

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 215.555, F.S.; revising a definition; providing
4 for certain additional coverages under the
5 Florida Hurricane Catastrophe Fund; increasing
6 the cap on fund liability; imposing an
7 additional liquidity enhancement factor to
8 reimbursement premiums; amending s. 627.351,
9 F.S.; providing for waiver of required flood
10 insurance under certain circumstances;
11 specifying policyholder burden of proof under
12 certain circumstances; authorizing an
13 association to deny certain coverage under
14 certain circumstances; renaming the Residential
15 Property and Casualty Joint Underwriting
16 Association as the Citizens Property Insurance
17 Corporation to provide residential and
18 commercial property insurance; requiring
19 insurers writing property insurance to
20 participate in the corporation; providing for
21 dividing the revenues, assets, liabilities,
22 losses, and expenses of the corporation into
23 three accounts; authorizing the Department of
24 Insurance to remove certain territories from
25 certain eligible areas under certain
26 circumstances; providing for emergency
27 assessments for policyholders of participating
28 insurers; providing a plan of operation;
29 defining the terms "quota share primary
30 insurance" and "eligible risks"; authorizing
31 the corporation to enter into quota share

1 primary insurance agreements; providing for a
2 board of governors appointed by the Treasurer,
3 subject to confirmation by the Cabinet;
4 providing rate limitations and requirements;
5 requiring the Department of Insurance to
6 provide the corporation with certain rate
7 information for certain purposes; requiring the
8 corporation to certify certain rates to the
9 department; authorizing the department to adopt
10 rules; requiring the corporation to impose and
11 collect an additional amount to augment the
12 corporation's financial resources; requiring
13 the corporation to file quarterly statements of
14 financial condition and submit other reports to
15 the Department of Insurance; providing that the
16 corporation is not required to obtain a
17 certificate of authority from the Department of
18 Insurance; providing that the corporation is
19 not required to be a member of the Florida
20 Insurance Guaranty Association; requiring the
21 corporation to pay assessments pledged by the
22 association to secure bonds to pay covered
23 claims arising from insurer insolvencies caused
24 by hurricane losses; providing for transfer of
25 policies of the association and the Florida
26 Windstorm Underwriting Association to the
27 corporation; providing for a transfer of assets
28 and liabilities; requiring the associations to
29 take actions necessary to further the
30 transfers; providing for the redesignation of
31 certain coverage as the high-risk account of

1 the corporation; providing that such account be
2 treated as if it were a separate participating
3 insurer for certain purposes; providing that
4 the personal lines and commercial lines
5 accounts be treated as a single participating
6 insurer for certain purposes; providing that
7 the department may postpone the July 1, 2002,
8 effective date of transfer under the act;
9 providing legislative intent; requiring the
10 board to report to the Legislature on certain
11 loss activities; requiring the board to reduce
12 certain eligibility boundaries under certain
13 circumstances; providing legislative intent not
14 to interfere with the rights of creditors, to
15 preserve the obligation of the association, and
16 to assure that outstanding financing agreements
17 pass unchanged to the corporation; amending s.
18 627.3511, F.S.; revising certain agent
19 commission payment policy servicing procedures
20 and requirements; creating s. 627.3517, F.S.;
21 preserving the right of a residual-market
22 policyholder to select and maintain an agent of
23 his or her own choice; providing an effective
24 date.

25

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

27

28 Section 1. Paragraph (d) of subsection (2) and
29 paragraph (b) of subsection (5) of section 215.555, Florida
30 Statutes, are amended to read:

31

215.555 Florida Hurricane Catastrophe Fund.--

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

2 (d) "Losses" means direct incurred losses under
3 covered policies, which shall include losses for additional
4 living expenses not to exceed 20 percent of the insured value
5 of mobile homes or personal residential structures and 40
6 percent of the insured value of contents covered under a
7 tenant's policy or a condominium unit owners policy and shall
8 exclude ~~excluding losses attributable to additional living~~
9 ~~expense coverages and excluding~~ loss adjustment expenses.
10 "Losses" does not include losses for fair rental value
11 associated with personal and commercial residential exposures
12 or business interruption losses associated with commercial
13 residential exposures.

14 (5) REIMBURSEMENT PREMIUMS.--

15 (b) The State Board of Administration shall select an
16 independent consultant to develop a formula for determining
17 the actuarially indicated premium to be paid to the fund. The
18 formula shall specify, for each zip code or other limited
19 geographical area, the amount of premium to be paid by an
20 insurer for each \$1,000 of insured value under covered
21 policies in that zip code or other area. In establishing
22 premiums, the board shall consider the coverage elected under
23 paragraph (4)(b) and any factors that tend to enhance the
24 actuarial sophistication of ratemaking for the fund, including
25 deductibles, type of construction, type of coverage provided,
26 relative concentration of risks, a factor providing for more
27 rapid cash buildup in the fund until the fund capacity for a
28 single hurricane season is fully funded,and other such
29 factors deemed by the board to be appropriate. The formula
30 may provide for a procedure to determine the premiums to be
31 paid by new insurers that begin writing covered policies after

1 the beginning of a contract year, taking into consideration
2 when the insurer starts writing covered policies, the
3 potential exposure of the insurer, the potential exposure of
4 the fund, the administrative costs to the insurer and to the
5 fund, and any other factors deemed appropriate by the board.
6 The formula must be approved by unanimous vote of the board.
7 The board may, at any time, revise the formula pursuant to the
8 procedure provided in this paragraph.

9 Section 2. Paragraph (b) of subsection (2) and
10 subsection (6) of section 627.351, Florida Statutes, are
11 amended to read:

12 627.351 Insurance risk apportionment plans.--

13 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

1 vehicle insurance as defined in s. 624.605(1)(a) other than
2 insurance on mobile homes used as permanent dwellings. The
3 department shall adopt rules that provide a formula for the
4 recovery and repayment of any deferred assessments.

