the same as the policies described in~~
3 ~~sub-subparagraph e. except that they do not include wind~~
4 ~~coverage.~~

5 3. May provide that the corporation ~~association~~ may
6 employ or otherwise contract with individuals or other
7 entities to provide administrative or professional services
8 that may be appropriate to effectuate the plan. The
9 corporation ~~association~~ shall have the power to borrow funds,
10 by issuing bonds or by incurring other indebtedness, and shall
11 have other powers reasonably necessary to effectuate the
12 requirements of this subsection. The corporation may, but is
13 not required to, seek judicial validation of its bonds or
14 other indebtedness under chapter 75.The corporation
15 ~~association~~ may issue bonds or incur other indebtedness, or
16 have bonds issued on its behalf by a unit of local government
17 pursuant to subparagraph (g)2., in the absence of a hurricane
18 or other weather-related event, upon a determination by the
19 corporation ~~association~~, subject to approval by the
20 department, that such action would enable it to efficiently
21 meet the financial obligations of the corporation ~~association~~
22 and that such financings are reasonably necessary to
23 effectuate the requirements of this subsection. The
24 corporation ~~association~~ is authorized to take all actions
25 needed to facilitate tax-free status for any such bonds or
26 indebtedness, including formation of trusts or other
27 affiliated entities. The corporation ~~association~~ shall have
28 the authority to pledge assessments, projected recoveries from
29 the Florida Hurricane Catastrophe Fund, other reinsurance
30 recoverables, market equalization and other surcharges, and
31 other funds available to the corporation ~~association~~ as

1 security for bonds or other indebtedness. In recognition of s.
2 10, Art. I of the State Constitution, prohibiting the
3 impairment of obligations of contracts, it is the intent of
4 the Legislature that no action be taken whose purpose is to
5 impair any bond indenture or financing agreement or any
6 revenue source committed by contract to such bond or other
7 indebtedness.

8 4.a. Must require that the corporation ~~association~~
9 operate subject to the supervision and approval of a board of
10 governors consisting of 7 ~~13~~ individuals from diverse
11 geographical areas of the state, appointed by the Treasurer.
12 The Treasurer shall designate one of the appointees as chair.
13 All board members serve at the pleasure of the Treasurer.
14 ~~including 1 who is elected as chair. The board shall consist~~
15 ~~of:~~

16 a. ~~The insurance consumer advocate appointed under s.~~
17 ~~627.0613.~~

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

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

28 d. ~~Two representatives of the insurance industry~~
29 ~~appointed by the Insurance Commissioner. Of the two insurance~~
30 ~~industry representatives appointed by the Insurance~~

31

1 ~~Commissioner, at least one must be an individual who is a~~
2 ~~minority person as defined in s. 288.703(3).~~

3
4 ~~Any board member may be disapproved or removed and replaced by~~
5 ~~the commissioner at any time for cause.~~All board members,
6 including the chair, must be appointed to serve for 3-year
7 terms beginning annually on a date designated by the plan. Any
8 board vacancy shall be filled for the unexpired term by the
9 Treasurer. The Treasurer shall appoint a technical advisory
10 group to provide information and advice to the board of
11 governors in connection with the board's duties under this
12 subsection. The executive director and senior managers of the
13 corporation shall be engaged by the Treasurer and serve at the
14 pleasure of the Treasurer. The executive director is
15 responsible for employing other staff as the corporation may
16 require, subject to review and concurrence by the Office of
17 the Treasurer.

18 b. To ensure the effective and efficient
19 implementation of this section, the Treasurer shall appoint
20 the board of governors by July 1, 2002. The board of governors
21 shall work in conjunction with the Residential Property
22 Insurance Market Coordinating Council to address appropriate
23 organizational, operational, and financial matters relating to
24 the corporation. In addition, after consultation with the
25 Residential Property Insurance Market Coordinating Council,
26 the Treasurer may postpone the implementation of the
27 provisions of paragraph (1) and any other provision of this
28 section related to the operation of the corporation for a
29 period not to exceed 180 days if the Treasurer determines that
30 phasing-in these provisions is necessary to ensure the
31 effective and efficient implementation of the corporation's

1 operations or financing arrangements. However, the Treasurer
2 may not affect any provision in paragraph (b) or any other
3 provision of this section related to financing arrangements
4 entered into by the Florida Windstorm Underwriting Association
5 or the Florida Residential Property and Casualty Joint
6 Underwriting Association and the ability of those entities or
7 the corporation to service its debts and maintain the capacity
8 to repay funds secured under those arrangements.

