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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-subparagraphs 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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