5 1. For the purpose of this section, properties
6 eligible for such windstorm coverage are defined as dwellings,
7 buildings, and other structures, including mobile homes which
8 are used as dwellings and which are tied down in compliance
9 with mobile home tie-down requirements prescribed by the
10 Department of Highway Safety and Motor Vehicles pursuant to s.
11 320.8325, and the contents of all such properties. An
12 applicant or policyholder is eligible for coverage only if an
13 offer of coverage cannot be obtained by or for the applicant
14 or policyholder from an admitted insurer at approved rates.

15 2.a.(I) All insurers required to be members of such
16 association shall participate in its writings, expenses, and
17 losses. Surplus of the association shall be retained for the
18 payment of claims and shall not be distributed to the member
19 insurers. Such participation by member insurers shall be in
20 the proportion that the net direct premiums of each member
21 insurer written for property insurance in this state during
22 the preceding calendar year bear to the aggregate net direct
23 premiums for property insurance of all member insurers, as
24 reduced by any credits for voluntary writings, in this state
25 during the preceding calendar year. For the purposes of this
26 subsection, the term "net direct premiums" means direct
27 written premiums for property insurance, reduced by premium
28 for liability coverage and for the following if included in
29 allied lines: rain and hail on growing crops; livestock;
30 association direct premiums booked; National Flood Insurance
31 Program direct premiums; and similar deductions specifically

1 authorized by the plan of operation and approved by the
2 department. A member's participation shall begin on the first
3 day of the calendar year following the year in which it is
4 issued a certificate of authority to transact property
5 insurance in the state and shall terminate 1 year after the
6 end of the calendar year during which it no longer holds a
7 certificate of authority to transact property insurance in the
8 state. The commissioner, after review of annual statements,
9 other reports, and any other statistics that the commissioner
10 deems necessary, shall certify to the association the
11 aggregate direct premiums written for property insurance in
12 this state by all member insurers.

13 (II) Effective July 1, 2002, the association shall
14 operate subject to the supervision and approval of ~~The plan of~~
15 ~~operation shall provide for a board of~~ governors who are the
16 same individuals that have been appointed by the Treasurer to
17 serve on the board of governors of the Citizens Property
18 Insurance Corporation ~~directors consisting of the Insurance~~
19 ~~Consumer Advocate appointed under s. 627.0613, 1 consumer~~
20 ~~representative appointed by the Insurance Commissioner, 1~~
21 ~~consumer representative appointed by the Governor, and 12~~
22 ~~additional members appointed as specified in the plan of~~
23 ~~operation. One of the 12 additional members shall be elected~~
24 ~~by the domestic companies of this state on the basis of~~
25 ~~cumulative weighted voting based on the net direct premiums of~~
26 ~~domestic companies in this state. Nothing in the 1997~~
27 ~~amendments to this paragraph terminates the existing board or~~
28 ~~the terms of any members of the board.~~

29 (III) The plan of operation shall provide a formula
30 whereby a company voluntarily providing windstorm coverage in
31 affected areas will be relieved wholly or partially from

1 apportionment of a regular assessment pursuant to
2 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

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

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

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

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

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

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

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

1 levy an assessment on member insurers in an amount equal to
2 the deficit.

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

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

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

1 not premium, and are not subject to premium tax, fees, or
2 commissions; however, failure to pay the emergency assessment
3 shall be treated as failure to pay premium.

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

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

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

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

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

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

1 deferment of an emergency assessment to be collected from
2 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

20 b. The association may require arbitration of a rate
21 filing under s. 627.062(6). It is the intent of the
22 Legislature that the rates for coverage provided by the
23 association be actuarially sound and not competitive with
24 approved rates charged in the admitted voluntary market such
25 that the association functions as a residual market mechanism
26 to provide insurance only when the insurance cannot be
27 procured in the voluntary market. The plan of operation shall
28 provide a mechanism to assure that, beginning no later than
29 January 1, 1999, the rates charged by the association for each
30 line of business are reflective of approved rates in the
31 voluntary market for hurricane coverage for each line of

1 business in the various areas eligible for association
2 coverage.

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

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

25 (I) Whether the likelihood of a loss for the
26 individual risk is substantially higher than for other risks
27 of the same class; and

28 (II) Whether the uncertainty associated with the
29 individual risk is such that an appropriate premium cannot be
30 determined.

31

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

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

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

27 6.a. The plan of operation may authorize the formation
28 of a private nonprofit corporation, a private nonprofit
29 unincorporated association, a partnership, a trust, a limited
30 liability company, or a nonprofit mutual company which may be
31 empowered, among other things, to borrow money by issuing

1 bonds or by incurring other indebtedness and to accumulate
2 reserves or funds to be used for the payment of insured
3 catastrophe losses. The plan may authorize all actions
4 necessary to facilitate the issuance of bonds, including the
5 pledging of assessments or other revenues.

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

1 subsequently modified consistent with chapter 76-96. The board
2 of directors and officers currently serving shall continue to
3 serve until their successors are duly qualified as provided
4 under the plan. The assets and obligations of the plan in
5 effect immediately prior to the effective date of chapter
6 76-96 shall be construed to be the assets and obligations of
7 the successor plan created herein.

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

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

22 8. Subject to approval by the department, the
23 association may establish different eligibility requirements
24 and operational procedures for any line or type of coverage
25 for any specified eligible area or portion of an eligible area
26 if the board determines that such changes to the eligibility
27 requirements and operational procedures are justified due to
28 the voluntary market being sufficiently stable and competitive
29 in such area or for such line or type of coverage and that
30 consumers who, in good faith, are unable to obtain insurance
31 through the voluntary market through ordinary methods would

1 continue to have access to coverage from the association. When
2 coverage is sought in connection with a real property
3 transfer, such requirements and procedures shall not provide
4 for an effective date of coverage later than the date of the
5 closing of the transfer as established by the transferor, the
6 transferee, and, if applicable, the lender.

7 9. Notwithstanding any other provision of law:

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

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

26 c. Each such pledge or sale of, lien upon, and
27 security interest in, including the priority of such pledge,
28 lien, or security interest, any such assessments, emergency
29 assessments, market equalization or renewal surcharges,
30 projected recoveries from the Florida Hurricane Catastrophe
31 Fund, reinsurance recoverables, or other rights, revenues, or

1 other assets which are collected, or levied and collected,
2 after the commencement of and during the pendency of or after
3 any such proceeding shall continue unaffected by such
4 proceeding.