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

11 a. Subject to the provisions of s. 627.3517, with
12 respect to personal lines residential risks, if the risk is
13 offered full coverage from an authorized insurer at the
14 insurer's approved rate under either a standard policy
15 including wind coverage or, if consistent with the insurer's
16 underwriting rules as filed with the department, a basic
17 policy including wind coverage, the risk is not eligible for
18 any policy issued by the corporation association. If the risk
19 accepts an offer of coverage through the market assistance
20 plan or an offer of coverage through a mechanism established
21 by the corporation association before a policy is issued to
22 the risk by the corporation association or during the first 30
23 days of coverage by the corporation association, and the
24 producing agent who submitted the application to the plan or
25 to the corporation association is not currently appointed by
26 the insurer, the insurer shall either:

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

1 (II) Offer to allow the producing agent of record of
2 the policy to continue servicing the policy for a period of
3 not less than 1 year and offer to pay the agent the insurer's
4 usual and customary commission for the type of policy written.
5 If the producing agent is unwilling or unable to accept
6 appointment by the new insurer, the new insurer shall pay the
7 agent in accordance with sub-sub-subparagraph (I).~~appoint the~~
8 ~~agent to service the risk or, if the insurer places the~~
9 ~~coverage through a new agent, require the new agent who then~~
10 ~~writes the policy to pay not less than 50 percent of the first~~
11 ~~year's commission to the producing agent who submitted the~~
12 ~~application to the plan or the association, except that if the~~
13 ~~new agent is an employee or exclusive agent of the insurer,~~
14 ~~the new agent shall pay a policy fee of \$50 to the producing~~
15 ~~agent in lieu of splitting the commission.~~

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

28 b. With respect to commercial lines ~~residential~~ risks,
29 if the risk is offered coverage under a policy ~~including wind~~
30 ~~coverage~~ from an authorized insurer at its approved rate, the
31 risk is not eligible for any policy issued by the corporation

1 ~~association~~. 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 corporation association before a
4 policy is issued to the risk by the corporation association,
5 and the producing agent who submitted the application to the
6 plan or the corporation association is not currently appointed
7 by the insurer, the insurer shall either:

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

13 (II) 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 insurer's
16 usual and customary commission for the type of policy written.

17 If the producing agent is unwilling or unable to accept
18 appointment by the new insurer, the new insurer shall pay the
19 agent in accordance with sub-sub-subparagraph (I).~~appoint the~~
20 ~~agent to service the risk or, if the insurer places the~~
21 ~~coverage through a new agent, require the new agent who then~~
22 ~~writes the policy to pay not less than 50 percent of the first~~
23 ~~year's commission to the producing agent who submitted the~~
24 ~~application to the plan, except that if the new agent is an~~
25 ~~employee or exclusive agent of the insurer, the new agent~~
26 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
27 ~~of splitting the commission.~~

28
29 If the risk is not able to obtain any such offer, the risk is
30 eligible for a policy ~~including wind coverage~~ issued by the
31 corporation association.

1 ~~c. This subparagraph does not require the association~~
2 ~~to provide wind coverage or hurricane coverage in any area in~~
3 ~~which such coverage is available through the Florida Windstorm~~
4 ~~Underwriting Association.~~

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

7 7. Must provide that if premium and investment income
8 for an account attributable to a particular calendar plan year
9 are in excess of projected losses and expenses for the account
10 ~~of the plan~~ attributable to that year, such excess shall be
11 held in surplus in the account. Such surplus shall be
12 available to defray deficits as to future years and shall be
13 used for that purpose prior to assessing assessable member
14 insurers and assessable insureds as to any calendar plan year.

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

20 a. Whether the likelihood of a loss for the individual
21 risk is substantially higher than for other risks of the same
22 class; and

23 b. Whether the uncertainty associated with the
24 individual risk is such that an appropriate premium cannot be
25 determined.

26
27 The acceptance or rejection of a risk by the corporation
28 ~~association~~ shall be construed as the private placement of
29 insurance, and the provisions of chapter 120 shall not apply.

30
31

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

4 10. Must provide that in the event of regular deficit
5 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
6 (b)3.b., in the personal lines account, the commercial lines
7 account, or the high-risk account ~~or by the Florida Windstorm~~
8 ~~Underwriting Association under sub-sub-subparagraph~~
9 ~~(2)(b)2.d.(I) or sub-sub-subparagraph (2)(b)2.d.(II)~~, the
10 corporation ~~association~~ shall levy upon corporation
11 ~~association~~ policyholders in such account in its next rate
12 filing, or by a separate rate filing solely for this purpose,
13 a market equalization surcharge in a percentage equal to the
14 total amount of such regular assessments divided by the
15 aggregate statewide direct written premium for subject lines
16 of business ~~for member insurers~~ for the prior calendar year.
17 Market equalization surcharges under this subparagraph are not
18 considered premium and are not subject to commissions, fees,
19 or premium taxes; however, failure to pay a market
20 equalization surcharge shall be treated as failure to pay
21 premium.

22 11. The policies issued by the corporation ~~association~~
23 must provide that, if the corporation ~~association~~ or the
24 market assistance plan obtains an offer from an authorized
25 insurer to cover the risk at its approved rates ~~under either a~~
26 ~~standard policy including wind coverage or a basic policy~~
27 ~~including wind coverage~~, the risk is no longer eligible for
28 renewal coverage through the corporation ~~association~~. However,
29 ~~if the risk is located in an area in which Florida Windstorm~~
30 ~~Underwriting Association coverage is available, such an offer~~
31 ~~of a standard or basic policy terminates eligibility~~

1 ~~regardless of whether or not the offer includes wind coverage.~~
2 ~~Upon termination of eligibility, the association shall provide~~
3 ~~written notice to the policyholder and agent of record stating~~
4 ~~that the association policy shall be canceled as of 60 days~~
5 ~~after the date of the notice because of the offer of coverage~~
6 ~~from an authorized insurer. Other provisions of the insurance~~
7 ~~code relating to cancellation and notice of cancellation do~~
8 ~~not apply to actions under this subparagraph.~~

9 12. Corporation Association policies and applications
10 must include a notice that the corporation association policy
11 could, under this section ~~or s. 627.3511~~, be replaced with a
12 policy issued by an authorized ~~admitted~~ insurer that does not
13 provide coverage identical to the coverage provided by the
14 corporation association. The notice shall also specify that
15 acceptance of corporation association coverage creates a
16 conclusive presumption that the applicant or policyholder is
17 aware of this potential.

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

1 established by the transferor, the transferee, and, if
2 applicable, the lender.

3 14. Must provide that, with respect to the high-risk
4 account, any assessable insurer with a surplus as to
5 policyholders of \$25 million or less writing 25 percent or
6 more of its total countrywide property insurance premiums in
7 this state may petition the department, within the first 90
8 days of each calendar year, to qualify as a limited
9 apportionment company. In no event shall a limited
10 apportionment company be required to participate in the
11 portion of any assessment, within the high-risk account,
12 pursuant to sub-subparagraph (b)3.a. or sub-subparagraph
13 (b)3.b. in the aggregate which exceeds \$50 million after
14 payment of available high-risk account funds in any calendar
15 year. However, a limited apportionment company shall collect
16 from its policyholders any emergency assessment imposed under
17 sub-subparagraph (b)3.d. The plan shall provide that, if the
18 department determines that any regular assessment will result
19 in an impairment of the surplus of a limited apportionment
20 company, the department may direct that all or part of such
21 assessment be deferred. However, there shall be no limitation
22 or deferment of an emergency assessment to be collected from
23 policyholders under sub-subparagraph (b)3.d.

24 15. Must provide that the corporation appoint as its
25 licensed agents only those agents who also hold an appointment
26 as defined in s. 626.104 with an insurer who at the time of
27 the agent's initial appointment by the corporation is
28 authorized to write and is actually writing personal lines
29 residential property coverage, commercial residential property
30 coverage, or commercial nonresidential property coverage
31 within the state.

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

14 2. For each county, the average rates of the
15 corporation ~~association~~ for each line of business for personal
16 lines residential policies excluding rates for wind-only
17 policies shall be no lower than the average rates charged by
18 the insurer that had the highest average rate in that county
19 among the 20 insurers with the greatest total direct written
20 premium in the state for that line of business in the
21 preceding year, except that with respect to mobile home
22 coverages, the average rates of the corporation ~~association~~
23 shall be no lower than the average rates charged by the
24 insurer that had the highest average rate in that county among
25 the 5 insurers with the greatest total written premium for
26 mobile home owner's policies in the state in the preceding
27 year.

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

31

1 ~~4.3.~~ Rates for commercial lines ~~residential~~ coverage
2 shall not be subject to the requirements of subparagraph 2.,
3 but shall be subject to all other requirements of this
4 paragraph and s. 627.062.

5 ~~5.4.~~ Nothing in this paragraph shall require or allow
6 the corporation ~~association~~ to adopt a rate that is inadequate
7 under s. 627.062 ~~or to reduce rates approved under s. 627.062.~~

8 ~~6.5.~~ ~~The association may require arbitration of a~~
9 ~~filing pursuant to s. 627.062(6). Rate filings of the~~
10 ~~association under this paragraph shall be made on a use and~~
11 ~~file basis under s. 627.062(2)(a)2.~~ The corporation
12 ~~association~~ shall make a rate filing at least once a year, but
13 no more often than quarterly.

14 7. In addition to the rates otherwise determined
15 pursuant to this paragraph, the corporation shall impose and
16 collect an amount equal to the premium tax provided for in s.
17 624.509 to augment the financial resources of the corporation.