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

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

1 sale and without the need for any physical delivery,
2 recordation, filing, or other action.

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

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

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

1 achievement of the foregoing public purposes. Because it is
2 essential for the corporation to have the maximum financial
3 resources to pay claims following a catastrophic hurricane, it
4 is the intent of the Legislature that the income of the
5 corporation be exempt from federal income taxation and that
6 interest on the debt obligations issued by the corporation be
7 exempt from federal income taxation.

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

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

1 (b)1. All insurers authorized to write one or more
2 subject lines of business in this state are subject to
3 assessment by the corporation and, for the purposes of this
4 subsection, are referred to collectively as "assessable
5 insurers." Insurers writing one or more subject lines of
6 business in this state pursuant to part VIII of chapter 626
7 are not assessable insurers, but insureds who procure one or
8 more subject lines of business in this state pursuant to part
9 VIII of chapter 626 are subject to assessment by the
10 corporation and are referred to collectively as "assessable
11 insureds." An authorized insurer's assessment liability, ~~other~~
12 ~~than underwriting associations or other entities created under~~
13 ~~this section, must participate in and be members of the~~
14 ~~Residential Property and Casualty Joint Underwriting~~
15 ~~Association. A member's participation shall begin on the first~~
16 ~~day of the calendar year following the year in which the~~
17 ~~insurer member~~ was issued a certificate of authority to
18 transact insurance for subject lines of business in this state
19 and shall terminate 1 year after the end of the first calendar
20 year during which the insurer member no longer holds a
21 certificate of authority to transact insurance for subject
22 lines of business in this state.

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

26 (I) A personal lines account for personal residential
27 policies issued by the corporation or issued by the
28 Residential Property and Casualty Joint Underwriting
29 Association and renewed by the corporation that provide
30 comprehensive, multi-peril coverage on risks that are not
31 located in areas eligible for coverage in the Florida

1 Windstorm Underwriting Association as those areas were defined
2 on January 1, 2002 and for such policies that do not provide
3 coverage for the peril of wind on risks that are located in
4 such areas;

5 (II) A commercial lines account for commercial
6 residential policies issued by the corporation or issued by
7 the Residential Property and Casualty Joint Underwriting
8 Association and renewed by the corporation that provide
9 coverage for basic property perils on risks that are not
10 located in areas eligible for coverage in the Florida

11 Windstorm Underwriting Association as those areas were defined
12 on January 1, 2002 and for such policies that do not provide
13 coverage for the peril of wind on risks that are located in
14 such areas; and

15 (III) A high-risk account for personal residential
16 policies and commercial residential and commercial
17 non-residential property policies issued by the corporation or
18 transferred to the corporation that provide coverage for the
19 peril of wind on risks that are located in areas eligible for
20 coverage in the Florida Windstorm Underwriting Association as
21 those areas were defined on January 1, 2002. The high-risk
22 account must also include quota share primary insurance under
23 subparagraph (c)2. The area eligible for coverage under the
24 high-risk account also includes the area within Port
25 Canaveral, which is bordered on the south by the City of Cape
26 Canaveral, bordered on the west by the Banana River, and
27 bordered on the north by Federal Government property. The
28 department may remove territory from the area eligible for
29 wind-only and quota share coverage if, after a public hearing,
30 the department finds that authorized insurers in the voluntary
31 market are willing and able to write sufficient amounts of

1 personal and commercial residential coverage for all perils in
2 the territory, including coverage for the peril of wind, such
3 that risks covered by wind-only policies in the removed
4 territory could be issued a policy by the corporation in
5 either the personal lines or commercial lines account without
6 a significant increase in the corporation's probable maximum
7 loss in such account. Removal of territory from the area
8 eligible for wind-only or quota share coverage does not alter
9 the assignment of wind coverage written in such areas to the
10 high-risk account.

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. Creditors of the Residential Property and Casualty
24 Joint Underwriting Association shall have a claim against, and
25 recourse to, the accounts referred to in sub-sub-subparagraphs
26 a.(I) and (II) and shall have no claim against, or recourse
27 to, the account referred to in sub-sub-subparagraph a.(III).
28 Creditors of the Florida Windstorm Underwriting Association
29 shall have a claim against, and recourse to, the account
30 referred to in sub-sub-subparagraph a.(III) and shall have no
31

1 claim against, or recourse to, the accounts referred to in
2 sub-sub-paragraphs a.(I) and (II).

3 d. Revenues, assets, liabilities, losses, and expenses
4 not attributable to particular accounts ~~coverages~~ shall be
5 prorated among ~~between~~ the accounts.

6 e. The Legislature finds that the revenues of the
7 corporation are revenues that are necessary to meet the
8 requirements set forth in documents authorizing the issuance
9 of bonds under this subsection.

10 f. No part of the income of the corporation may inure
11 to the benefit of any private person.

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

13 a. When the deficit incurred in a particular calendar
14 year is not greater than 10 percent of the aggregate statewide
15 direct written premium for the subject lines of business for
16 the prior calendar year ~~for all member insurers~~, the entire
17 deficit shall be recovered through regular assessments of
18 assessable ~~member~~ insurers under paragraph (g) and assessable
19 insureds.

20 b. When the deficit incurred in a particular calendar
21 year exceeds 10 percent of the aggregate statewide direct
22 written premium for the subject lines of business for the
23 prior calendar year ~~for all member insurers~~, the corporation
24 association shall levy regular assessments ~~an assessment~~ on
25 assessable ~~member~~ insurers under paragraph (g) and on
26 assessable insureds in an amount equal to the greater of 10
27 percent of the deficit or 10 percent of the aggregate
28 statewide direct written premium for the subject lines of
29 business for the prior calendar year ~~for all member insurers~~.
30 Any remaining deficit shall be recovered through emergency
31 assessments under sub-subparagraph d.