18 (e) If coverage in an account through the association
19 ~~is hereby activated effective upon approval of the plan, and~~
20 ~~shall remain activated until coverage is deactivated pursuant~~
21 ~~to paragraph (f). Thereafter, coverage through the corporation~~
22 ~~association~~ shall be reactivated by order of the department
23 only under one of the following circumstances:

24 1. If the market assistance plan receives a minimum of
25 100 applications for coverage within a 3-month period, or 200
26 applications for coverage within a 1-year period or less for
27 residential coverage, unless the market assistance plan
28 provides a quotation from admitted carriers at their filed
29 rates for at least 90 percent of such applicants. Any market
30 assistance plan application that is rejected because an
31 individual risk is so hazardous as to be uninsurable using the

1 criteria specified in subparagraph (c)8. shall not be included
2 in the minimum percentage calculation provided herein. In the
3 event that there is a legal or administrative challenge to a
4 determination by the department that the conditions of this
5 subparagraph have been met for eligibility for coverage in the
6 corporation ~~association~~, any eligible risk may obtain coverage
7 during the pendency of such challenge.

8 2. In response to a state of emergency declared by the
9 Governor under s. 252.36, the department may activate coverage
10 by order for the period of the emergency upon a finding by the
11 department that the emergency significantly affects the
12 availability of residential property insurance.

13 (f)1. The corporation shall file with the department
14 quarterly statements of financial condition, an annual
15 statement of financial condition, and audited financial
16 statements in the manner prescribed by law. In addition, the
17 corporation shall report to the department monthly on the
18 types, premium, exposure, and distribution by county of its
19 policies in force, and shall submit other reports as the
20 department requires to carry out its oversight of the
21 corporation.

22 2. The activities of the corporation ~~association~~ shall
23 be reviewed at least annually by the department to determine
24 whether ~~board and, upon recommendation by the board or~~
25 ~~petition of any interested party,~~ coverage shall be
26 deactivated in an account on the basis ~~if the department finds~~
27 that the conditions giving rise to its activation no longer
28 exist.

29 (g)1. The corporation ~~board~~ shall certify to the
30 department its needs for annual assessments as to a particular
31 calendar year, and for any ~~startup or~~ interim assessments that

1 it deems to be necessary to sustain operations as to a
2 particular year pending the receipt of annual assessments.
3 Upon verification, the department shall approve such
4 certification, and the corporation board shall levy such
5 annual, ~~startup~~, or interim assessments. Such assessments
6 shall be prorated as provided in paragraph (b). The
7 corporation board shall take all reasonable and prudent steps
8 necessary to collect the amount of assessment due from each
9 assessable participating member insurer, including, if
10 prudent, filing suit to collect such assessment. If the
11 corporation board is unable to collect an assessment from any
12 assessable member insurer, the uncollected assessments shall
13 be levied as an additional assessment against the assessable
14 ~~participating member~~ insurers and any assessable participating
15 ~~member~~ insurer required to pay an additional assessment as a
16 result of such failure to pay shall have a cause of action
17 against such nonpaying assessable member insurer. Assessments
18 shall be included as an appropriate factor in the making of
19 rates. The failure of a surplus lines agent to collect and
20 remit any regular or emergency assessment levied by the
21 corporation is considered to be a violation of s. 626.936 and
22 subjects the surplus lines agent to the penalties provided in
23 that section.

24 2. The governing body of any unit of local government,
25 any residents of which are insured by the corporation
26 ~~association~~, may issue bonds as defined in s. 125.013 or s.
27 166.101 from time to time to fund an assistance program, in
28 conjunction with the corporation association, for the purpose
29 of defraying deficits of the corporation association. In order
30 to avoid needless and indiscriminate proliferation,
31 duplication, and fragmentation of such assistance programs,

1 any unit of local government, any residents of which are
2 insured by the corporation association, may provide for the
3 payment of losses, regardless of whether or not the losses
4 occurred within or outside of the territorial jurisdiction of
5 the local government. Revenue bonds may not be issued until
6 validated pursuant to chapter 75, unless a state of emergency
7 is declared by executive order or proclamation of the Governor
8 pursuant to s. 252.36 making such findings as are necessary to
9 determine that it is in the best interests of, and necessary
10 for, the protection of the public health, safety, and general
11 welfare of residents of this state ~~and the protection and~~
12 ~~preservation of the economic stability of insurers operating~~
13 ~~in this state,~~ and declaring it an essential public purpose to
14 permit certain municipalities or counties to issue such bonds
15 as will permit relief to claimants and policyholders of the
16 corporation joint underwriting association and insurers
17 ~~responsible for apportionment of association losses~~. Any such
18 unit of local government may enter into such contracts with
19 the corporation association and with any other entity created
20 pursuant to this subsection as are necessary to carry out this
21 paragraph. Any bonds issued under this subparagraph shall be
22 payable from and secured by moneys received by the corporation
23 ~~association~~ from emergency assessments under sub-subparagraph
24 (b)3.d., and assigned and pledged to or on behalf of the unit
25 of local government for the benefit of the holders of such
26 bonds. The funds, credit, property, and taxing power of the
27 state or of the unit of local government shall not be pledged
28 for the payment of such bonds. If any of the bonds remain
29 unsold 60 days after issuance, the department shall require
30 all insurers subject to assessment to purchase the bonds,
31 which shall be treated as admitted assets; each insurer shall