1 c. Each assessable member insurer's share of the
2 amount being assessed ~~total assessment~~ under sub-subparagraph
3 a. or sub-subparagraph b. shall be in the proportion that the
4 assessable member insurer's direct written premium for the
5 subject lines of business for the year preceding the
6 assessment bears to the aggregate statewide direct written
7 premium for the subject lines of business for that year ~~for~~
8 ~~all member insurers~~. The assessment percentage applicable to
9 each assessable insured is the ratio of the amount being
10 assessed under sub-subparagraph a. or sub-subparagraph b. to
11 the aggregate statewide direct written premium for the subject
12 lines of business for the prior year. Assessments levied by
13 the corporation on assessable insurers under sub-subparagraphs
14 a. and b. shall be paid as required by the corporation's plan
15 of operation and paragraph (g). Assessments levied by the
16 corporation on assessable insureds under sub-subparagraphs a.
17 and b. shall be collected by the surplus lines agent at the
18 time the surplus lines agent collects the surplus lines tax
19 required by s. 626.932 and shall be paid to the Florida
20 Surplus Lines Service Office at the time the surplus lines
21 agent pays the surplus lines tax to the Florida Surplus Lines
22 Service Office. Upon receipt of regular assessments from
23 surplus lines agents, the Florida Surplus Lines Service Office
24 shall transfer the assessments directly to the corporation as
25 determined by the corporation.

26 d. Upon a determination by the board of governors that
27 a deficit in an account exceeds the amount that will be
28 recovered through regular assessments ~~on member insurers~~ under
29 sub-subparagraph a. or sub-subparagraph b., the board shall
30 levy, after verification by the department, emergency
31 assessments, for as many years as necessary to cover the

1 deficits, to be collected by assessable member insurers and
2 the corporation and collected from assessable insureds by
3 ~~underwriting associations created under this section which~~
4 ~~write subject lines of business~~ upon issuance or renewal of
5 policies for subject lines of business, excluding National
6 Flood Insurance policies, ~~in the year or years following levy~~
7 ~~of the regular assessments~~. The amount of the emergency
8 assessment collected in a particular year shall be a uniform
9 percentage of that year's direct written premium for subject
10 lines of business and all accounts of the corporation for all
11 ~~member insurers and underwriting associations~~, excluding
12 National Flood Insurance Program policy premiums, as annually
13 determined by the board and verified by the department. The
14 department shall verify the arithmetic calculations involved
15 in the board's determination within 30 days after receipt of
16 the information on which the determination was based.
17 Notwithstanding any other provision of law, the corporation
18 and each assessable member insurer that ~~and each underwriting~~
19 ~~association created under this section which~~ writes subject
20 lines of business shall collect emergency assessments from its
21 policyholders without such obligation being affected by any
22 credit, limitation, exemption, or deferment. Emergency
23 assessments levied by the corporation on assessable insureds
24 shall be collected by the surplus lines agent at the time the
25 surplus lines agent collects the surplus lines tax required by
26 s. 626.932 and shall be paid to the Florida Surplus Lines
27 Service Office at the time the surplus lines agent pays the
28 surplus lines tax to the Florida Surplus Lines Service Office.
29 The emergency assessments so collected shall be transferred
30 directly to the corporation ~~association~~ on a periodic basis as
31 determined by the corporation and shall be held by the

1 corporation solely in the applicable account ~~association~~.
2 The aggregate amount of emergency assessments levied for an
3 account under this sub-subparagraph in any calendar year may
4 not exceed the greater of 10 percent of the amount needed to
5 cover the original deficit, plus interest, fees, commissions,
6 required reserves, and other costs associated with financing
7 of the original deficit, or 10 percent of the aggregate
8 statewide direct written premium for subject lines of business
9 and for all accounts of the corporation ~~written by member~~
10 ~~insurers and underwriting associations~~ for the prior year,
11 plus interest, fees, commissions, required reserves, and other
12 costs associated with financing the original deficit.

13 e. The corporation ~~board~~ may pledge the proceeds of
14 assessments, projected recoveries from the Florida Hurricane
15 Catastrophe Fund, other insurance and reinsurance
16 recoverables, market equalization surcharges and other
17 surcharges, and other funds available to the corporation
18 ~~association~~ as the source of revenue for and to secure bonds
19 issued under paragraph (g), bonds or other indebtedness issued
20 under subparagraph (c)3., or lines of credit or other
21 financing mechanisms issued or created under this subsection,
22 or to retire any other debt incurred as a result of deficits
23 or events giving rise to deficits, or in any other way that
24 the board determines will efficiently recover such deficits.
25 The purpose of the lines of credit or other financing
26 mechanisms is to provide additional resources to assist the
27 corporation ~~association~~ in covering claims and expenses
28 attributable to a catastrophe. As used in this subsection, the
29 term "assessments" includes regular assessments under
30 sub-subparagraph a., sub-subparagraph b., or subparagraph
31 (g)1. and emergency assessments under sub-subparagraph d.

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

12 f. As used in this subsection, the term "subject lines
13 of business" means insurance written by assessable insurers or
14 procured by assessable insureds on real or personal property,
15 as defined in s. 624.604, including insurance for fire,
16 industrial fire, allied lines, farmowners multiperil,
17 homeowners multiperil, commercial multiperil, and mobile
18 homes, and including liability coverage on all such insurance,
19 but excluding inland marine as defined in s. 624.607(3) and
20 excluding vehicle insurance as defined in s. 624.605(1) other
21 than insurance on mobile homes used as permanent dwellings.

22 g. The Florida Surplus Lines Service Office shall
23 determine annually the aggregate statewide written premium in
24 subject lines of business procured by assessable insureds and
25 shall report that information to the corporation in a form and
26 at a time the corporation specifies to ensure that the
27 corporation can meet the requirements of this subsection and
28 the corporation's financing obligations.