1 be required to purchase that percentage of the unsold portion
2 of the bond issue that equals the insurer's relative share of
3 assessment liability under this subsection. An insurer shall
4 not be required to purchase the bonds to the extent that the
5 department determines that the purchase would endanger or
6 impair the solvency of the insurer.

7 3.a. ~~In addition to any credits, bonuses, or~~
8 ~~exemptions provided under s. 627.3511,~~The corporation board
9 shall adopt one or more programs ~~a program~~ subject to approval
10 by the department for the reduction of both new and renewal
11 writings in the corporation association. The corporation board
12 may consider any prudent and not unfairly discriminatory
13 approach to reducing corporation association writings, and may
14 ~~but must~~ adopt ~~at least~~ a credit against assessment liability
15 or other liability that provides an incentive for insurers to
16 take risks out of the corporation association and to keep
17 risks out of the corporation association by maintaining or
18 increasing voluntary writings in counties or areas in which
19 corporation association risks are highly concentrated and a
20 program to provide a formula under which an insurer
21 voluntarily taking risks out of the corporation association by
22 maintaining or increasing voluntary writings will be relieved
23 wholly or partially from assessments under sub-subparagraphs
24 (b)3.a. and b. When the corporation enters into a contractual
25 agreement for a take-out plan, the producing agent of record
26 of the corporation policy is entitled to retain any unearned
27 commission on such policy, and the insurer shall either:

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

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

3 (II) Offer to allow the producing agent of record of
4 the policy to continue servicing the policy for a period of
5 not less than 1 year and offer to pay the agent the insurer's
6 usual and customary commission for the type of policy written.
7 If the producing agent is unwilling or unable to accept
8 appointment by the new insurer, the new insurer shall pay the
9 agent in accordance with sub-sub-subparagraph (I).

10 b. Any credit or exemption from regular assessments
11 adopted under this subparagraph shall last no longer than the
12 3 years following the cancellation or expiration of the policy
13 by the corporation ~~association~~. With the approval of the
14 department, the board may extend such credits for an
15 additional year if the insurer guarantees an additional year
16 of renewability for all policies removed from the corporation
17 ~~association~~, or for 2 additional years if the insurer
18 guarantees 2 additional years of renewability for all policies
19 so removed.

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

23 4. The plan shall provide for the deferment, in whole
24 or in part, of the assessment of an assessable ~~a member~~
25 insurer, other than an emergency assessment collected from
26 policyholders pursuant to sub-subparagraph (b)3.d., if the
27 department finds that payment of the assessment would endanger
28 or impair the solvency of the insurer. In the event an
29 assessment against an assessable ~~a member~~ insurer is deferred
30 in whole or in part, the amount by which such assessment is
31 deferred may be assessed against the other assessable ~~member~~

1 insurers in a manner consistent with the basis for assessments
2 set forth in paragraph (b).

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

6 (i) There shall be no liability on the part of, and no
7 cause of action of any nature shall arise against, any
8 assessable member insurer or its agents or employees, the
9 corporation association or its agents or employees, members of
10 the board of governors or their respective designees at a
11 board meeting, corporation association committee members, or
12 the department or its representatives, for any action taken by
13 them in the performance of their duties or responsibilities
14 under this subsection. Such immunity does not apply to:

15 1. Any of the foregoing persons or entities for any
16 willful tort;

17 2. The corporation association or its ~~servicing or~~
18 producing agents for breach of any contract or agreement
19 pertaining to insurance coverage;

20 3. The corporation association with respect to
21 issuance or payment of debt; or

22 4. Any assessable member insurer with respect to any
23 action to enforce an assessable a member insurer's obligations
24 to the corporation association under this subsection.