29 h. The Florida Surplus Lines Service Office shall
30 verify the proper application by surplus lines agents of
31 assessment percentages for regular assessments and emergency

1 assessments levied under this subparagraph on assessable
2 insureds and shall assist the corporation in ensuring the
3 accurate, timely collection and payment of assessments by
4 surplus lines agents as required by the corporation., with
5 ~~respect to the personal lines account, any personal lines~~
6 ~~policy defined in s. 627.4025, and means, with respect to the~~
7 ~~commercial lines account, all commercial property and~~
8 ~~commercial fire insurance.~~

9 (c) The plan of operation of the corporation
10 association:

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

22 1.2. Must provide for adoption of residential property
23 and casualty insurance policy forms and commercial residential
24 and nonresidential property insurance forms, which forms must
25 be approved by the department prior to use. The corporation
26 association shall adopt the following policy forms:

27 a. Standard personal lines policy forms that including
28 wind coverage, which are comprehensive multiperil policies
29 providing ~~what is generally considered to be~~ full coverage of
30 a residential property equivalent ~~similar~~ to the coverage
31

1 provided in the private insurance market under an ~~HO-2~~, HO-3,
2 HO-4, or HO-6 policy.

3 ~~b. Standard personal lines policy forms without wind~~
4 ~~coverage, which are the same as the policies described in~~
5 ~~sub-subparagraph a. except that they do not include wind~~
6 ~~coverage.~~

7 ~~b.c.~~ Basic personal lines policy forms that including
8 ~~wind coverage, which~~ are policies similar to an HO-8 policy or
9 a dwelling fire policy that provide coverage meeting the
10 requirements of the secondary mortgage market, but which
11 coverage is more limited than the coverage under a standard
12 policy.

13 ~~d. Basic personal lines policy forms without wind~~
14 ~~coverage, which are the same as the policies described in~~
15 ~~sub-subparagraph c. except that they do not include wind~~
16 ~~coverage.~~

17 ~~c.e.~~ Commercial lines residential policy forms
18 ~~including wind coverage~~ that are generally similar to the
19 basic perils of full coverage obtainable for commercial
20 residential structures in the admitted voluntary market.

21 d. Personal lines and commercial lines residential
22 property insurance forms that cover the peril of wind only.
23 The forms are applicable only to residential properties
24 located in areas eligible for coverage under the high-risk
25 account referred to in sub-subparagraph (b)2.a.

26 e. Commercial lines nonresidential property insurance
27 forms that cover the peril of wind only. The forms are
28 applicable only to nonresidential properties located in areas
29 eligible for coverage under the high-risk account referred to
30 in sub-subparagraph (b)2.a.

31

1 2.a. Must provide that the corporation adopt a program
2 in which the corporation and authorized insurers enter into
3 quota share primary insurance agreements for hurricane
4 coverage, as defined in s. 627.4025(2)(a), for eligible risks,
5 and adopt property insurance forms for eligible risks which
6 cover the peril of wind only. As used in this subsection, the
7 term:

8 (I) "Quota share primary insurance" means an
9 arrangement in which the primary hurricane coverage of an
10 eligible risk is provided in specified percentages by the
11 corporation and an authorized insurer. The corporation and
12 authorized insurer are each solely responsible for a specified
13 percentage of hurricane coverage of an eligible risk as set
14 forth in a quota share primary insurance agreement between the
15 corporation and an authorized insurer and the insurance
16 contract. The responsibility of the corporation or authorized
17 insurer to pay its specified percentage of hurricane losses of
18 an eligible risk, as set forth in the quota share primary
19 insurance agreement, may not be altered by the inability of
20 the other party to the agreement to pay its specified
21 percentage of hurricane losses. Eligible risks that are
22 provided hurricane coverage through a quota share primary
23 insurance arrangement must be provided policy forms that set
24 forth the obligations of the corporation and authorized
25 insurer under the arrangement, clearly specify the percentages
26 of quota share primary insurance provided by the corporation
27 and authorized insurer, and conspicuously and clearly state
28 that neither the authorized insurer nor the corporation may be
29 held responsible beyond its specified percentage of coverage
30 of hurricane losses.

31

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

6 b. The corporation may enter into quota share primary
7 insurance agreements with authorized insurers at corporation
8 coverage levels of 90 percent and 50 percent.

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

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

22 e. Any quota share primary insurance agreement entered
23 into between an authorized insurer and the corporation is
24 subject to review and approval by the department. However,
25 such agreement shall be authorized only as to insurance
26 contracts entered into between an authorized insurer and an
27 insured who is already insured by the corporation for wind
28 coverage.

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

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

10 g. The corporation board shall establish in its plan
11 of operation standards for quota share agreements which ensure
12 that there is no discriminatory application among insurers as
13 to the terms of quota share agreements, pricing of quota share
14 agreements, incentive provisions if any, and consideration
15 paid for servicing policies or adjusting claims.

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

29 ~~f. Commercial lines residential policy forms without~~
30 ~~wind coverage, which are the same as the policies described in~~
31

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

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

1 impairment of obligations of contracts, it is the intent of
2 the Legislature that no action be taken whose purpose is to
3 impair any bond indenture or financing agreement or any
4 revenue source committed by contract to such bond or other
5 indebtedness.

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

14 a. ~~The insurance consumer advocate appointed under s.~~
15 ~~627.0613.~~

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

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

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

31

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

15 b. To ensure the effective and efficient
16 implementation of this subsection, the Treasurer shall appoint
17 the board of governors by July 1, 2002. The board of governors
18 shall work in conjunction with the Residential Property
19 Insurance Market Coordinating Council to address appropriate
20 organizational, operational, and financial matters relating to
21 the corporation. In addition, after consultation with the
22 Residential Property Insurance Market Coordinating Council,
23 the bond trustees and rating agencies, the Treasurer may
24 postpone for a period not to exceed 180 days after the
25 effective date, the implementation of the corporation or the
26 implementation of one or more of the provisions relating to
27 transfer of Florida Windstorm Underwriting Association
28 policies, obligations, rights, assets, and liabilities into
29 the high-risk accounts and such other provisions that may be
30 affected thereby if the Treasurer determines that postponement
31 is necessary:

- 1 (i) Due to emergency conditions;
2 (ii) To ensure the effective and efficient
3 implementation of the corporation's operations; or
4 (iii) To maintain existing financing arrangements
5 without a material adverse effect on the creditors of the
6 Residential Property and Casualty Joint Underwriting
7 Association or the Florida Windstorm Underwriting Association.
- 8 5. Must provide a procedure for determining the
9 eligibility of a risk for coverage, as follows:
- 10 a. With respect to personal lines residential risks,
11 if the risk is offered full coverage from an authorized
12 insurer at the insurer's approved rate under either a standard
13 policy ~~including wind coverage~~ or, if consistent with the
14 insurer's underwriting rules as filed with the department, a
15 basic policy ~~including wind coverage~~, the risk is not eligible
16 for any policy issued by the corporation ~~association~~. If the
17 risk accepts an offer of coverage through the market
18 assistance plan or an offer of coverage through a mechanism
19 established by the corporation ~~association~~ before a policy is
20 issued to the risk by the corporation ~~association~~ or during
21 the first 30 days of coverage by the corporation ~~association~~,
22 and the producing agent who submitted the application to the
23 plan or to the corporation ~~association~~ is not currently
24 appointed by the insurer, the insurer shall either:
- 25 (I) Pay to the producing agent of record of the
26 policy, for the first year, an amount which is the greater of
27 the insurer's usual and customary commission for the type of
28 policy written or a policy fee equal to the usual and
29 customary commission of the corporation; or
- 30 (II) Offer to allow the producing agent of record of
31 the policy to continue servicing the policy for a period of

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

14

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

26 b. With respect to commercial lines ~~residential~~ risks,
27 if the risk is offered coverage under a policy ~~including wind~~
28 ~~coverage~~ from an authorized insurer at its approved rate, the
29 risk is not eligible for any policy issued by the corporation
30 ~~association~~. If the risk accepts an offer of coverage through
31 the market assistance plan or an offer of coverage through a

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

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

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

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

26
27 If the risk is not able to obtain any such offer, the risk is
28 eligible for a policy ~~including wind coverage~~ issued by the
29 corporation ~~association~~.

30 ~~c. This subparagraph does not require the association~~
31 ~~to provide wind coverage or hurricane coverage in any area in~~

1 ~~which such coverage is available through the Florida Windstorm~~
2 ~~Underwriting Association.~~

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

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

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

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

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

25
26 The acceptance or rejection of a risk by the corporation
27 ~~association~~ shall be construed as the private placement of
28 insurance, and the provisions of chapter 120 shall not apply.

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

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

19 11. The policies issued by the corporation association
20 must provide that, if the corporation association or the
21 market assistance plan obtains an offer from an authorized
22 insurer to cover the risk at its approved rates ~~under either a~~
23 ~~standard policy including wind coverage or a basic policy~~
24 ~~including wind coverage~~, the risk is no longer eligible for
25 renewal coverage through the corporation association. ~~However,~~
26 ~~if the risk is located in an area in which Florida Windstorm~~
27 ~~Underwriting Association coverage is available, such an offer~~
28 ~~of a standard or basic policy terminates eligibility~~
29 ~~regardless of whether or not the offer includes wind coverage.~~
30 ~~Upon termination of eligibility, the association shall provide~~
31 ~~written notice to the policyholder and agent of record stating~~

1 ~~that the association policy shall be canceled as of 60 days~~
2 ~~after the date of the notice because of the offer of coverage~~
3 ~~from an authorized insurer. Other provisions of the insurance~~
4 ~~code relating to cancellation and notice of cancellation do~~
5 ~~not apply to actions under this subparagraph.~~

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

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

31

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

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

31

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. However, for
31 personal lines residential wind-only policies issued or

1 renewed between July 1, 2002, and June 30, 2003, the maximum
2 premium increase must be no greater than 10 percent of the
3 Florida Windstorm Underwriting Association premium for that
4 policy in effect on June 30, 2002, as adjusted for coverage
5 changes and seasonal occupancy surcharges. The personal lines
6 residential wind-only rates for the corporation effective July
7 1, 2003, must be based on a rate filing by the corporation
8 which establishes rates which are actuarially sound and not
9 competitive with approved rates charged by authorized
10 insurers. Corporation rate manuals shall include a rate
11 surcharge for seasonal occupancy. To ensure that personal
12 lines residential wind-only rates effective on or after July
13 1, 2003, are not competitive with approved rates charged by
14 authorized insurers, the department, by March 1 of each year,
15 shall provide the corporation, for each county in which there
16 are geographical areas in which personal lines residential
17 wind-only policies may be issued, the average rates charged by
18 the insurer that had the highest average rate in that county
19 for wind coverage in that insurer's rating territories which
20 most closely approximate the geographical area in that county
21 in which personal lines residential wind-only policies may be
22 written by the corporation. The average rates provided must
23 be from an insurer among the 20 insurers with the greatest
24 total direct written premium in the state for personal lines
25 residential property insurance for the preceding year. With
26 respect to mobile homes, the five insurers with the greatest
27 total written premium for that line of business in the
28 preceding year shall be used. The corporation shall certify
29 to the department that its average personal lines residential
30 wind-only rates are no lower in each county than the average
31 rates provided by the department. The department is

1 authorized to adopt rules to establish reporting requirements
2 to obtain the necessary wind-only rate information from
3 insurers to implement this provision.

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

8 ~~5.4.~~ Nothing in this paragraph shall require or allow
9 the corporation ~~association~~ to adopt a rate that is inadequate
10 under s. 627.062 ~~or to reduce rates approved under s. 627.062.~~

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

17 7. In addition to the rates otherwise determined
18 pursuant to this paragraph, the corporation shall impose and
19 collect an amount equal to the premium tax provided for in s.
20 624.509 to augment the financial resources of the corporation.

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

27 1. If the market assistance plan receives a minimum of
28 100 applications for coverage within a 3-month period, or 200
29 applications for coverage within a 1-year period or less for
30 residential coverage, unless the market assistance plan
31 provides a quotation from admitted carriers at their filed

1 rates for at least 90 percent of such applicants. Any market
2 assistance plan application that is rejected because an
3 individual risk is so hazardous as to be uninsurable using the
4 criteria specified in subparagraph (c)8. shall not be included
5 in the minimum percentage calculation provided herein. In the
6 event that there is a legal or administrative challenge to a
7 determination by the department that the conditions of this
8 subparagraph have been met for eligibility for coverage in the
9 corporation ~~association~~, any eligible risk may obtain coverage
10 during the pendency of such challenge.