25 (j) ~~The Residential Property and Casualty Joint~~
26 ~~Underwriting Association is not a state agency, board, or~~
27 ~~commission. However, For the purposes of s. 199.183(1), the~~
28 corporation Residential Property and Casualty Joint
29 ~~Underwriting Association~~ shall be considered a political
30 subdivision of the state and shall be exempt from the
31 corporate income tax. The premiums, assessments, investment

1 income, and other revenue of the corporation are funds
2 received for providing property insurance coverage as required
3 by this subsection, paying claims for Florida citizens insured
4 by the corporation, securing and repaying debt obligations
5 issued by the corporation, and conducting all other activities
6 of the corporation, and shall not be considered taxes, fees,
7 licenses, or charges for services imposed by the Legislature
8 on individuals, businesses, or agencies outside state
9 government. Bonds and other debt obligations issued by or on
10 behalf of the corporation are not to be considered "State
11 bonds" within the meaning of s. 215.58(10). The corporation is
12 not subject to the procurement provisions of chapter 287, and
13 policies and decisions of the corporation relating to
14 incurring debt, levying of assessments and the sale, issuance,
15 continuation, terms and claims under corporation policies, and
16 all services relating thereto, are not subject to the
17 provisions of chapter 120. The corporation is not required to
18 obtain or to hold a certificate of authority issued by the
19 department, nor is it required to participate as a member
20 insurer of the Florida Insurance Guaranty Association.
21 However, the corporation is required to pay, in the same
22 manner as an authorized insurer, assessments pledged by the
23 Florida Insurance Guaranty Association to secure bonds issued
24 or other indebtedness incurred to pay covered claims arising
25 from insurer insolvencies caused by, or proximately related
26 to, hurricane losses. It is the intent of the Legislature that
27 the tax exemptions provided in this paragraph will augment the
28 financial resources of the corporation to better enable the
29 corporation to fulfill its public purposes. Any bonds issued
30 by the corporation, their transfer, and the income therefrom,
31 including any profit made on the sale thereof, shall at all

1 times be free from taxation of every kind by the state and any
2 political subdivision or local unit or other instrumentality
3 thereof; however, this exemption does not apply to any tax
4 imposed by chapter 200 on interest, income, or profits on debt
5 obligations owned by corporations other than the corporation.

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

18 (1)1. Effective July 1, 2002, policies of the
19 Residential Property and Casualty Joint Underwriting
20 Association shall become policies of the corporation. All
21 obligations, rights, assets and liabilities of the Residential
22 Property and Casualty Joint Underwriting Association,
23 including bonds, note and debt obligations, and the financing
24 documents pertaining to them become those of the corporation
25 as of July 1, 2002. The corporation is not required to issue
26 endorsements or certificates of assumption to insureds during
27 the remaining term of in-force transferred policies.

28 2. Effective July 1, 2002, policies of the Florida
29 Windstorm Underwriting Association are transferred to the
30 corporation and shall become policies of the corporation. All
31 obligations, rights, assets, and liabilities of the Florida

1 Windstorm Underwriting Association, including bonds, note, and
2 debt obligations, and the financing documents pertaining to
3 them are transferred to and assumed by the corporation on July
4 1, 2002. The corporation is not required to issue endorsement
5 or certificates of assumption to insureds during the remaining
6 term of in-force transferred policies.

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

31

1 lines account and the commercial lines account, respectively,
2 of the corporation.

3 4. Effective July 1, 2002, a new applicant for
4 property insurance coverage who would otherwise have been
5 eligible for coverage in the Florida Windstorm Underwriting
6 Association is eligible for coverage from the corporation as
7 provided in this subsection.

8 5. The transfer of all policies, obligations, rights,
9 assets, and liabilities from the Florida Windstorm
10 Underwriting Association to the corporation and the renaming
11 of the Residential Property and Casualty Joint Underwriting
12 Association as the corporation shall in no way affect the
13 coverage with respect to covered policies as defined in s.
14 215.555(2)(c) provided to these entities by the Florida
15 Hurricane Catastrophe Fund. The coverage provided by the
16 Florida Hurricane Catastrophe Fund to the Florida Windstorm
17 Underwriting Association based on its exposures as of June 30,
18 2002, and each June 30 thereafter shall be redesignated as
19 coverage for the high-risk account of the corporation. The
20 coverage provided by the Florida Hurricane Catastrophe Fund to
21 the Residential Property and Casualty Joint Underwriting
22 Association based on its exposures as of June 30, 2002, and
23 each June 30 thereafter shall be transferred to the personal
24 lines account and the commercial lines account of the
25 corporation. The high-risk account shall be treated, for all
26 Florida Hurricane Catastrophe Fund purposes, as if it were a
27 separate participating insurer with its own exposures,
28 reimbursement premium, and loss reimbursement. Likewise, the
29 personal lines and commercial lines accounts shall be viewed
30 together, for all Florida Hurricane Catastrophe Fund purposes,
31 as if the two accounts were one and represent a single,

1 separate participating insurer with its own exposures,
2 reimbursement premium, and loss reimbursement. The coverage
3 provided by the Florida Hurricane Catastrophe Fund to the
4 corporation shall constitute and operate as a full transfer of
5 coverage from the Florida Windstorm Underwriting Association
6 and Residential Property and Casualty Joint Underwriting to
7 the corporation.