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

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

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

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

27 2. The governing body of any unit of local government,
28 any residents of which are insured by the corporation
29 ~~association~~, may issue bonds as defined in s. 125.013 or s.
30 166.101 from time to time to fund an assistance program, in
31 conjunction with the corporation association, for the purpose

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

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

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

1 (I) Pay to the producing agent of record of the
2 policy, for the first year, an amount which is the greater of
3 the insurer's usual and customary commission for the type of
4 policy written or a policy fee equal to the usual and
5 customary commission of the corporation; or

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

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

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

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

1 assessment against an assessable ~~a member~~ insurer is deferred
2 in whole or in part, the amount by which such assessment is
3 deferred may be assessed against the other assessable member
4 insurers in a manner consistent with the basis for assessments
5 set forth in paragraph (b).

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

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

18 1. Any of the foregoing persons or entities for any
19 willful tort;

20 2. The corporation association or its ~~servicing or~~
21 producing agents for breach of any contract or agreement
22 pertaining to insurance coverage;

23 3. The corporation association with respect to
24 issuance or payment of debt; or

25 4. Any assessable member insurer with respect to any
26 action to enforce an assessable ~~a member~~ insurer's obligations
27 to the corporation association under this subsection.

28 ~~(j) The Residential Property and Casualty Joint~~
29 ~~Underwriting Association is not a state agency, board, or~~
30 ~~commission. However, For the purposes of s. 199.183(1), the~~
31 corporation Residential Property and Casualty Joint

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

1 corporation to fulfill its public purposes. Any bonds issued
2 by the corporation, their transfer, and the income therefrom,
3 including any profit made on the sale thereof, shall at all
4 times be free from taxation of every kind by the state and any
5 political subdivision or local unit or other instrumentality
6 thereof; however, this exemption does not apply to any tax
7 imposed by chapter 200 on interest, income, or profits on debt
8 obligations owned by corporations other than the corporation.

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

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

31

1 2. Effective July 1, 2002, policies of the Florida
2 Windstorm Underwriting Association are transferred to the
3 corporation and shall become policies of the corporation. All
4 obligations, rights, assets, and liabilities of the Florida
5 Windstorm Underwriting Association, including bonds, note, and
6 debt obligations, and the financing documents pertaining to
7 them are transferred to and assumed by the corporation on July
8 1, 2002. The corporation is not required to issue endorsement
9 or certificates of assumption to insureds during the remaining
10 term of in-force transferred policies.

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

1 coverage account and the commercial lines residential coverage
2 account of the Residential Property and Casualty Joint
3 Underwriting Association shall be credited to the personal
4 lines account and the commercial lines account, respectively,
5 of the corporation.

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

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

1 participating insurer with its own exposures, reimbursement
2 premium, and loss reimbursement. Likewise, the personal lines
3 and commercial lines accounts shall be viewed together, for
4 all Florida Hurricane Catastrophe Fund purposes, as if the two
5 accounts were one and represent a single, separate
6 participating insurer with its own exposures, reimbursement
7 premium, and loss reimbursement. The coverage provided by the
8 Florida Hurricane Catastrophe Fund to the corporation shall
9 constitute and operate as a full transfer of coverage from the
10 Florida Windstorm Underwriting Association and Residential
11 Property and Casualty Joint Underwriting to the corporation.
12 ~~All obligations, rights, assets, and liabilities of the~~
13 ~~Florida Property and Casualty Joint Underwriting Association~~
14 ~~created by subsection (5), which obligations, rights, assets,~~
15 ~~or liabilities relate to the provision of commercial lines~~
16 ~~residential property insurance coverage as described in this~~
17 ~~section are hereby transferred to the Residential Property and~~
18 ~~Casualty Joint Underwriting Association. The Residential~~
19 ~~Property and Casualty Joint Underwriting Association is not~~
20 ~~required to issue endorsements or certificates of assumption~~
21 ~~to insureds during the remaining term of in-force transferred~~
22 ~~policies.~~

23 (m) Notwithstanding any other provision of law:

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

1 receivership, conservatorship, reorganization, or similar
2 proceeding against the corporation ~~association~~ under the laws
3 of this state.

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

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

31

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

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

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

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

1 written request and demonstration of need; such records held
2 by the receiving agency remain confidential and exempt as
3 provided for herein.

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

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

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

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

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

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) It is the intent of the Legislature that the
23 amendments to this subsection enacted in 2002 should, over
24 time, reduce the probable maximum windstorm losses in the
25 residual markets and should reduce the potential assessments
26 to be levied on property insurers and policyholders statewide.
27 In furtherance of this intent:

28 1. The board shall, on or before February 1 of each
29 year, provide a report to the President of the Senate and the
30 Speaker of the House of Representatives showing the reduction
31 or increase in the 100-year probable maximum loss attributable

1 to wind-only coverages and the quota share program under this
2 subsection combined, as compared to the benchmark 100-year
3 probable maximum loss of the Florida Windstorm Underwriting
4 Association. For purposes of this paragraph, the benchmark
5 100-year probable maximum loss of the Florida Windstorm
6 Underwriting Association shall be the calculation dated
7 February 2001 and based on November 30, 2000, exposures. In
8 order to ensure comparability of data, the board shall use the
9 same methods for calculating its probable maximum loss as were
10 used to calculate the benchmark probable maximum loss.

11 2. Beginning February 1, 2007, if the report under
12 subparagraph 1. for any year indicates that the 100-year
13 probable maximum loss attributable to wind-only coverages and
14 the quota share program combined does not reflect a reduction
15 of at least 25 percent from the benchmark, the board shall
16 reduce the boundaries of the high-risk area eligible for
17 wind-only coverages under this subsection in a manner
18 calculated to reduce such probable maximum loss to an amount
19 at least 25 percent below the benchmark.