8 6. The department may, by order, postpone the July 1,
9 2002, effective dates set forth in this paragraph if the
10 department finds that effectuation of these dates cannot be
11 accomplished due to emergency conditions.~~All obligations,~~
12 ~~rights, assets, and liabilities of the Florida Property and~~
13 ~~Casualty Joint Underwriting Association created by subsection~~
14 ~~(5), which obligations, rights, assets, or liabilities relate~~
15 ~~to the provision of commercial lines residential property~~
16 ~~insurance coverage as described in this section are hereby~~
17 ~~transferred to the Residential Property and Casualty Joint~~
18 ~~Underwriting Association. The Residential Property and~~
19 ~~Casualty Joint Underwriting Association is not required to~~
20 ~~issue endorsements or certificates of assumption to insureds~~
21 ~~during the remaining term of in-force transferred policies.~~

22 (m) Notwithstanding any other provision of law:

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

1 proceeding against the corporation ~~association~~ under the laws
2 of this state.

3 2. No such proceeding shall relieve the corporation
4 ~~association~~ of its obligation, or otherwise affect its ability
5 to perform its obligation, to continue to collect, or levy and
6 collect, assessments, market equalization or other surcharges
7 under subparagraph (c)10., or any other rights, revenues, or
8 other assets of the corporation ~~association~~ pledged pursuant
9 to any financing documents.

10 3. Each such pledge or sale of, lien upon, and
11 security interest in, including the priority of such pledge,
12 lien, or security interest, any such assessments, market
13 equalization or other surcharges, or other rights, revenues,
14 or other assets which are collected, or levied and collected,
15 after the commencement of and during the pendency of, or
16 after, any such proceeding shall continue unaffected by such
17 proceeding. As used in this subsection, the term "financing
18 documents" means any agreement or agreements, instrument or
19 instruments, or other document or documents now existing or
20 hereafter created evidencing any bonds or other indebtedness
21 of the corporation ~~association~~ or pursuant to which any such
22 bonds or other indebtedness has been or may be issued and
23 pursuant to which any rights, revenues, or other assets of the
24 corporation ~~association~~ are pledged or sold to secure the
25 repayment of such bonds or indebtedness, together with the
26 payment of interest on such bonds or such indebtedness, or the
27 payment of any other obligation or financial product, as
28 defined in the plan of operation of the corporation
29 ~~association~~ related to such bonds or indebtedness.

30 4. Any such pledge or sale of assessments, revenues,
31 contract rights, or other rights or assets of the corporation

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

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

22 a. Underwriting files, except that a policyholder or
23 an applicant shall have access to his or her own underwriting
24 files.

25 b. Claims files, until termination of all litigation
26 and settlement of all claims arising out of the same incident,
27 although portions of the claims files may remain exempt, as
28 otherwise provided by law. Confidential and exempt claims file
29 records may be released to other governmental agencies upon
30 written request and demonstration of need; such records held
31

1 by the receiving agency remain confidential and exempt as
2 provided for herein.

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

11 d. Matters reasonably encompassed in privileged
12 attorney-client communications.

13 e. Proprietary information licensed to the corporation
14 ~~association~~ under contract and the contract provides for the
15 confidentiality of such proprietary information.

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

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

31

1 h. Information relating to negotiations for financing,
2 reinsurance, depopulation, or contractual services, until the
3 conclusion of the negotiations.

4 i. Minutes of closed meetings regarding underwriting
5 files, and minutes of closed meetings regarding an open claims
6 file until termination of all litigation and settlement of all
7 claims with regard to that claim, except that information
8 otherwise confidential or exempt by law will be redacted.

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

1 loss history; and policy type. The receiving licensed general
2 lines insurance agent must retain the confidentiality of the
3 information received.