20 3. Beginning February 1, 2012, if the report under
21 subparagraph 1. for any year indicates that the 100-year
22 probable maximum loss attributable to wind-only coverages and
23 the quota share program combined does not reflect a reduction
24 of at least 50 percent from the benchmark, the boundaries of
25 the high-risk area eligible for wind-only coverages under this
26 subsection shall be reduced by the elimination of any area
27 that is not seaward of a line 1,000 feet inland from the
28 Intracoastal Waterway.

29 (p) In enacting the provisions of this section, the
30 Legislature recognizes that both the Florida Windstorm
31 Underwriting Association and the Residential Property and

1 Casualty Joint Underwriting Association have entered into
2 financing arrangements that obligate each entity to service
3 its debts and maintain the capacity to repay funds secured
4 under these financing arrangements. It is the intent of the
5 Legislature that nothing in this section be construed to
6 compromise, diminish, or interfere with the rights of
7 creditors under such financing arrangements. It is further the
8 intent of the Legislature to preserve the obligations of the
9 Florida Windstorm Underwriting Association and Residential
10 Property and Casualty Joint Underwriting Association with
11 regard to outstanding financing arrangements, with such
12 obligations passing entirely and unchanged to the corporation
13 and, specifically, to the applicable account of the
14 corporation. So long as any bonds, notes, indebtedness, or
15 other financing obligations of the Florida Windstorm
16 Underwriting Association or the Residential Property and
17 Casualty Joint Underwriting Association are outstanding, under
18 the terms of the financing documents pertaining to them, the
19 governing board of the corporation shall have and shall
20 exercise the authority to levy, charge, collect, and receive
21 all premiums, assessments, surcharges, charges, revenues and
22 receipts that the associations had authority to levy, charge,
23 collect, or receive under the provisions of subsection (2) and
24 subsection (6), respectively, as they existed on January 1,
25 2002, to the extent necessary to provide moneys, together with
26 other available moneys of the corporation in the applicable
27 account without exercise of the authority provided by this
28 paragraph, in at least the amounts, and by the times, as would
29 be provided under those former provisions of subsection (2) or
30 subsection (6), respectively, so that the value, amount, and
31 collectability of any assets, revenues, or revenue source

1 pledged or committed to, or any lien thereon securing such
2 outstanding bonds, notes, indebtedness, or other financing
3 obligations will not be diminished, impaired, or adversely
4 affected by the amendments made by this act and to permit
5 compliance with all provisions of financing documents
6 pertaining to such bonds, notes, indebtedness, or other
7 financing obligations, or the security or credit enhancement
8 for them, and any reference in this subsection to bonds,
9 notes, indebtedness, financing obligations, or similar
10 obligations, of the corporation shall include like instruments
11 or contracts of the Florida Windstorm Underwriting Association
12 and the Residential Property and Casualty Joint Underwriting
13 Association to the extent not inconsistent with the provisions
14 of the financing documents pertaining to them.

15 (q) Effective January 7, 2003, any reference in this
16 subsection to the Treasurer shall be deemed to be a reference
17 to the Chief Financial Officer and any reference to the
18 Department of Insurance shall be deemed to be a reference to
19 the Department of Insurance and Financial Services or other
20 successor to the Department of Insurance specified by law.

21 (r) The corporation shall not require the securing of
22 flood insurance as a condition of coverage if the insured or
23 applicant executes a form approved by the department affirming
24 that flood insurance is not provided by the corporation and
25 that if flood insurance is not secured by the applicant or
26 insured in addition to coverage by the corporation, the risk
27 will not be covered for flood damage. A corporation
28 policyholder electing not to secure flood insurance and
29 executing a form as provided herein making a clam for water
30 damage against the corporation shall have the burden of
31 proving the damage was not caused by flooding. Notwithstanding

1 other provisions of this subsection, the corporation may deny
2 coverage to an applicant or insured who refuses to execute the
3 form described herein.

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

6 627.3511 Depopulation of Residential Property and
7 Casualty Joint Underwriting Association.--

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

14 (a) Pay to the producing agent of record of the
15 association policy, for the first year, an amount that is the
16 greater of ~~equal to~~ the insurer's usual and customary
17 commission for the type of policy written of a fee equal to
18 the ~~if the term of the association policy was in excess of 6~~
19 ~~months, or one-half of such~~ usual and customary commission ~~if~~
20 ~~the term of the association policy was 6 months or less; or~~

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

26
27 If the producing agent is unwilling or unable to accept
28 appointment, the new insurer shall pay the agent in accordance
29 with paragraph (a). ~~The insurer need not take any further~~
30 ~~action if the offer is rejected. This subsection does not~~
31 ~~apply to any reciprocal interinsurance exchange, nonprofit~~

1 ~~federation, or any subsidiary or affiliate of such~~
2 ~~organization. This subsection does not apply if the agent is~~
3 ~~also the agent of record on the new coverage.~~The requirement
4 of this subsection that the producing agent of record is
5 entitled to retain the unearned commission on an association
6 policy does not apply to a policy for which coverage has been
7 provided in the association for 30 days or less or for which a
8 cancellation notice has been issued pursuant to s.
9 627.351(6)(c)11. during the first 30 days of coverage.

10 Section 4. Section 627.3517, Florida Statutes, is
11 created to read:

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

1 or keepout offer, the policyholder shall not be disqualified
2 from participation in the appropriate insurance risk
3 apportionment plan because of an offer of coverage in the
4 voluntary market. An offer of full property insurance coverage
5 by the insurer currently insuring either the ex-wind or
6 wind-only coverage on the policy to which the offer applies
7 shall not be considered a takeout or keepout offer. Any rule,
8 plan of operation, or plan of depopulation, through keepout,
9 takeout, midterm assumption, or any other means, of any
10 property insurance risk apportionment plan under s. 627.351(2)
11 or s. 627.351(6) is subject to ss. 627.351(2)(b) and (6)(c)
12 and 627.351(4).

13 Section 5. This act shall take effect upon becoming a
14 law.

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