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

22 (o) In enacting the provisions of this section, the
23 Legislature recognizes that both the Florida Windstorm
24 Underwriting Association and the Residential Property and
25 Casualty Joint Underwriting Association have entered into
26 financing arrangements that obligate each entity to service
27 its debts and maintain the capacity to repay funds secured
28 under these financing arrangements. It is the intent of the
29 Legislature that nothing in this section be construed to
30 compromise, diminish, or interfere with the rights of
31 creditors under such financing arrangements. It is further the

1 intent of the Legislature to preserve the obligations of the
2 Florida Windstorm Underwriting Association and Residential
3 Property and Casualty Joint Underwriting Association with
4 regard to outstanding financing arrangements, with such
5 obligations passing entirely and unchanged to the corporation.
6 So long as any bonds, notes, indebtedness, or other financing
7 obligations of the Florida Windstorm Underwriting Association
8 or the Residential Property and Casualty Joint Underwriting
9 Association are outstanding, under the terms of the financing
10 documents pertaining to them, the governing board of the
11 corporation shall have and shall exercise the authority to
12 levy, charge, collect, and receive all premiums, assessments,
13 surcharges, charges, revenues and receipts that the
14 associations had authority to levy, charge, collect, or
15 receive under the provisions of subsection (2) and subsection
16 (6), respectively, as they existed on January 1, 2002, to the
17 extent necessary to provide moneys, together with other
18 available moneys of the corporation without exercise of the
19 authority provided by this paragraph, in at least the amounts,
20 and by the times, as would be provided under those former
21 provisions of subsection (2) or subsection (6), respectively,
22 so that the value, amount, and collectability of any assets,
23 revenues, or revenue source pledged or committed to, or any
24 lien thereon securing such outstanding bonds, notes,
25 indebtedness, or other financing obligations will not be
26 diminished, impaired, or adversely affected by the amendments
27 made by this act and to permit compliance with all provisions
28 of financing documents pertaining to such bonds, notes,
29 indebtedness, or other financing obligations, or the security
30 or credit enhancement for them, and any reference in this
31 subsection to bonds, notes, indebtedness, financing

1 obligations, or similar obligations, of the corporation shall
2 include like instruments or contracts of the Florida Windstorm
3 Underwriting Association and the Residential Property and
4 Casualty Joint Underwriting Association to the extent not
5 inconsistent with the provisions of the financing documents
6 pertaining to them.

7 Section 2. Section 627.3517, Florida Statutes, is
8 created to read:

9 627.3517 Consumer choice.--No provision of s. 627.351,
10 s. 627.3511, or s. 627.3515 shall be construed to impair the
11 right of any insurance risk apportionment plan policyholder,
12 upon receipt of any keepout or takeout offer, to retain his or
13 her current agent, so long as that agent is duly licensed and
14 appointed by the insurance risk apportionment plan or
15 otherwise authorized to place business with the insurance risk
16 apportionment plan. This right shall not be cancelled,
17 suspended, impeded, abridged, or otherwise compromised by any
18 rule, plan of operation, or depopulation plan, whether through
19 keepout, takeout, midterm assumption, or any other means, of
20 any insurance risk apportionment plan or depopulation plan,
21 including, but not limited to, those described in s. 627.351,
22 s. 627.3511, or s. 627.3515. The department shall adopt any
23 rules necessary to cause any insurance risk apportionment plan
24 or market assistance plan under such sections to demonstrate
25 that the operations of the plan do not interfere with,
26 promote, or allow interference with the rights created under
27 this section. If the policyholder's current agent is unable or
28 unwilling to be appointed with the insurer making the takeout
29 or keepout offer, the policyholder shall not be disqualified
30 from participation in the appropriate insurance risk
31 apportionment plan because of an offer of coverage in the

1 voluntary market. Any rule, plan of operation, or plan of
2 depopulation, through keepout, takeout, midterm assumption, or
3 any other means, of any property insurance risk apportionment
4 plan under s. 627.351(2) or s. 627.351(6) is subject to ss.
5 627.351(2)(b), 627.351(6)(c), and 627.351(4).

6 Section 3. Paragraph (d) of subsection (2) of section
7 215.555, Florida Statutes, is amended to read:

8 215.555 Florida Hurricane Catastrophe Fund.--

9 (2) DEFINITIONS.--As used in this section:

10 (d) "Losses" means direct incurred losses under
11 covered policies, including up to 20 percent of the value of
12 the residential structure or up to 40 percent of the value of
13 the residential contents for ~~excluding~~ losses attributable to
14 additional living expense coverages on mobile homes and
15 personal residential exposures, but excluding fair rental
16 value losses associated with personal and commercial
17 residential exposures and business interruption losses
18 associated with commercial residential exposures, and also
19 excluding loss adjustment expenses.

20 Section 4. This act shall take effect July 1, 2002.

21
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 Senate Bill 1418

25 Provides that entering into a quota share primary insurance
26 agreement is voluntary and at the discretion of an authorized
insurer.

27 Clarifies that the "consumer choice" protections of the bill
28 apply to insurance risk apportionment plan policyholders;
29 limits such protections to current agents who are licensed and
30 appointed by insurance risk apportionment plans; and,
specifies that the insurance agent commissions apply to the
Citizens Property Insurance Corporation and other specified
risk apportionment plans.

31 Requires the Florida Hurricane Catastrophe Fund to cover
losses attributable to additional living expense coverages.